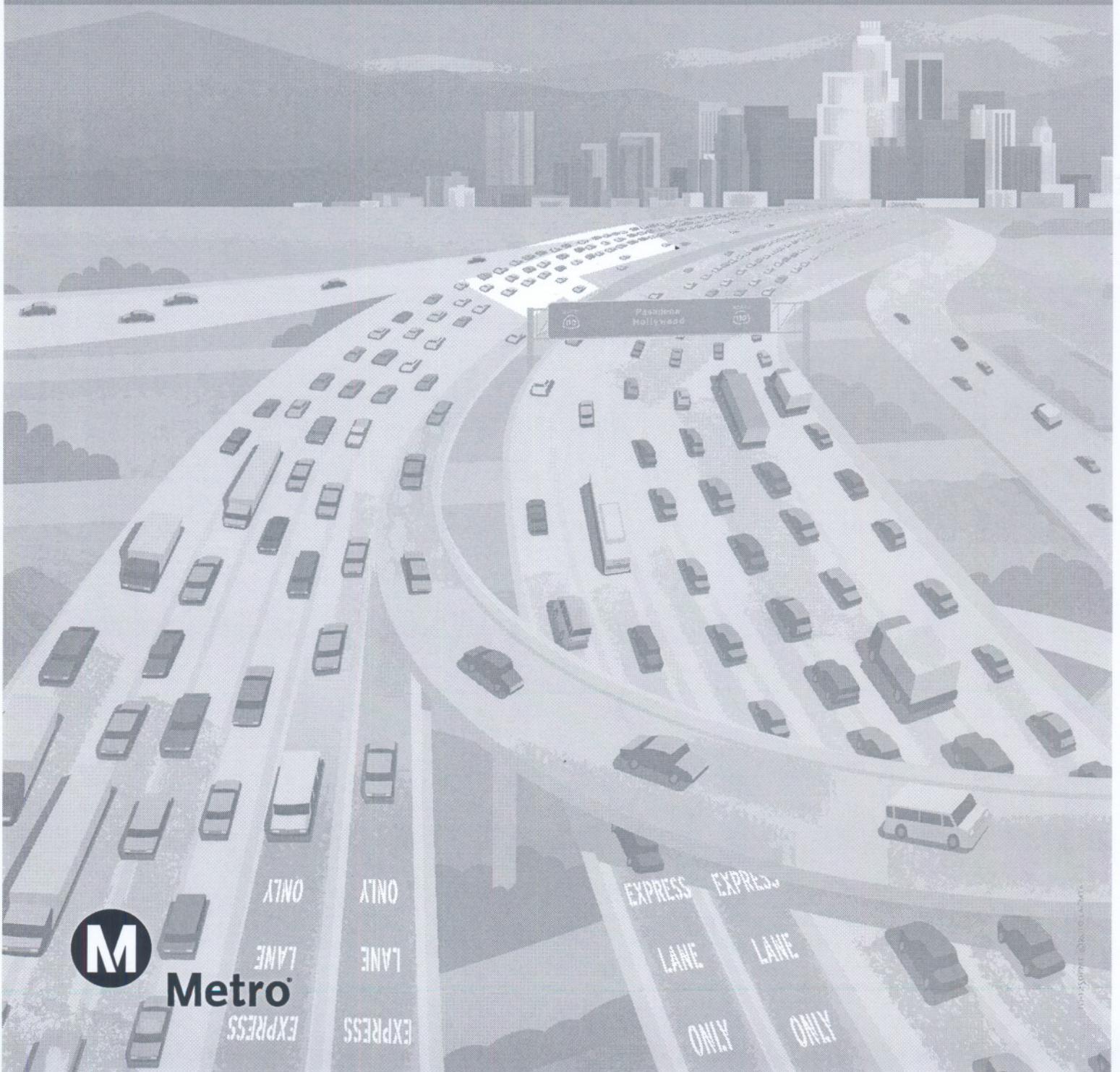


Los Angeles County  
Metropolitan Transportation Authority

# Metro ExpressLanes Project

CONTRACT NO. PS0922102333

DECEMBER 16, 2010



**Metro**

EXPRESS LANE ONLY  
EXPRESS LANE ONLY  
EXPRESS LANE ONLY  
EXPRESS LANE ONLY

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\* All Articles, Subarticles, or portions of the Contract noted by an asterisk (\*) shall be included in (flow-down to) all Subcontracts of any tier.

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

**CONTRACT NO.**

**METRO EXPRESSLANES PROJECT**

**FIRM FIXED PRICE CONTRACT**

**BETWEEN**

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

**AND**

**ATKINSON CONTRACTORS, LP**

**DECEMBER 16, 2010**

---

**EFFECTIVE DATE**

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
FIRM FIXED PRICE CONTRACT**

**CONTRACT NO: PS0922102333**

**Between**

**LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION AUTHORITY  
ONE GATEWAY PLAZA  
LOS ANGELES, CA 90012-2952**

**and**

**ATKINSON CONTRACTORS, LP  
27422 PORTOLA PARKWAY, SUITE #250  
FOOTHILL RANCH, CA 92694**

**METRO EXPRESSLANES PROJECT**

---

This Contract is entered into by and between the Los Angeles County Metropolitan Transportation Authority (Metro), and Atkinson Contractors, LP (Contractor), a California limited partnership.

In consideration of the mutual covenants of the parties as set forth below, the parties hereby agree as follows:

**ARTICLE I: CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE**

- A. This Contract includes this Form of Contract and the other following Contract Documents and Attachments, which are incorporated herein and made a part of this Contract.
- B. Except as otherwise specified herein, in the event of any conflict, the precedence of the Contract Documents shall be as follows:
  - 1. Form of Contract, including Exhibit 1, Insurance Requirements.
  - 2. Regulatory Requirements, (Pro Form 039, Dated 04.27.10)
  - 3. Special Provisions, (Pro Form 093a, Dated 04.27.10)
  - 4. General Conditions, (Pro Form 042a, Dated 04.27.10)
  - 5. Compensation and Payment Provisions, Firm Fixed Price, (Pro Form 040, Dated 04.27.10)
  - 6. AFC Design Documents
  - 7. Statement of Work (SOW) and all other Technical Documents or Project Definition Documents, General Requirements Division 1, Specifications, and Preliminary Engineering Drawings.

8. Final Environmental Impact Statement/Environmental Impact Report
9. DEOD Contract Compliance Manual (Federal – FHWA), (Pro Form 087, Date 4.22.10)
10. Labor Compliance Manual (Dated 10.22.02)
11. Alcohol and Drug-Free Workplace Manual (Pro Form 023, Dated 5.15.09)

C. An Amendment or Change to this Contract shall take its precedence from the term it amends. All other documents and terms and conditions shall remain unchanged.

## **ARTICLE II: DEFINITIONS**

Capitalized terms, abbreviations and symbols used in this Contract are defined in the Article in the General Conditions entitled GLOSSARY OF TERMS. Additional terms may be defined in the Special Provisions or the Statement of Work.

## **ARTICLE III: WORK TO BE PERFORMED**

Contractor shall perform the Work, as more fully described in the Statement of Work, to design, purchase, install and test toll systems on the I-10 and I-110 freeways, as designated. Civil engineering work and construction on both corridors will be required to support the tolling infrastructure and implementation. Customer Service Center(s) with back-office functions and systems operations and maintenance will be required after acceptance and revenue operating date.

## **ARTICLE IV: COMPENSATION BY METRO**

### **A. Contract Price**

In consideration of the Contractor's full performance of the Work, and in accordance with the terms of the Contract, Metro will pay the Contractor the Contract Price of Seventy Two Million Three Hundred Sixty Three Thousand Seven Hundred Two dollars (\$72,363,702) as provided in this Article and in the Contract Document entitled Compensation and Payment Provisions.

### **B. Applications for Progress Payments, Milestone Payments and Fixed Monthly Payments**

All Applications for Payments shall be submitted in writing in accordance with the Contract Documents entitled COMPENSATION AND PAYMENT and SPECIAL PROVISIONS, as applicable, and delivered or mailed to Metro as follows:

Los Angeles County Metropolitan Transportation Authority  
Accounts Payable  
P.O. Box 512296  
Los Angeles, CA 90051-0296  
Contract No. **PS0922102333**

C. Final Payment

The Application for Final Payment shall be marked **FINAL** and a copy sent to Metro's Authorized Representative.

- D. Effective January 1, 2009, Metro started payment of invoices via Electronic Funds Transfer (EFT) which guarantees faster payments and is a more secure and efficient way to make payments. If Contractor has not already done so, Contractor will be required to sign up for EFT, unless Contractor requests a waiver in writing. Please call (213) 922-6811, then press option # 7 for EFT forms.

## **ARTICLE V: TRANSFER OF TOLL COLLECTION FUNDS TO METRO**

During tolling operations, all toll system collection funds shall be deposited through an Automated Clearing House (ACH) electronic funds transfer (EFT) system to a bank and account(s) as specified by Metro.

These funds shall be deposited on a monthly basis by 5pm (PST) and made available three (3) working days after month end. A monthly summary report of all financial transactions shall be forwarded electronically to Metro Accounts Receivable Department; this report shall detail the deposit components by corridor and any adjustments or reconciliation required to support the monthly deposit. For audit purposes, Metro Accounts Receivable Department shall have the capability to access these reports directly from the toll operator accounting system.

## **ARTICLE VI: CONTRACT TERM AND PERIOD OF PERFORMANCE**

The Effective Date of this Contract is December 16, 2010. The Period of Performance of this Contract shall begin on the date set forth in the Notice to Proceed (hereinafter "Commencement Date"). Contractor shall complete all Work under the Contract within nine hundred and ninety (990) calendar days after the Commencement Date, unless this Contract is terminated earlier or extended by Metro, in writing, as provided in the Contract. The above period of performance represents Contractor's proposed accelerated schedule from the Contract schedule shown in the Contract Special Provisions, Appendix A, entitled WORK COMPLETION SCHEDULE.

Contractor understands and agrees that Metro assumes no schedule or cost risk associated with Contractor's proposed accelerated schedule of sixty (60) days from the Contract schedule for Substantial Completion, as described in the Contract Special Provisions, Appendix A, and such sixty days must be exhausted before Contractor is entitled to any Excusable and/or Compensable Delay under the terms of the Contract, accordingly Metro will only assess Liquidated Damages from the milestone dates shown in the Contract Document SPECIAL PROVISIONS Article entitled LIQUIDATED DAMAGES.

## ARTICLE VII: THIRD PARTY WORK

Should Contractor be engaged by a Third Party to perform construction or other work within or adjacent to the sites of the Work specified in this Contract ("Third Party Work"), Contractor shall not commit or permit any act or omission in connection with the Third Party Work that will interfere with, impact, or delay the performance of the Work specified in this Contract. Contractor understands and agrees that it shall not pursue any claim for time or money for any interference with, impact on, or delay to this Contract resulting from the Third Party Work under Contractor's, including its subcontractor's and supplier's, supervision or control. The foregoing shall not preclude Contractor's administrative remedies in this Contract for any such interference with, impact on, or delay caused by the Third Party or Metro.

## ARTICLE VIII: CONTRACT OPTIONS

Metro may increase the basic Contract Term and Total Contract Price by exercising the following Options for performance as detailed in the Contract Statement of Work and the Schedule of Quantities and Prices; at the prices set forth in the Schedule of Quantities and Prices.

<u>SQ&amp;P Item No.</u>	<u>Item Description</u>
C.1	Option 1: I-105 Enhancement
C.2	Option 2: Additional Signage Required by MUTCD
C.3	Option 3: Self-Declaration Transponders
C.9	Option 5: Enforcement Technology
C.10	Option 6: Additional Language Support

### Options to Extend Operate and Maintain (OM) Term

C.4	Option 4.1: Additional Year of Operation and Maintenance – Year 1.
C.5	Option 4.2: Additional Year of Operation and Maintenance – Year 2.
C.6	Option 4.3: Additional Year of Operation and Maintenance – Year 3.
C.7	Option 4.4: Additional Year of Operation and Maintenance – Year 4.
C.8	Option 4.5: Additional Year of Operation and Maintenance – Year 5.

Metro may exercise said Options in writing as follows:

- Option 1, no later than sixty (60) Days after NTP;
- Option 2, no later than thirty (30) Days after NTP;
- Option 3, at any time in quantities of 5,000 – 10,000
- Option 5, no later than sixty (60) Days after NTP; and
- Option 6, no later than one hundred eighty (180) Days after NTP.
- Option(s) 4.1 thru 4.5; Metro will provide written notice to the Contractor at least ninety (90) Days prior to the scheduled termination of the OM Demonstration Period or Option Period, as the case may be, notifying the

Contractor that the Contract shall be extended for the Option Period. It is understood that exercising the Options extending the term for Operations and Maintenance is contingent upon the enactment of California state law authorizing Metro to continue tolling operations.

#### **ARTICLE IX: AVAILABILITY OF FUNDS**

Funding for this Contract is based upon the availability of funds determined by Metro's fiscal budget, which runs from July 1 through June 30 of each fiscal year. If funding is not approved for any subsequent fiscal year during which this Contract is in effect, Metro will issue a stop work notice.

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**ARTICLE X: ENTIRE AGREEMENT**

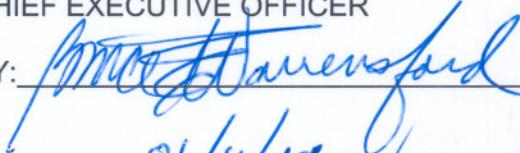
This Contract includes this Form of Contract, all other Contract Documents incorporated pursuant to Article I herein, and all Attachments and other documents incorporated herein by inclusion or by reference, and constitutes the complete and entire agreement between Metro and Contractor and supersedes any prior representations, understandings, communications, agreements or proposals, oral or written.

**ATKINSON CONTRACTORS, LP**  
27422 Portola Parkway, Suite #250  
Foothill Ranch, CA 972694  
John.Harrington@atkn.com  
(949) 855-9755

**LOS ANGELES COUNTY  
METROPOLITAN  
TRANSPORTATION AUTHORITY**

ARTHUR T. LEAHY  
CHIEF EXECUTIVE OFFICER

  
\_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICIAL

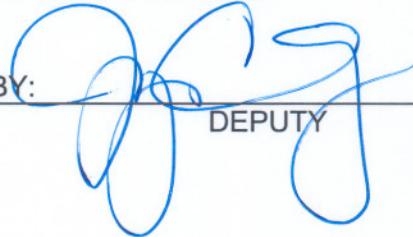
BY:   
\_\_\_\_\_  
01/11/11  
DATE

BY: JOHN HARRINGTON  
(PRINT OR TYPE NAME)

Vice President and General Manager  
TITLE

APPROVED AS TO FORM  
Andrea Sheridan Ordin  
COUNTY COUNSEL

1-7-2011  
DATE

BY:   
\_\_\_\_\_  
DEPUTY

TAX ID NO.: 34-1997409

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## EXHIBIT 1 – INSURANCE REQUIREMENTS

Insurance requirements are applicable to all phases of the Work, in accordance with the following provisions.

### CONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall procure and maintain each of the required insurance coverages identified in this Section. Except as otherwise specified noted herein, evidence of all required coverages shall be provided by the Contractor to Metro prior to the issuance of the NTP and all required coverages shall remain in effect throughout the performance of the design, construction, and operations and maintenance phases of Work. All limits specified in this section are project specific. Coverage required in support of the project is as follows:

(a) Commercial General Liability Insurance. -- The Contractor shall provide commercial general liability broad form coverage (for bodily injury, property damage, personal injury and advertising injury) written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) form CG 00 01 07 98 or equivalent. Such insurance shall include, by its terms or appropriate endorsements, coverage for bodily injury, property damage, fire legal liability (not less than the replacement value of the portion of the premises occupied), personal injury, blanket contractual, independent Contractors, premises operations, products and completed operations, broad form property damage and hazards commonly referred to as “x” (explosion), “c” (collapses) and “u” (underground) exposures. This coverage shall have a minimum limit of \$1 million per occurrence, \$2 million general annual aggregate and \$2 million products/completed operations aggregate. The Contractor shall maintain the products and completed operations coverage for a period of seven (7) years following Final Acceptance of the O & M Work, and shall maintain all other commercial general liability insurance through the expiration of the Warranty periods. If commercial general liability insurance or other form with a general aggregate limit and products and completed operations aggregate limit is used, then the aggregate limits shall apply separately to the Project, or the Contractor may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the Contractor; any such excess insurance shall be at least as broad as the Contractor’s primary insurance. The Contractor shall be the named insured and each of the Indemnified Parties shall be additional insureds (without exclusions) with respect to liability arising out of the acts or omissions of the Contractor or any Contractor-Related Entity, whether occurring on or off of the Worksite. Coverage must be endorsed to eliminate the exclusion of coverage within 50 feet of a railroad property. The required limits can be satisfied by a combination of a primary policy and an excess policy.

(b) Workers’ Compensation and Employer’s Liability Insurance. -- The Contractor shall provide workers’ compensation insurance in conformance with the laws of the State of California, and employer’s liability insurance (or bodily injury or disease) with minimum limits of \$1 million per accident for bodily injury by accident, \$1 million per employee for bodily injury by disease, and \$1 million policy limit for bodily injury by disease. The Contractor shall be the named insured on these policies. The workers’ compensation policy shall contain the following endorsements:

- (1) A voluntary compensation endorsement.
- (2) An alternate employer endorsement.

- (3) An endorsement extending coverage to all states operations on an "if any" basis.
- (4) Other states coverage on an "if any" basis.
- (5) Federal Employers Liability Act Coverage (WC 00 01 01A) (if any basis).
- (6) If applicable, USL&H, Maritime, Jones Act and Foreign Coverage.

The required limits can be satisfied by a combination of a primary policy and an excess or umbrella policy.

(c) Automobile Liability Insurance. -- The Contractor shall provide commercial automobile liability insurance covering the ownership, maintenance or use of all owned/leased, non-owned and hired vehicles used in the performance of the Work, both on and off the Worksite, including loading and unloading, with limits of not less than \$1 million, combined single limit for bodily injury and property damage liability. The Contractor shall maintain such insurance through Final Acceptance; provided, however, that such coverage shall be maintained for vehicles used in the performance of any work related to the Project until the expiration of the Warranty period. Coverage shall be provided on Insurance Services Office form number CA 001 (Ed. 7/97) or its equivalent. The Contractor shall be the named insured and the Indemnified Parties shall be additional insureds (without exclusions) with respect to liability arising out of the acts or omissions of the Contractor or any Contractor-Related Entity. The required limits can be satisfied by a combination of a primary policy and an excess policy.

(d) Environmental Liability Insurance. -- The Contractor shall provide a Claims Made environmental liability coverage policy with limits not less than \$5,000,000 each claim and \$5,000,000 annual aggregate. The policy shall include as insureds Metro, Contractor, and any of its Subcontractors (including design sub-consultants) of any tier. The Indemnified Parties shall be additional insureds (without exclusions) with respect to liability arising out of the acts or omissions of the Contractor or any Contractor-Related Entity, whether occurring on or off of the Site. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

(e) Excess Liability Insurance. -- The Contractor shall provide umbrella or excess liability insurance with limits not less than \$20,000,000 which will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including Employer's Liability, Commercial General Liability, and Comprehensive Automobile Liability insurance, in excess of the amounts set forth herein above. This coverage must be endorsed to eliminate the exclusion of coverage within 50 feet of a railroad property.

(f) Professional Liability Insurance. -- The Contractor shall provide professional liability coverage with limits not less than \$10 million per claim and aggregate. The professional liability coverage shall be Project specific and shall protect against any error, omission, or negligent act arising out of design, engineering, construction and/or project management activities with respect to the Project, including coverage for errors, omissions or negligent acts by the Contractor or any Contractor-Related Entity. The policy shall remain in full force and effect for a period of seven (7) years following Final Acceptance of the O & M Work. The coverage shall include the Contractor and any of its Subcontractors (including design sub-consultants) of any tier. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude the Contractor or Metro, from making a claim

that would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

(g) **Builders Risk.** -- The Contractor shall provide builder's risk insurance for the Project as specified below. The insureds shall be the Contractor, all Subcontractors (excluding those solely responsible for Design Work) of any tier, and Metro, as their interests may appear. The Indemnified Parties shall be additional insureds (without exclusions) with respect to liability arising out of the acts or omissions of the Contractor or any Contractor-Related Entity, whether occurring on or off of the Worksite. The insurance shall be maintained until the date of Final Acceptance; provided that the Contractor shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to Metro. This Builder's Risk Insurance is required for the design/construction phase of the Work and is not applicable to the operations and maintenance phase. Requirements for this Builder's Risk insurance are as follows:

(1) **Minimum Scope.** -- A blanket builder's risk insurance policy on an "all risk" basis for the Probable Maximum Loss (PML) of the entire value of the Project including: (A) coverage for any ensuing loss from faulty workmanship; Nonconforming Work materials, omission or deficiency in design or specifications; (B) coverage against damage or loss caused by earth movement, flood, fire, theft, vandalism and malicious mischief and machinery accidents and operational testing; (C) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project; (D) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to Metro.

(2) **Minimum Coverage.** -- Coverage shall be for the replacement value thereof for "all risks" of direct physical loss or damage, including earth movement and flood coverage, with a Probable Maximum Loss (PML) limit of liability equal to \$10,000,000, plus "soft cost expense cover" (including attorneys' fees and fees and other costs associated with such damage or loss and with any Government Approvals).

**Sublimits of Coverage Include:**

\$5,000,000 annual aggregate limit Water Damage/Flood Insurance

\$5,000,000 any one Occurrence as respects insured Property in-transit

\$5,000,000 any one Occurrence as respects insured Property stored off-site

\$200,000 Trees, Grass, Shrubbery and Plant coverage for any one Occurrence.

The coverage shall be written without risk of liability to Metro for payment and without deduction for depreciation. There shall be no coinsurance penalty provision in any such policy. Deductibles or self-insured retentions shall be no greater than 5% of the total value of each insured unit at the time of loss.

(h) **Railroad Protective Liability.** -- The Contractor shall provide railroad protective liability insurance with a limit not less than \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be at least \$6,000,000. In addition the commercial general liability policy shall be endorsed to remove the exclusion for

work performed within 50 feet of operating track through the addition of endorsement CG 24 17 or its equivalent.

(i) Valuable Papers. -- The Contractor shall provide valuable papers insurance with a limit of not less than \$200,000 each loss. Such insurance shall assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the Work and/or the Project in the event of loss or destruction, until all such items and data are turned over to Metro.

(j) Aircraft Liability. -- The Contractor shall provide insurance, with a limit of not less than \$5,000,000 per occurrence, in all cases where any aircraft is used on the Project that is owned, leased or chartered by any Contractor or Contractor-Related Entity, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the Work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Site or on any property owned by Metro shall be subject to review and written acceptance by Metro prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable but must be provided prior to use of the aircraft.

(k) Pollution Legal Liability – The Contractor shall provide a pollution legal liability coverage policy. Such insurance shall include bodily injury, property damage, environmental damage, loss of use of property, governmental ordered clean up costs, completed operations and defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for damages. Coverage shall also be provided for transport of waste and non-owned disposal sites (NODS) coverage. Contractual liability shall be included. The following limits and conditions shall apply:

(1) A limit of not less than of \$5,000,000 per occurrence and \$5,000,000 annual aggregate.

(2) The State shall be named an additional insured.

(3) A “claims “made form will be acceptable. The coverage must be in place for all claims arising from the Contract. The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and the Contractor shall maintain such insurance for a period of at least seven (7) years following Final Acceptance of the O & M Work. If the Contractor discontinues such coverage, then extended reporting period coverage must be purchased to fulfill this requirement.

(l) Employee Dishonesty/Crime Coverage. – The Contractor shall procure and maintain to the benefit of Metro coverage in an amount not less than \$5,000,000 in support of transactions related to the project. Coverage is to afford protection for any loss related to monies and securities as the result of activities of Contractor, Subcontractors and their Agents and/or employees. This insurance is required only for the operations and maintenance phase of the Work. Certificates of Insurance for this coverage must be provided to Metro prior to the NTP for the operations and maintenance Work.

(m) Electronic Data Processing/Cyber Security Coverage. – The Contractor shall procure and maintain coverage in an amount not less than \$5,000,000 which affords protection due interruptions in transmission, loss of information, including breaches caused by lapses in security resulting in loss and or the compromise of data integrity. This insurance is required only for the operations and maintenance phase of the Work. Certificates of Insurance for this coverage must be provided to Metro prior to the NTP for the operations and maintenance Work.

(n) Property Damage Coverage – The Contractor shall procure and maintain “all perils” or broad form property insurance covering all Toll Collection Equipment and Systems and

related improvements, with coverage sufficient to insure the full value of such Equipment, Systems and related improvements. This insurance is required only for the operations and maintenance phase of the Work. Certificates of insurance for this coverage must be provided to Metro prior to NTP for the operations and maintenance Work.

## **GENERAL REQUIREMENTS APPLICABLE TO ALL INSURANCE**

(a) Contractor's Failure to Procure. -- The Contractor's failure to procure or maintain the insurance required by this Section during the entire term of the Work shall constitute a material breach of contract. In the event of such a breach, Metro may exercise all available rights and remedies hereunder, including the rights to immediately suspend or terminate the Contractor, at its discretion, procure or renew such insurance to protect Metro and pay any and all premiums in connection therewith, and withhold or recover all monies so paid (plus interest) from the Contractor.

(b) Additional Insured Endorsement. -- Each policy, except for Workers Compensation and Professional Liability, shall name Authority, its subsidiaries, members, directors, and affiliated companies, including without limitation, Metro, Caltrans, the City of Los Angeles, Los Angeles Department of Transportation, Southern California Regional Rail Authority, National Railroad Passenger Corporation, Union Pacific Railroad and their respective officers, agents, shareholders, and employees as additional insureds (without exclusions). The additional insured endorsement for all policies shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds. The Endorsement shall include language that affords coverage for any work emanating from the Project and related facilities. The endorsement shall also contain a provision that Metro, Caltrans and the City of Los Angeles shall be notified by the insurer(s), in writing, at least thirty (30) days prior to any cancellation, non-retrieval, or material change adversely affecting the interest of the Metro, Caltrans, the City of Los Angeles, Los Angeles Department of Transportation, Southern California Regional Rail Authority, National Railroad Passenger Corporation, or Union Pacific Railroad.

(c) Waiver of Subrogation. -- The Contractor hereby waives all rights of recovery under subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against the Metro and its officers, employees, subsidiaries, members, directors, agents, and affiliated companies, including without limitation, Metro and their respective officers, agents, shareholders, and employees, and any other Contractor or Subcontractor performing Work or rendering services on behalf of Metro in connection with the planning, development and construction of the Project.

(d) Additional Insurance. -- The Contractor shall, by mutual agreement with Metro and at Metro's cost, provide any additional insurance as may be required by Metro. The Contractor shall provide certificates of insurance evidencing any such additional insurance coverage.

(e) Deductibles. -- The Contractor shall be solely responsible for all deductibles and self-assured retentions hereunder. Any deductibles or self-insured retentions greater than \$100,000 for all lines of coverage except \$250,000 for flood must be declared to and approved by Metro.

(f) Delivery of Policies. -- At Metro's request, the Contractor shall provide actual copies of the policy of any insurance that is required hereunder prior to the commencement of any work. In the event that the Contractor has not received the policy, a signed Binder of Insurance detailing coverage and deductibles will suffice until the policy is received. The

Contractor shall submit, concurrently with its signing of this Contract, all required Insurance Certificates (and any other related documents) specified in the Contract within fourteen (14) Days of the Effective Date of the Contract. The Contractor shall not commence the Work until it receives written confirmation of acceptance by Metro of all required Insurance documentation.

(g) Reinsurance. -- When the Contractor has utilized a fronting company to place insurance (as in the use of a Captive), the Contractor shall assure that each such Reinsurer has consented to the following terms being made part of Insurer's policy and that these terms are also part of the reinsurance agreements between the Insurer and each of the Reinsurers:

(1) The Insurer hereby declares itself the trustee of the reinsurance identified above for the benefit of each insured under this policy and covenants to hold all rights and benefits under each such reinsurance contract in trust for each Insured under this policy. Consistent with the foregoing, each Reinsurer is aware that the Insurer has constituted itself as a trustee of all reinsurance for the Insureds under this policy and that this reinsurance is payable to the Insurer as a trustee for each of the Insureds.

(2) In the event of the insolvency of the Insurer, each Reinsurer shall be responsible directly to each Insured under this policy as beneficiary of the reinsurance contract on the basis of liability of the Insurer without diminution because of the insolvency of the Insurer.

(h) Primary and Non-Contributory. -- The insurance coverage specified in this Article shall be primary insurance for claims covered with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that the Contractor has left the Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an insured, additional insured, or their members, directors, officers, employees, agents and consultants shall be excess of such insurance and shall not contribute.

(i) Governmental Immunity. -- Insurance companies providing policies as required under this Article shall waive their rights to assert the immunity of the State of California as defense to any claims arising out of this Contract.

## **SUBCONTRACTOR INSURANCE REQUIREMENTS**

The Contractor shall cause each Subcontractor to provide insurance that complies with requirements for Contractor-provided insurance set forth in the Sections entitled CONTRACTOR INSURANCE REQUIREMENTS and GENERAL REQUIREMENTS APPLICABLE TO ALL INSURANCE in circumstances where the Subcontractor is not covered by the Contractor-provided insurance; provided that the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. The Contractor shall cause each such Subcontractor to include the Indemnified Parties as additional insureds under such Subcontractor's insurance policies as required for the Contractor. The Contractor shall require each such Subcontractor to comply with all the requirements stated in the Section entitled GENERAL REQUIREMENTS APPLICABLE TO ALL INSURANCE. If requested by Metro, the Contractor shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. Metro shall have the right to contact the Subcontractors directly in order to verify the above coverage.

# GENERAL CONDITIONS (DESIGN, BUILD, OPERATE & MAINTAIN)

## GC-01 GLOSSARY OF TERMS

### 1.1 Abbreviations and Symbols

The following abbreviations are used in these documents:

\* **Marks Required Subcontract Provisions that must flow down to all subcontracts as defined in the Article entitled SUBCONTRACTORS AND SUPPLIERS herein.**

AAR	Association of American Railroads
ADR	Alternative Disputes Resolution
AFC	Approved for Construction
AGC	Associated General Contractors
AIA	American Institute of Architects
AREA	American Railway Engineering Association
ASTM	American Society for Testing and Materials
ATSF	Atchison Topeka & Santa Fe Railroad
Cal-OSHA	California Occupational Safety and Health Administration
BNSF	Burlington Northern & Santa Fe Railroad (formerly ATSF)
CALTRANS	California Department of Transportation
CCIP	Contractor Controlled Insurance Program
CCR	California Code of Regulations
CDR	Critical Design Review
CD-R	Compact Disc (Recordable Memory Only – NO Re-Write)
CD-ROM	Compact Disc (Read Only Memory)
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CM	Construction Manager or Construction Management Consultant

CN	Change Notice
CO	Change Order
COD	Contracting Officer's Directive
CPCC	California Public Contract Code
CPM	Critical Path Method
CPSC	Consumer Products Safety Council
CPUC	California Public Utilities Commission
CSI	Construction Specifications Institute
CSP	Cost and Schedule Proposal
CWA	Continuation of Work Agreement
DOC	United States Department of Commerce
DOT	United States Department of Transportation
DWP	Department of Water and Power
EEO	Equal Employment Opportunity
EPA	United States Environmental Protection Agency
Est.	Estimated
FAR	Federal Acquisition Regulations
FAT	Factory Acceptance Testing
FHWA	United States Department of Transportation, Federal Highway Administration
FOB	Free On Board
FRA	Federal Railroad Administration
FS	Federal Specifications
FTA	Federal Transit Administration
GDSR	Geotechnical Design Summary Report

LACFCD	Los Angeles County Flood Control District
LACOFD	Los Angeles County Fire Department
LACMTA	See Metro
LADOT	Los Angeles City Department of Transportation
LADPW	Department of Public Works, City of Los Angeles
LAFD	Los Angeles City Fire Department
LDs	Liquidated Damages
Metro	Los Angeles County Metropolitan Transportation Authority
NOAA	National Oceanic and Atmospheric Administration
NOIC	Notice of Intent to Claim
NPDES	National Pollutant Discharge Elimination Systems
NTE	Not-to-Exceed
NTSB	National Transportation Safety Board
NTP	Notice To Proceed
OCIP	Owner Controlled Insurance Program
OSHA	United States Department of Labor, Occupational Safety and Health Administration, and Occupational Safety and Health Act
PCC	Public Contract Code
PDR	Preliminary Design Review
PPE	Personal Protective Equipment
PUC	Public Utilities Code, State of California, California Public Utilities Commission
QA	Quality Assurance
QC	Quality Control
RFC	Request for Change
RFI	Request for Information

ROW	Right-Of-Way
SCAQMD	South Coast Air Quality Management District
SDDD	System Detailed Design Documents
SP or SPTC	Southern Pacific Transportation Company
SOW	Statement of Work
SOP	Standard Operating Procedure
SSPWC	Standard Specifications for Public Works Construction
UOM	Unit of Measure
UPRR	Union Pacific Railroad
U.S.C.	United States Code
UST	Underground Storage Tank
VECP	Value Engineering Change Proposal
VMS	Variable Message Sign

Additional abbreviations may be found in the following:

- 1.1.1 Contract Document STATEMENT OF WORK;
- 1.1.2 Contract Document SPECIAL PROVISIONS; and
- 1.1.3 Other Contract Documents.

## 1.2 Definitions

Unless explicitly identified as otherwise, terms used in this Contract, when capitalized, shall have the meanings set forth in this Section.

Additional terms may be defined in Contract Documents entitled SPECIAL PROVISIONS, REGULATORY REQUIREMENTS, and STATEMENT OF WORK, as well as other Contract Documents.

Term	Definition
Acceleration Costs	Increased costs incurred by Contractor (that is, costs over and above what Contractor would otherwise have incurred) which are directly attributable to increasing the performance level of the Work, in an attempt to complete necessary segments of the Work earlier than otherwise anticipated, such as for additional Construction Equipment, additional crews, lost productivity, overtime and shift premiums,

Term	Definition
	<p>increased supervision and any unexpected material, equipment or crew movement necessary for resequencing in connection with acceleration efforts.</p> <p>Acceleration Costs are compensable only under the specific circumstances stated in the Contract Documents, and only if reasonably incurred and fully documented.</p>
Acceptance	Acceptance by Metro's Authorized Representative of completion of the Work or any element thereof in accordance with the Contract, by the issuance of a Certificate of Substantial Completion of the Work or any element thereof, as provided in the Contract.
Acceptance Test	Any one of the tests described in the Contract as an acceptance test.
AFC Design Documents	<p>Individually each, and collectively all, of the Design Documents depicting final (construction-ready) design, and meeting the following requirements. AFC Design Documents shall be issued and clearly marked by the Contractor with approval status "Approved For Construction" (AFC). Unless an element is clearly/explicitly noted as otherwise by the Contractor in the AFC Design Document, all of the Work detailed in the AFC Design Document will be interpreted as being approved and ready for construction.</p> <p>Any Design Document provided to Metro for information only, in accordance with the Contract, shall become an AFC Design Document only when the Contractor approves the final design indicated in the Design Document, or a designated element thereof, as being ready for construction, and Contractor re-issues the Design Document with approval status "Approved For Construction" (AFC), accordingly. Likewise, any Design Document provided to Metro for Metro Approval, in accordance with the Contract, shall become an AFC Design Document only when the Contractor and Metro's Authorized Representative both Approve the final design indicated in the Design Document, or a designated element thereof, as being ready for construction, and Contractor re-issues the Design Document with approval status "Approved For Construction" (AFC), accordingly.</p>
	For purposes of any Equipment and Systems required to be provided under the Contract, "Approved for Construction" shall be deemed to mean "Approved for Production or Manufacture".
Alignment	Horizontal and vertical location of a track, street and/or highway as described by curves, tangents and elevations.
Alternative Dispute Resolution (ADR)	Means for settling a Dispute, which may include arbitration, mediation or any other recognized procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation.

Term	Definition
Approve (or Approval)	The formal written action taken by Metro's Authorized Representative under the Contract, whereby Metro authorizes the Contractor to proceed with specific documents submitted by, and/or specific actions to be taken by, the Contractor, relating to the Work. <b>Any Approval granted by Metro or its Authorized Representative shall not relieve Contractor of any obligations under this Contract, nor constitute Metro assumption of responsibility for the accuracy or adequacy of any of the information in such documents or the Work.</b>
Assessment	A cost imposed on the Contractor for non-compliance with certain contractual requirements.
Authority	See Metro
Authorized Auditor	Any Metro Authorized Representative, any Government Entity and/or any firm of auditors appointed by Metro or other Government Entity to perform any audit on behalf of Metro or Government Entity.
Authorized Representative	Person or firm authorized or empowered by Metro, or other Government Entity to act for, on behalf of, or in place of, Metro, or other Government Entity, respectively. The limits of authority of Metro's Authorized Representative(s) shall be as set forth in the Article entitled AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORIZED REPRESENTATIVES herein.
Beneficial Occupancy	The taking possession of a portion of the Work by Metro for its use and/or occupancy on other than a temporary or Emergency basis.
Betterment	Any upgrading of a Relocated facility that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility owner, including an increase in the capacity, capability, level of service, efficiency or function of a Relocated facility over that which was provided by the existing facility, or the meaning (if any) of "betterment" set forth in the Master Cooperative Agreement (MCA) applicable to that Utility. The following actions or activities are not considered Betterments unless otherwise provided in the applicable MCAs: (a) any upgrading which is necessary to complete the Project; (b) replacement devices or materials that are of equivalent standards even though not identical; (c) replacement of devices or materials no longer regularly manufactured with the next highest grade or size; (c) any upgrading required by applicable Law; (e) replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); (f) any upgrading required by the Utility Owner's utility standards in effect as of the date of execution of the applicable MCA; or (g) any replacement or upgrading which is required to comply with a Utility standard.

Term	Definition
Certificate of Final Acceptance	The formal written acknowledgment from Metro to the Contractor that the Work has been fully completed and has been Finally Accepted in accordance with the Contract.
Certificate of Substantial Completion	The formal written acknowledgment from Metro to the Contractor that the Work, or an element thereof, has been Substantially Completed in accordance with the Contract.
Change	<p>Additions, deletions or other revisions to the Work within the general scope of the Contract. A Change must be directed by Metro through its issuance of a Modification.</p> <p>A Change includes Work that does not involve an adjustment in the Total Contract Price and/or Contract Time, but does not include Work performed or time spent by Contractor to correct any Deficiency.</p>
Change Notice (CN)	A written document issued by Metro to the Contractor describing a proposed change to the Work and requesting the Contractor to submit a Contractor's Cost and Schedule Proposal (CSP).
Change Order (CO)	A written order by Metro's Contracting Officer, directing Changed Work.
Changed Work	See Change.
Change in Law	The enactment, adoption, modification, repeal, or other change in any Law, or the enactment or adoption of any new Law, that occurs after the Proposal Date (including any change in the judicial or administrative interpretation of any Law) which is materially inconsistent with Laws in effect on the Proposal Date, but excluding any such change in or new Law which was passed or adopted but not yet effective as of the Proposal Date. The term "Change in Law" does not include changes in Utility standards.
Chief Executive Officer (CEO)	Unless explicitly stated otherwise, this term shall refer to the Chief Executive Officer of Metro.
Claim	<p>A written demand by the Contractor to Metro for:</p> <ol style="list-style-type: none"> <li>1. A time extension;</li> <li>2. An adjustment or interpretation of Contract terms;</li> <li>3. Payment or money; or</li> <li>4. Other legal, equitable or contractual relief.</li> </ol>
Commencement Date	The date set forth in the Contract, under the Article entitled CONTRACT TERM AND PERIOD OF PERFORMANCE in Contract Document FORM OF CONTRACT, that is the commencement date of all performance under the Contract. All dates and Schedules under the Contract, including Contract Time, shall be measured from the Commencement Date.

<b>Term</b>	<b>Definition</b>
Compensable Delays	As defined in the Article entitled EXTENSION OF TIME herein.
Construction	When addressing the Work under this Contract for a design build delivery, whether or not the word is capitalized, it is the “build” scope of this Contract, including without limitation the performance, procurement, installation, inspection, and testing of all temporary and permanent materials, equipment, systems, software, and any components thereof, needed to meet and complete the requirements of this Contract. It does not include the Operations and Maintenance scope defined in the Contract Documents.
Construction Committee	Metro Board Committee designated to hear and make recommendations to Metro Board on construction related matters.
Construction Documents	Shop Drawings, Working Drawings, Samples and other documents necessary for construction of the Project, produced and/or provided by the Contractor in accordance with the Contract Documents.
Construction Equipment	Contractor-furnished equipment required and used by the Contractor to perform the Work, but not affixed to or incorporated into the Work.
Construction Manager (CM)	Construction Manager shall mean Metro’s Authorized Representative retained and designated by Metro to provide technical assistance during the project implementation and monitor construction of the Project. The authority of the CM shall be limited to the extent expressly set forth in the Contract or in any written delegation by the Contracting Officer.
Construction Safety & Security Manual	The Contract Document that specifies certain minimum requirements and provisions of the construction safety program. This manual is applicable to both construction and systems contracts awarded by Metro.
Construction Staging Area	Property used by the Contractor during the performance of the Work for the purpose of storing Goods and Construction Equipment, and coordinating the Work.
Contract	The written agreement executed by Metro and the Contractor which sets forth the rights and obligations of the Parties in connection with the Work, and which includes the Contract Documents.
Contract Administrator	Metro’s Authorized Representative with the authority to administer all non-technical contractual matters related to this Contract. The Contract Administrator shall be Metro’s Authorized Representative to the extent expressly set forth in the Contract or in any written delegation by the Contracting Officer.

Term	Definition
Contract Documents	<p>Individually each, and collectively all, of the following:</p> <ol style="list-style-type: none"> <li>1. All documents listed in the Article entitled <b>CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE</b> in Contract Document <b>FORM OF CONTRACT</b>.</li> <li>2. All attachments and exhibits incorporated herein either by attachment or by reference; and</li> <li>3. All Modifications to the Contract, made a part hereof.</li> </ol>
Contract Drawings	<p>A part of the <b>Contract Documents</b>, constituting individually each, and collectively all, of those plans, profiles, typical cross-sections, general cross-sections, elevations, schedules and details/diagrams needed at a minimum to adequately and completely depict (in graphic and/or tabular form) the locations, dimensions, character, properties, requirements, and details of the Work.</p> <p>Contract Drawings are those documents described above, which are a part of the <b>AFC Design Documents</b> furnished by the Contractor.</p>
Contract Milestone	<p>An established event or occurrence that is associated with the Schedule as defined in the Contract.</p>
Contract Modification	<p>See Modification.</p>
Contract Price	<p>See Total Contract Price.</p>
Contract Specifications	<p>A part of the <b>Contract Documents</b>, constituting individually each, and collectively all, of those specifications needed at a minimum to adequately and completely describe (in narrative and/or tabular form) the locations, dimensions, character, properties, requirements, and details of the Work. Contract Specifications include, without limitation, all things entitled, described, stated or referenced in any Contract Document as a "Specification", "Technical Specification", "Statement of Work", or "Scope of Work", as well as all other narrative descriptions of the Work.</p> <p>Contract Specifications including the <b>AFC Design Documents</b> furnished by the Contractor to the extent they include specifications as described above.</p>
Contract Time	<p>The number of calendar days, or portion thereof, allowed for completion of the Work and Final Acceptance by Metro, including all authorized time extensions. The date specified in the NTP as the Commencement Date shall be the date on which the Contract Time begins. The date specified as the Scheduled Completion Date shall be the date the Contract Time ends for the Work, exclusive of Metro's resolution of any outstanding Claims and administrative close-out of the Contract.</p>

Term	Definition
Contracting Officer	<p>The CEO of Metro, or Metro's primary Authorized Representative, who is designated in writing as Contracting Officer for this Contract, and authorized and empowered on behalf of Metro to:</p> <ol style="list-style-type: none"> <li>1. Execute this Contract, and all Modifications, directives, and other agreements and documents related to this Contract; and</li> <li>2. Delegate in writing specific authority and responsibilities under this Contract to other Metro Authorized Representatives.</li> </ol>
Contractor (or DBOM Contractor)	<p>The individual, firm, partnership, corporation, joint venture, or combination thereof, referred to throughout the Contract in the singular and by the neuter term "it", that has entered into the Contract with Metro. Includes Contractor's successors, assigns, employees, officers, Contractor's Representatives, and agents.</p> <p>In provisions concerning Contractor's responsibility or liability for its actions, inactions, negligence or fault, the provision shall automatically be deemed to encompass actions, inactions, negligence or fault of Contractor, its employees, agents, officers or Subcontractors or any other persons or entities for whom Contractor may be legally or contractually responsible.</p>
Contractor's Project Manager	See Contractor's Representative.
Contractor's Representative	Unless explicitly identified as otherwise in the Contract, this term shall mean the Contractor's executive representative authorized and empowered to act on behalf of the Contractor, to receive and fulfill instructions from Metro, and who shall direct the activities of the Contractor.
Contractor Technical Documents	Those Contract Documents identified as such in the Article entitled CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE in Contract Document FORM OF CONTRACT.
Critical Path	The line on a Critical Path Schedule through the various project tasks at the intersection of the points of their logical relationship (junction points or nodes) that controls the time of completion of the Work.
Critical Path Schedule	A schedule which includes the planned sequence of activities showing the interrelationships and dependencies of the elements that comprise the Work, including a breakdown of all of the elements of the Work into individual tasks, number of days required to perform each task and their logical relationship. The Critical Path Schedule includes the entire Contract Time from the Commencement Date to the Scheduled Completion Date.
Cure Notice	Written notice from Metro to the Contractor to cure a default, issued pursuant to the Article entitled TERMINATION FOR DEFAULT herein.

Term	Definition
Datum	Elevations based on the National Geodetic Vertical datum of 1929 as established in Los Angeles County by the Los Angeles County Road Department level net, unless otherwise designated.
Days	Unless otherwise stated, "days" shall mean calendar days
Deficiency (or Deficient)	<p>Deficiency (or Deficient) shall be interpreted as including one or more of the following:</p> <ol style="list-style-type: none"> <li>1. Defect(s) in any of the Work related to its construction, materials, workmanship or functionality.</li> <li>2. Design defect(s), omission(s), and deviation(s) in any of the engineering/design work furnished by the Contractor.</li> <li>3. Unapproved deviation(s) from the requirements of the Contract, any applicable codes, or any applicable standards.</li> <li>4. Other problem(s) that may result in the Work or any portion thereof to not perform in accordance with the requirements of the Contract.</li> </ol>
Delay	Any delay to the Critical Path in the Critical Path Schedule. The specific types of Delay applicable to the Contract are described in the Article entitled EXTENSION OF TIME herein.
Delay Compensation	<p>A liquidated amount payable to the Contractor based upon a daily rate of compensation for Compensable Delays (as described in the Article entitled EXTENSION OF TIME herein). Such liquidated amount constitutes the total compensation for Compensable Delays for all costs associated with the Delay, whether foreseen or unforeseen, including without limitation:</p> <ol style="list-style-type: none"> <li>1. Allowable Costs</li> <li>2. Extended and extraordinary overhead (direct and home office);</li> <li>3. Added insurance and bond costs;</li> <li>4. Loss of productivity or inefficiency;</li> <li>5. Labor, wage, material and Construction Equipment escalation costs;</li> <li>6. Other costs, expenses and damages, direct and indirect, arising from or related to the Compensable Delay; and</li> <li>7. The "impact" or "ripple effect" of the Compensable Delay on the Work.</li> </ol>

Term	Definition
Design, Build, Operate, and Maintain (DBOM)	<p>“Design, Build, Operate and Maintain” (or “DBOM”), referred to throughout the Contract, is a project delivery system whereby Metro contracts with a Contractor for delivery of a complete and operational Project. The Contractor is given overall responsibility for project implementation, including design, installation, operation and maintenance plus civil/construction, subject to Approval by Metro.</p>
Design Documents	<p>Those plans, profiles, typical cross-sections, general cross-sections, elevations, schedules, details/diagrams, drawings, specifications, reports, calculations, records and other submittals which, collectively, are needed at a minimum to adequately and completely depict and record Contractor’s detailed design of the Project. Design Documents are furnished by the Contractor, and are based upon the Project Definition Documents and other applicable requirements set forth in the Contract. Contractor shall submit all Design Documents to Metro, either for Metro Approval or for information only, in accordance with the Contract.</p> <p>Design Documents depicting final (construction-ready) design, and issued as “Approved for Construction” (AFC), become <b>AFC Design Documents</b> on the Project.</p>
Design Manager (DM)	<p>Metro’s Authorized Representative responsible for monitoring the design of the Work. The DM shall be the Authorized Representative to the extent expressly set forth in the Contract or in any written delegation by the Contracting Officer.</p>
Differing Site Condition	<p>The following conditions (A) subsurface or latent physical conditions at the Site that differ materially from those indicated in the Contract Documents; and (B) physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Contract; provided that in all cases that the Contractor had no actual or constructive knowledge of such conditions as of the Contract Date. The term “Differing Site Condition” specifically includes the discovery at, near, or on the Site, of any archaeological, paleontological or cultural resource that requires a new State or Federal environmental review and approval; provided that the existence of such resource (1) was not disclosed in the Contract Documents; (2) was not otherwise known to Contractor prior to the Proposal Date, and (3) would not have become known to Contractor by undertaking reasonable investigation prior to the Contract Date. The term “Differing Site Condition” specifically excludes Utilities, those Hazardous Materials identified in the Technical Specifications or other Contract Documents, and any differences in groundwater depth from the depths noted in the Reference Documents.</p>
Dispute	<p>A disagreement between the parties as to the merits, amount or remedy arising out of an issue in controversy, including a Claim or asserted default.</p>

Term	Definition
Effective Date	The date the Contract becomes effective and enforceable. Note: This may not be the commencement date of Work; see Commencement Date.
Emergency	Any sudden, generally unforeseen occurrence (such as a Force Majeure event) that has the potential to: Adversely affect the safety of life, the Work, or adjacent property; interrupt contracts essential to the provision of daily transit service; or cause catastrophic failure of revenue-producing equipment or facilities.
Engineer of Record	Contractor's principal engineer in charge of the Project. The Engineer of Record shall initially be the individual designated in Contractor's technical bid/proposal and is considered key personnel (pursuant to the provisions set forth in the Article entitled CONTRACTOR'S REPRESENTATIVE, ORGANIZATION, AND PERSONNEL herein).
Environmental Impairment Losses	Any and all loss, liability, expense or damage (including, without limitation, all attorneys' fees and costs and all other professional or contractors' fees and costs), incurred by Metro under an Environmental Law as a result of the activities conducted by the Contractor under the Contract.
Environmental Laws	<p>All Laws applicable to Metro or to the Work, now or hereafter in effect relating to:</p> <ol style="list-style-type: none"> <li>1. The environment;</li> <li>2. To emissions, discharges, releases or threatened releases of Hazardous Substances into the environment, including into the air, surface water or ground water or onto land;</li> <li>3. The manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances; or</li> <li>4. The protection of public health, public welfare or the natural environmental (including protection of non-human forms of life, land, surface water, groundwater and air) including without limitation: <ul style="list-style-type: none"> <li>• The Laws listed in the definition of Hazardous Substances (which are hereby incorporated into this definition);</li> <li>• The following laws – the National Environmental Policy Act, 42 U.S.C. §4321 et. Seq.; the California Environmental Quality Act., Cal. Pub. Res. Code §21000 et. seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et. seq.; the California Occupational Safety and Health Act of 1973, Cal Lab. Code §6300 et. seq.; Cal. Gov. Code §11017; the Endangered Species Act, 16 U.S.C. §1531 et. seq.; the Migratory Bird Treaty Act, 16 U.S.C. §703 et. seq.; Cal. Fish and Game Code §1600 et. seq.; and</li> <li>• All Federal, state and local regulations, guidelines and interpretations arising out of the above referenced Laws,</li> </ul> </li> </ol>

Term	Definition
	including, without limitation, applicable regulations in the Code of Federal Regulations and the California Code of Regulations and Executive Order 11378.
Equal / Equivalent (or Equivalency)	A Unit, Equipment, element, service, component, system, code, or standard which the Contractor proposes, and the Contracting Officer or its Authorized Representative Approves, as being equal to the Unit, Equipment, element, service, component, system, code, or standard specified, respectively.
Equipment	Any and all machinery, vehicles, systems, assemblies, sub-assemblies, products, material fittings, devices, appliances, fixtures, apparatus, supplies, hardware, computers, technology, and parts used by the Contractor or provided by the Contractor to Metro pursuant to this Contract. Does not include Construction Equipment as defined herein.
Excusable Delay	Shall have the meaning set forth in the GENERAL CONDITIONS Article entitled EXTENSION OF TIME.
Exposure Events	Those construction activities and events that expose the general public to inconvenience, risk, or high degree of danger.
Extra Work	Work not specified in the Contract and found not to be essential to the satisfactory completion of the Contract, but required by Metro.
Final Acceptance	Acceptance by Metro of all Work under the Contract by the issuance of a Certificate of Final Acceptance, certifying that all work has been fully and satisfactorily completed in accordance with the Contract.
Float	The difference between early completion times and late completion times for activities as shown on the Contract Schedule, and shall include any float contained within an activity as well as any period containing an artificial activity (that is, one which is not encompassed within the meaning of the word "Work").
Flow Down Provisions (or Flow-Down)	See term "Required Subcontract Provisions" defined below.
Force Majeure	<p>Any of the following events (provided such events are beyond the control of the Contractor and are not due to an act or omission of the Contractor), which materially and adversely affect the Contractor's obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by the Contractor:</p> <ol style="list-style-type: none"> <li>1. Any earthquake exceeding 3.5 on the Richter scale epicentered within 25 miles of the specific location of damage on the Worksite, any earthquake exceeding 5.0 on the Richter scale epicentered within 50 miles from the specific location of damage</li> </ol>

Term	Definition
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- on the Worksite, and any earthquake exceeding 6.5 on the Richter scale epicentered within 75 miles from the specific location of damage on the Worksite, based on the final determination regarding the location and magnitude of the earthquake published by the National Earthquake Information Center in Golden, Colorado;
2. Any epidemic, quarantine restrictions, blockade, rebellion, war, riot, civil commotion, act of a public enemy, act of sabotage, act of terrorism, or any malicious or other acts intended to cause loss or damage;
  3. The discovery at, near or on the Worksite of any archaeological, paleontological or cultural resources or Hazardous Substances; provided that the existence of such resources or substances were not disclosed in the Contract Documents, were not otherwise known to the Contractor prior to the Bid/Proposal Date and would not have become known to the Contractor by undertaking reasonable investigation prior to the Bid/Proposal Date, and excluding any risks of Delays arising from such discovery allocated to the Contractor under this Contract;
  4. The discovery at, near or on the Worksite of any species listed as threatened or endangered under any Federal or California endangered species act, except to the extent that the environmental documents related to the Project provide for mitigation measures to be undertaken with respect thereto regardless of whether the species is listed as threatened or endangered as of the Bid/Proposal Date, and also subject to any risk allocation provisions which may be contained in this Contract;
  5. The suspension, termination, interruption, denial or failure to obtain, non-renewal or amendment by a Government Entity, of any permit or approval required to be obtained and maintained in force by Metro;
  6. Any change in a Law or change in the judicial or administrative interpretation of, or adoption of any new Law, which is materially inconsistent with Laws in effect on the Bid/Proposal Date (subject to the exclusions set forth below);
  7. Any lawsuit seeking to restrain, enjoin, challenge or delay the Work or the granting or renewal of any Governmental Approval of the Work, except to the extent that the risk of such lawsuit has been assumed by the Contractor in this Contract;
  8. Any physical destruction or damage caused by fire, lightning, explosion, drought, rain, flood, hurricane, storm or action of the elements or other acts of God;
  9. Strike, labor dispute, freight embargos, work slowdown, work stoppage, secondary boycott, walk-out or other similar occurrence; or
  10. Except as otherwise provided in the Contract, any other event not in the reasonable control of the parties.

Term	Definition
Goods	Equipment, material and other products incorporated into or required to perform the Work, or otherwise furnished by the Contractor in accordance with the Contract. Unless explicitly identified otherwise, Goods shall be furnished by the Contractor.
Government Entity	Any Federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than Metro.
Governmental Approval	Approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, registration or ruling, issued or required by or with any Government Entity having subject matter jurisdiction by Law or consent of Metro, required for performance of the Work or commencement of operations of the Project.
Hazardous Substances	<p>One or more of the following:</p> <ol style="list-style-type: none"> <li>1. Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed, regulated, or addressed in or pursuant to any of the following Laws (which shall include any regulations either in the Code of Federal Regulations or the California Code of Regulations or other regulations implemented under the authority of such Laws): <ul style="list-style-type: none"> <li>• The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. (“CERCLA”);</li> <li>• The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.;</li> <li>• The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. (“RCRA”);</li> <li>• The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.;</li> <li>• The Clean Water Act, 33 U.S.C. §1251 et. seq.;</li> <li>• The Clean Air Act, 42 U.S.C. §7401 et. seq.;</li> <li>• The California Hazardous Waste Control Act, Health and Safety Code §25100 et. seq.; (including without limitation “Hazardous Waste” as defined in §2517).</li> <li>• The California Underground Storage of Hazardous Substances Act, Health and Safety Code §25280, et. seq.;</li> <li>• The California Hazardous Substance Account Act, Health and Safety Code §25300 et. seq.; (with particular reference to the definition contained in Health and Safety Code §25316);</li> <li>• The California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code §25249.5 et. seq.;</li> <li>• The California Hazardous Waste Management Act, Health</li> </ul> </li> </ol>

Term	Definition
	<p>and Safety Code §25170.1 et. seq.;</p> <ul style="list-style-type: none"> <li>• The California Health and Safety Code §25501 et. seq. (Hazardous Materials Response Plans and Inventory);</li> <li>• The California Hazardous Substances Information and Training Act, Labor Code §6360 et. seq.;</li> <li>• The California Porter-Cologne Water Quality Control Act, Water Code §13000 et. seq.; or</li> <li>• Any other Federal, state or local Law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect;</li> </ul> <p>2. Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above Laws or under any statutory or common law theory based on negligence, trespass, intentional tort nuisance or strict liability or under any reported decisions of a state or Federal court;</p> <p>3. Notwithstanding Health and Safety Code §25317, petroleum, petroleum by-products, waste oil, crude oil and natural gas; and</p> <p>4. Other substances, product, waste or material defined, or to be treated or handled, as a Hazardous Substance pursuant to provisions of the Contract.</p>
Impacted Schedule	For a description of the meaning of this term, see the Section entitled IMPACTED SCHEDULE, in the Article entitled PROJECT SCHEDULE AND CONSTRUCTION STAGING herein.
Indicated	As shown, specified, required or reasonably inferred in or from the Contract Documents.
Inspector	Metro or its Authorized Representative, a Governmental Entity, or interested parties assigned to make inspections and/or tests of the Work performed or being furnished by the Contractor.
Installation (or Install)	Completing assembly, erection, and/or connection of Goods, parts, components, supplies, and related Equipment specified and/or required for the completion of the Work.
Insurance Specifications	The Contract Documents specifying the insurance coverage provided by Metro (if any), and the insurance coverage to be provided by the Contractor.
LACMTA	See Metro.
Law	Any Federal, state or local statute, law, regulation, ordinance, rule, standard, judgment, order, executive order, decree, directive, guideline, policy requirement, or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration

Term	Definition
	of any of the foregoing by, any court or Government Entity, which is applicable to the Contract or the Work, as amended, whether now or hereafter in effect. A Law, when cited herein, shall be as amended unless provided to the contrary.
Major Subcontract	Any Subcontract or combination of Subcontracts with a single Subcontractor, with a price in excess of one-half of one percent ( <b>0.5%</b> ) of the Total Contract Price.
Materially Differ	When the circumstances differ from that which a knowledgeable Contractor, in the subject field, would reasonably expect to find when relying upon information provided and/or specified, subject to the Contractor's responsibility to inquire as to any known or perceived discrepancies within the Contract Documents.
Milestone	An established point, event or occurrence in the process of the Work that is included in or that is associated with the Schedule as defined in the Contract.
Modification	Any written addition, deletion, adjustment or alteration to the Contract, whether arising out of the unilateral exercise by Metro of any right under the Contract, or by a mutual agreement/action executed by the Parties. A Modification may be unilateral or bilateral, and includes Change Orders, adjustments in quantities, extensions of time, administrative changes and adjustments, and all other actions and events that result in an alteration, correction or adjustment of the Total Contract Price or Time, any Contract term or process, or any other obligation of either Party.
Metro or MTA	The Los Angeles County Metropolitan Transportation Authority (Metro), its predecessors, successors, or any successor in interest, or its Contracting Officer or other Metro Authorized Representative.
Metro Operations	Metro's operation and maintenance of existing Metro facilities and equipment, or the Department within Metro that operates and maintains existing Metro facilities and equipment, as the context requires.
Metro Technical Documents	Those Contract Documents identified as such in the Article entitled CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE in Contract Document FORM OF CONTRACT.
Notice of Completion	A document recorded with the Los Angeles County Recorder by Metro signifying completion of all Work.
Notice of Termination	Written notice from Metro to the Contractor and its Surety terminating the Contract, or an element or a portion thereof, either for convenience of Metro or due to Contractor's default, as provided in this Contract.

Term	Definition
Notice to Proceed (NTP)	Written authorization from Metro to the Contractor specifying the date on which Work under the Contract is to be initiated (the Commencement Date) and providing other information as set forth in this Contract.
Parties	Metro, the Contractor and any other signatories to Contract Document FORM OF CONTRACT as parties to the Contract.
Period of Performance	The total time period as set forth in the Schedule allowed for Contractor to complete all or any defined element of the Work under the Contract. May be all or a defined portion of the Contract Time which shall be established in the Notice to Proceed (NTP) or elsewhere in the Contract.
Price Schedule	The breakdown of the Total Contract Price into values relating to specific components of the Work, including but not limited to the SCHEDULE OF VALUES as well as the SCHEDULE OF QUANTITIES & PRICES provided in Contract Document COMPENSATION & PAYMENT PROVISIONS.
Product Data	Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate Goods, Equipment or systems for a portion of the Work.
Project	The work, activities, and services to be developed and provided by Contractor as described in the Contract, and all other work products to be provided by the Contractor in accordance with the Contract.
Project Definition	A part of the <b>Contract Documents</b> , consisting of those performance and prescriptive specifications, drawings, and other documents in the Contract Documents, which are furnished by Metro or its Authorized Representative. The Project Definition Documents set forth the minimum technical and/or performance characteristics of the Work that must be met by the Contractor, and serve as the basis for development of the Design Documents for the Project.
Protection-In-Place	<p>Any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by Construction Equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection-In-Place; whereas temporarily moving power lines to another location after cutting them would be considered a Temporary Relocation.</p> <p>As the term is used in the Contract, includes both temporary measures and permanent installations meeting the foregoing definition.</p>

Term	Definition
Provide	In reference to Work performed by the Contractor, "provide" shall mean furnish and/or install complete in place, unless directed otherwise.
Punch List	The list of Work which remains to be completed after achievement of Substantial Completion. This list shall be limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety, usability or operability of the Work or completed portion of the Work, as the case may be.
Reference Codes	Federal, State, or Local governmental codes, ordinances or regulations, or trade organization codes.
Reference Documents	Documents, other than the Contract Documents, which are identified as such in the Contract. Reference Documents are not a part of the Contract and are to be used for reference only.
Reference Standards	Authoritative principles, rules, and models used to determine or establish the acceptability of the Work or elements thereof, Goods, work procedures, or workmanship. These standards are in other documents and are incorporated into the Contract only by reference. The Reference Standards shall have the same force and effect as if their full text were physically incorporated in the Contract.
Relocation (or Relocate)	The necessary removal, rearrangement, abandonment and/or Protection-In-Place (including provision for temporary services, as necessary) of any or all Utilities, in order to accommodate or permit construction on the Project.
Request for Change (RFC)	<p>A written request submitted by the Contractor to Metro, detailing any proposed change to the Contract Documents, and/or any proposed use of Units, Components, Equipment, materials or services in lieu of those specified in the Contract.</p> <p>This written request/document is a required submittal by the Contractor if it wishes to propose any change to the Contract (including the documents/items mentioned above), and shall be the only mechanism by which Metro's Authorized Representative shall respond to (and potentially Approve) any such request.</p>
Request for Information (RFI)	A written request submitted by the Contractor to Metro, detailing any need for clarification or information on a portion of the Work or the Contract. This written request/document is a required submittal by the Contractor if it wishes to request any clarification or additional information regarding the Contract or any element of the Work, and shall be the only mechanism by which Metro's Authorized Representative shall respond to any such request.

Term	Definition
Required Subcontract Provisions	Contract provisions that must flow down to all Subcontracts (regardless of tier) as required in the Article entitled SUBCONTRACTORS AND SUPPLIERS herein.
Resident Engineer	Metro's Authorized Representative, to the extent delegated by the Contracting Officer, charged with managing, administering, organizing, coordinating and inspecting the Work in order to assure completion of the Contract in conformance with the Contract Documents.
Right-of-Way	<p>The real property, inclusive of all estates and interests therein, that is necessary for ownership and operation of the Project. Right-Of-Way, as the term is used in the Contract, specifically excludes:</p> <ol style="list-style-type: none"> <li>1. Utility easements outside of Metro ROW (as defined in the applicable Metro-furnished Contract Documents); and</li> <li>2. Any temporary easements or other real property interests which Contractor deems necessary or advisable in connection with construction of the Project and/or Relocations.</li> </ol>
Samples	Physical examples that illustrate materials, Equipment, fixtures and workmanship, and which establish standards by which the Work may be judged.
Schedule/ Project Schedule	A time-phased, resource-loaded, Work execution plan approved by Metro, identifying all activities necessary to complete the Work in a logical manner in a Critical Path Schedule format. The Schedule shall include the Critical Path Schedule, the Impacted Schedule, the As Built Schedule, and all updates thereof. The Schedule shall provide the start and completion date of each activity and its Milestones, and shall include the Milestones for the Period of Performance of any defined elements of the Work and for the entire Contract Time, including any activities that may follow the defined Period of Performance. The Schedule shall include all mandatory Milestones for the completion of all Work.
Schedule of Values	The breakdown of the Total Contract Price into units relating to specific components of the Work, including but not limited to the <b>SCHEDULE OF QUANTITIES &amp; PRICES</b> provided in Contract Document COMPENSATION & PAYMENT PROVISIONS.
Scheduled Completion Date	The date all Work is to be completed, and the date that Contract Time ends.
Shop Drawings	<p>Part of the Construction Documents, consisting of original drawings, plans, diagrams, schedules and other data pursuant to the Work specifically prepared and submitted to Metro by the Contractor or any of its Subcontractors or Suppliers of any tier, and which show in detail:</p> <ol style="list-style-type: none"> <li>1. The proposed fabrication and assembly of a specific portion of the Work; and</li> </ol>

Term	Definition
	<p>2. The installation (form, fit and attachment details) of a specific portion of the Work.  Shop Drawings shall include Product Data, literature, and performance and test data, as appropriate.</p>
Special Provisions	Contract Document containing requirements of the Contract that modify or supplement these General Conditions.
Specialty Item	A designated item of Work or Goods that requires highly specialized knowledge, craftsmanship, or Construction Equipment not ordinarily available in contracting organizations qualified to bid/propose on the Contract.
Specifications	See Contract Specifications.
Standard Drawings	Drawings included as part of or referenced in the Contract, that have been developed to attain uniformity in Goods, geometries, arrangements, details, and procedures and, in some instances, to express prior acceptance thereof by affected Government Entities, utilities, railroads, pipeline companies or other affected entities.
Standard Work Day	In accordance with State Law, eight (8) consecutive working hours, allowing a maximum of one (1) non-working hour for lunch and breaks, unless otherwise agreed to by the Contractor and Metro in writing.
Standard Work Week	Five (5) Standard Work Days (Monday through Friday).
State	State of California.
Subcontract	<p>Any contract, including contracts of any tier, to furnish Work, Goods or Equipment (Construction or otherwise) between the Contractor and/or any Subcontractor or Supplier at any tier.  Depending upon the value of the Subcontract (relative to the Total Contract Price), a Subcontract may be considered by Metro as a Major Subcontract, in which case Contractor shall comply with the applicable requirements set forth in the Contract.</p>
Subcontractor	<p>Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor or Subcontractor, that enters into a legal agreement with the Contractor or any Subcontractor to furnish Work, Goods or Construction Equipment.  Unless otherwise specified, Subcontractor includes a Subcontractor of any tier.</p>
Substantial Completion	Work or element thereof sufficiently complete, in accordance with the Contract, to be used by Metro for the purpose for which it was intended.

Term	Definition
Substitution (or Substitute)	<p>Any Goods, Equipment, service(s), or system(s) that the Contractor proposes, and Metro's Authorized Representative subsequently Approves, to use in lieu of that specified in the Contract Documents.</p> <p>The means by which any Contractor request for a Substitution is considered by Metro, is by a Request for Change (RFC).</p>
Supplier	<p>Any Subcontractor not performing Work at the Site that supplies Goods or Construction Equipment.</p> <p>Persons, who only transport, pick up, deliver and/or carry materials, personnel, parts, equipment, or any other items or persons to or from the Worksite shall not be deemed to be performing Work at the Worksite.</p>
Surety	<p>Properly licensed surety company, insurance company or other person approved by the California State Insurance Commissioner to do business in California, and approved by Metro, which has issued any of the following:</p> <ol style="list-style-type: none"> <li>1. Contractor's Bid/Proposal Bond;</li> <li>2. Contractor's Payment Bond; and/or</li> <li>3. Contractor's Performance Bond.</li> <li>4. Contractor's Warranty Bond (if provided).</li> </ol>
Temporary Construction Easement	<p>Real property not belonging to Metro or Contractor, on which Work can take place during the construction period, subject to any limitations described in the Contract.</p>
Temporary Relocation	<p>Temporary Relocation shall mean:</p> <ol style="list-style-type: none"> <li>1. Any interim relocation of a Utility (i.e., the installation, removal, and disposal of the interim facility) pending installation of the permanent facility in the same or a new location; and</li> <li>2. Any removal and reinstallation of a Utility in the same place with or without an interim relocation.</li> </ol>
Third Party	<p>A Government Entity, utility company, railroad or other entity that contracts with Metro by means of a Cooperative Agreement, Utility Services Agreement or other similar agreement regarding the construction, reconstruction, rearrangement and/or improvement of facilities owned or controlled by the Third Party, to facilitate the Work of the Contractor.</p>
Total Contract Price	<p>The total compensation payable to the Contractor under the Contract for the completion of the Work, including all authorized cost changes due to Metro-Approved Contract Modifications.</p>
Transit System	<p>The entire bus and/or fixed-guideway rail transportation system described in Metro-furnished Contract Documents, including Metro</p>

Term	Definition
	Right-of-Way, pavement, tracks (if applicable), structures, revenue producing equipment, appurtenances, and all other related property of Metro.
Unit	A single item or group of items constituting a single unit which is identified as a Unit or Unit Priced item in the SCHEDULE OF QUANTITIES & PRICES provided in Contract Document COMPENSATION & PAYMENT PROVISIONS.
Unit Price	The price of a single Unit
Utility	A privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system as well as streetlights associated with City-owned roadways. However, when used in the context of the Relocation of facilities to accommodate the Project, the term "Utility" excludes (1) storm water facilities; and (2) traffic signals, ramp metering systems, flashing beacon systems, and lighting systems serving existing improvements. The necessary appurtenances to each Utility facility shall be considered part of such Utility.
Warranty	A representation, promise or affirmation given by the Contractor to Metro regarding the nature, description, usefulness, suitability, lifecycle, condition, construction, materials, workmanship or any other aspect of the Work, or any portion thereof, whether contained in any provision in the Contract entitled WARRANTY, in the STATEMENT OF WORK, or in any other provision of the Contract, including documents incorporated by reference or provided by the Contractor, any Subcontractor, Supplier, manufacturer or any other Contractor related entity.
Work	<p>When capitalized, signifies the facility or Project described in Contract Document STATEMENT OF WORK, and all services as described in the Article entitled CONTRACTOR'S OBLIGATION herein including the sum total of productive and operative efforts used to generate the results specified, indicated or implied in the Contract to complete the fully functional facility or Project, including all related activities to:</p> <ol style="list-style-type: none"> <li data-bbox="524 1539 1437 1602">1. Furnish all material, Goods and Equipment, and perform all services required to complete the fully functional facility or Project;</li> <li data-bbox="524 1644 1437 1707">2. Develop and maintain all required documentation and Schedules, in accordance with the Contract; and</li> <li data-bbox="524 1728 1437 1854">3. Perform all activities to design and engineer the facility or Project, including development of all required Design Documents and applicable Construction Documents, in accordance with the Contract.</li> </ol> <p>The term may also refer to Work in progress.</p>

Term	Definition
Worksite And Site	<p>The area(s) designated in writing by Metro for performance of construction Work, and such additional area(s) as may, from time to time, be Approved in writing by Metro's Contracting Officer for inclusion in the Worksite, initially limited to the area identified as Metro Right-Of-Way in the Contract Documents, and the immediately surrounding streets and easements.</p> <p>For purposes of safety and security requirements, prevailing wage requirements, indemnification, insurance and for payment for Goods, the term includes A] any area(s) in the vicinity of the construction site being temporarily used by Contractor for construction Work (e.g., including laydown and staging areas), and/or storage of Goods; B]. field office sites, including the Integrated Project Office, and C] vehicles used on the Worksite or for travel to and from the Worksite.</p>
Working Drawings	<p>Original drawings prepared by the Contractor and/or its Subcontractors or Suppliers, of any tier, illustrating Work required for construction that will not become an integral part of the completed Work. This includes, but is not limited to, drawings for temporary structures such as decking, bulkheads, excavation supports, utility support, groundwater control, forming, and false work.</p>

## GC-02 INTERPRETATION\*

### 2.1 General

- 2.1.1 Contractor shall interpret the Contract as a whole and read all its parts together. Contractor shall not take advantage of any apparent non-conformity that may be found in the Contract Documents. Should it appear that any contract provision requires interpretation, the Contractor shall request from Metro in writing (with an RFI), an explanation or interpretation of contract provisions as may be necessary, and shall conform to the interpretation given by the Contracting Officer or its Authorized Representative. **The interpretation of the Contracting Officer, or its duly-delegated Authorized Representative, is final,** without prejudice to Contractor's rights to pursue a Change to the Contract.
- 2.1.2 Metro may make such additions to, or corrections and/or interpretations of any Contract Documents as are necessary to ensure that everything necessary to complete the Work in accordance with the intent of the Contract, or that is customarily performed to complete the Work, is performed by the Contractor in accordance with the intent of the Contract.

### 2.2 Contract Documents

- 2.2.1 The individual documents comprising the Contract Documents are complementary, indicating all aspects of the Work. Anything

mentioned or shown in any Contract Document, which is not mentioned in or shown on another Contract Document, shall be of like effect as if shown or mentioned in all Contract Documents.

2.2.2 In the event of any conflict in the Contract Documents, the resolution of the conflict shall be pursuant to the Section entitled CONFLICTS IN CONTRACT DOCUMENTS provided in this Article.

2.2.3 The intent of the Contract Documents is to include all items necessary for the proper initiation, execution, and completion of the Work.

### **2.3 Project Definition Documents**

The Project Definition Documents (provided by Metro), along with the other requirements of the Contract, are the basis for development of Contractor's Design Documents, subject to the Section entitled GENERAL in this Article.

### **2.4 Design Documents**

Contractor shall:

2.4.1 Furnish the individual specifications, drawings, and other documents comprising the Design Documents;

2.4.2 Incorporate all technical, performance, and functional requirements from the Project Definition Documents (and other Contract Documents provided by Metro and/or its Authorized Representative) into its Design Documents; and

2.4.3 Include in the Design Documents all items necessary for the proper initiation, execution, and completion of the Work.

### **2.5 AFC Design Documents**

2.5.1 The Design Documents which depict and describe final (construction-ready) design, and are approved/issued as "Approved For Construction" (AFC) in accordance with the Contract, shall become AFC Design Documents on the Project. Likewise, the individual specifications and drawings comprising the AFC Design Documents, upon issuance as "Approved For Construction" (AFC), shall thereafter become Contract Specifications and Contract Drawings, respectively.

2.5.2 In the AFC Design Documents, anything mentioned in the Contract Specifications and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the

Contract Specifications, shall be of like effect as if shown or mentioned in both.

2.5.3 Contractor shall be responsible for ensuring that:

Metro's Approval of the AFC Design Documents, when applicable, is intended to constitute "approval" of the design under the provisions of Government Code 830.6.

## **2.6 Construction Documents**

2.6.1 Contractor's Construction Documents shall fully comply with all applicable Contract Documents and other Contract requirements.

2.6.2 Contractor shall notify Metro in writing of any changes to Construction Documents previously delivered to Metro, in advance of implementation of such changes, and following such notice shall promptly deliver the corrected Construction Documents.

## **2.7 References within the Contract**

References to Articles (e.g. GC-2), Sections (e.g. 2.11), Paragraphs (e.g. 2.11.1), and Subparagraphs (e.g., 2.11.1-A, 2.11.1-A.1, etc.), are made by citing the title of the provision only: For example, a reference to this particular Article would be phrased "in the Article entitled INTERPRETATION", which would necessarily include all Sections, Paragraphs, and Subparagraphs in this Article. References to Sections and Paragraphs include Paragraphs and Subparagraphs within the same Section or Paragraph. References to other Contract Documents are made by citing the title of the Contract Document, e.g., "SPECIAL PROVISIONS".

## **2.8 Standard Specifications**

Where Standard Specifications (e.g., CALTRANS, SSPWC "Greenbook") are a part of the Contract Documents, the following definitions shall apply:

2.8.1 All references therein to the "City", "County", "State", "Agency", or "Department", when referring to the public entity party to the contract shall mean Metro.

2.8.2 All references to the "Engineer" and/or "Metro Engineer" or similar term when referring to the provider of compliance judgment shall mean Metro or its Authorized Representative.

2.8.3 All references to the "plan(s)" or other similar term shall mean the Contract Document(s), Contract Drawing(s), and/or Contract Specification(s), as appropriate.

2.8.4 All references inconsistent with any terms of this Contract including without limitation, to measurement and payment in the Standard Specifications, shall not apply. Measurement and payment shall be deemed as references to equivalent provisions in the Contract Documents (other than the Standard Specifications).

## 2.9 Reference Standards

Goods and workmanship specified by the number, symbol, or title of a Reference Standard shall comply with the latest edition or revision and amendments and supplements in effect on the date of the Invitation for Bids (or Request For Proposals) except where a different edition is specified. All governmental, utility, and railroad standards referenced in the Contract are incorporated herein as an integral part of the Contract unless specifically marked otherwise (e.g., see Section in this Article entitled REFERENCE SPECIFICATIONS AND DRAWINGS). In case of a conflict between the various standards referenced herein, the more stringent shall govern unless otherwise indicated.

## 2.10 Reference Specifications and Drawings

Specifications and drawings indicated as reference specifications or reference drawings (respectively), or Reference Documents, or "For Information Only", or "Not For Construction", are not a part of the Contract, but provided for the purposes of information and coordination only, and shall not be interpreted otherwise. These Reference Specifications and Reference Drawings are subject to revision, and the information contained therein shall not be used directly or indirectly as the basis for any Claim.

## 2.11 Conflicts Between Contract Documents

### 2.11.1 General Guidelines:

- A. Conflicts between Contract Documents (General): In case of conflicts between Contract Documents, the Contract Document order of precedence dictates which Contract Document governs, and thus, which corresponding provisions take precedence (between two Contract Documents). Contract Document order of precedence is given in the Article entitled CONTRACT DOCUMENTS & ORDER OF PRECEDENCE in Contract Document FORM OF CONTRACT.
- B. Conflicts between Contract Documents of Equal Precedence: In case of conflicts between Contract Documents of equal precedence, the more stringent requirement (between the conflicting Contract Documents) shall govern.

- C. Conflicts within a Contract Document: In case of conflicts within a Contract Document, the more stringent requirement (within the conflicting Contract Document) shall govern.

2.11.2 Conflicts between Metro-Technical Documents – If Contractor, or its Subcontractors and Suppliers of any tier, discovers a conflict between any Metro-Technical Documents, the Contractor shall notify Metro’s Authorized Representative in writing (with an RFI) as soon as practicable from the time of discovery, citing the specific documents and provisions that are in conflict. Upon receipt of an RFI of this nature, Metro may do one or more of the following:

- A. Provide Contractor with instruction and/or interpretation specific to the context of the RFI, based upon the general guideline of Contract Document conflict interpretation given in the Paragraph entitled GENERAL GUIDELINES above in this Section.
- B. Revise and re-issue the conflicting Metro-Technical Documents in question, to remove any document conflict and potential misinterpretation in the future.

2.11.3 Conflicts between Contractor-Technical Documents – If Metro, or Contractor’s Subcontractors and Suppliers of any tier, discovers a conflict between Contractor-Technical Documents, the party which discovered the conflict shall notify Contractor’s Representative in writing as soon as practicable from the time of discovery, citing the specific documents and provisions that are in conflict. Upon receipt of such a notice, Contractor shall do the following:

- A. Respond to the notice in writing, copying all affected parties (including Metro), basing its response upon the general guideline for Contract Document conflict interpretation given in the Paragraph entitled GENERAL GUIDELINES above.
- B. If deemed by Contractor as necessary and prudent, or if it is otherwise requested by Metro, Contractor shall revise and re-issue the conflicting Contractor-Technical Documents in question, to remove any document conflict and potential misinterpretation in the future, and shall resubmit such documents to Metro.

## **2.12 Conflicts Between Contract Drawings**

Notwithstanding the provisions set forth in the previous Section entitled CONFLICTS BETWEEN CONTRACT DOCUMENTS of this Article, the following additional interpretation rules, specific to Contract Drawings, shall apply:

2.12.1 Small-Scale vs. Large-Scale – In case of conflicts between small and large-scale Contract Drawings, the large scale Contract Drawings shall govern.

2.12.2 Written Figures vs. Scaled Dimensions – In the event of a discrepancy between a figure written on a Contract Drawing and the scaled dimensions, the written figure shall govern.

**2.13 References to the Los Angeles County Transportation Commission (LACTC) or Southern California Rapid Transit District (SCRTD)**

If any of the following terms appear on any document, whether a Contract Document or a Reference Document, it shall mean Metro:

2.13.1 Los Angeles County Transportation Commission (or LACTC);

2.13.2 Southern California Rapid Transit District (or SCRTD); or

2.13.3 AUTHORITY.

**2.14 Omissions, Misdescriptions, and Interpretations**

2.14.1 Contractor shall:

- A. Carefully and continuously study and compare all Contract Documents; and
- B. Verify all figures in the Contract Documents before laying out the Work.

2.14.2 Request For Information, Notification and Contractor Performance:

- A. Should it appear that the Work to be done, or any of the matters relative thereto, is not sufficiently detailed or explained in any Metro-furnished Contract Documents, Contractor shall submit a Request for Information (RFI), in writing, asking for such further written explanations as may be necessary. Contractor shall conform to the explanation provided.
- B. Contractor shall promptly notify Metro of all Deficiencies (including inaccuracies and inconsistencies) it may discover in Metro-furnished Contract Documents, and obtain specific instructions in writing regarding any such Deficiency, before proceeding with the Work affected thereby.
- C. Omission of any technical provisions in the Contract Documents, or the misdescription of details of Work which are necessary to carry out the intent of Metro-furnished Contract Documents, or which are customarily performed, shall not

relieve Contractor from performing such omitted Work (no matter how extensive) or misdescribed details of the Work. Any such omitted or misdescribed Work shall be performed as if fully and correctly set forth and described in the technical provisions of the Contract Documents, without entitlement to a Contract Modification hereunder.

## **2.15 Information Supplied To the Contractor:**

### **2.15.1 Furnished by Metro:**

If Metro made available to Bidders/Proposers (including the Contractor) during the solicitation of this Contract information described in the Bid/Proposal Documents as "Information Available to Bidders (or Proposers)" the Information Available to Bidders/Proposers is not a part of this Contract, but was made available to share then existing information, without warranty, with Bidders/Proposers (including the Contractor). Metro made reasonable efforts to ensure that all Information available to Bidders/Proposers was reliable, accurate and complete. However, because the information is not a part of the Contract and does not meet Contract Document standards, Metro makes no representations with respect to its reliability, accuracy, or completeness and shall not be responsible or liable to Contractor for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by Contractor. If the Contractor intends to use such information, it shall use the information at its own risk and shall apply its professional judgment as to its reliability, accuracy and completeness for the purposes for which the Contractor intends to use it. Metro will rely on the Contractor to determine which information is sufficiently reliable, accurate and complete for Contractor to use for Contractor's intended purpose.

### **2.15.2 Furnished by Others:**

Metro will not be responsible or liable in any respect for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by the Contractor by reason of its use of any information furnished by others, or for any actions of forbearance in reliance thereon. The Contractor further acknowledges and agrees that:

- A. If and to the extent the Contractor or anyone on the Contractor's behalf uses any of such information in any way, the Contractor, not Metro, shall be fully responsible for the use of said information; and
- B. Any use of such information is entirely at the Contractor's own risk and at its own discretion.

### 2.15.3 Contractor Representation:

Contractor represents that it is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement any information furnished by Metro and others as provided in this Section.

## 2.16 Headings

2.16.1 The various topical headings contained in the Contract are intended for convenience only and shall not affect the meaning or interpretation of the Contract or any of its provisions.

2.16.2 The only exceptions to this provision are the headings of those Articles, Sections, Paragraphs, and/or Subparagraphs which are flagged with a “\*”. An explanation as to how this mark/flag shall be interpreted by the Parties is provided in the Article entitled GLOSSARY OF TERMS, under Section ABBREVIATIONS AND SYMBOLS.

## 2.17 Word Construction

Where appropriate:

2.17.1 The singular includes the plural and vice versa;

2.17.2 References to any Law include all statutory or regulatory provisions consolidating, amending or replacing the Law referred to;

2.17.3 The word “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”;

2.17.4 Unless otherwise indicated, references to Articles, Sections, Paragraphs, Subparagraphs, Exhibits, Attachments, Appendices or Schedules are all references to parts of this Contract;

2.17.5 Words such as “herein”, “hereof” and “hereunder” shall refer to the entire document in which they are contained, and not to any particular provision unless the reference is to the specific provision;

2.17.6 Words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings;

2.17.7 References to persons or entities include their respective permitted successors and assigns and, in the case of Government

Entities, entities succeeding to their respective functions and capacities;

2.17.8 Words of any gender shall include each other gender where appropriate;

2.17.9 Unless otherwise specified, the Contract shall be read as a whole, and lists contained in the Contract Documents defining the Work shall not be deemed all-inclusive; and

2.17.10 All “notices”, “requests”, “directives” and other communications are required to be in writing, and all references to “notices”, “requests”, “directives” and other communications, by whatever term used, shall be deemed to be followed by the words “in writing” or preceded by the word “written”.

## **2.18 Alternative Codes and Standards**

Codes and standards not in accordance with those contained in the Contract shall not be used unless accepted by the Contracting Officer. If the Contractor wishes to utilize codes or standards not specified in the Contract, Contractor shall submit for acceptance (with its RFC) sufficient information for the Contracting Officer to determine Equivalency. Information shall include, but not be limited to, detailed comparison of the Substitute standard/code, the rationale for Substitution, and whether it meets or exceeds the existing standard/code specified in the Contract.

## **2.19 Default Language and Units of Measure (UOM)**

2.19.1 Language – All information, communication, documentation, and submittals on this Project shall be in the English language.

2.19.2 Units of Measure (UOM) – Unless explicitly specified as otherwise in Metro Technical Documents or in a written notice by Metro’s Authorized Representative, the English Imperial (lb/foot) system shall be the primary UOM used on the Project. Likewise, unless explicitly specified as otherwise by Metro, all communication and documentation related to the Work that contain any UOM, must utilize and express all measurements in the English Imperial system. The use of the Metric system to express UOM is also permitted, but only to the extent that it expresses the metric equivalent of the English Imperial UOM being used, and is provided as additional/secondary data to the English Imperial UOM.

# **GC-03 AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORIZED REPRESENTATIVES**

## **3.1 Authority and Responsibility of Metro’s Contracting Officer**

- 3.1.1 Metro's Contracting Officer has the authority and responsibility to exercise all powers, rights, and/or privileges that have been lawfully delegated to the Contracting Officer by Metro in all matters relating to or affecting the Work and this Contract.
- 3.1.2 Except as expressly specified in this Contract, the Contracting Officer may delegate, in writing, specifically described authority and responsibility within the scope of its authority and responsibility to Authorized Representatives.
- 3.1.3 The Contracting Officer is Metro's primary Authorized Representative, and is the only person authorized to delegate authority to any other Authorized Representative(s).
- 3.1.4 Any authority or responsibility of the Contracting Officer not delegated by the Contracting Officer to another Authorized Representative shall remain solely with the Contracting Officer, as Metro's primary Authorized Representative.

### **3.2 Authority and Responsibility of Metro's Authorized Representatives**

- 3.2.1 The authority and responsibility of each Authorized Representative shall be as set forth herein, or in the written delegation of the Contracting Officer.
- 3.2.2 The Contracting Officer's delegation of responsibility and authority to other Authorized Representative(s) shall be limited to specifically-defined authority and responsibilities. The authority, responsibilities and limitations of any Authorized Representative shall be described in the Contracting Officer's notice to the Contractor designating the Authorized Representative.
- 3.2.3 The Authorized Representatives, and the authority and responsibilities of the Authorized Representatives, may from time to time be changed by notice to the Contractor from the Contracting Officer.
- 3.2.4 Nothing in this Contract shall be construed to bind Metro for acts of any Metro employee or any other person, or for the acts of the Contracting Officer or any other Authorized Representative, including its Construction Manager, that exceed the authority delegated to them herein or in any other written delegation.

### **3.3 Contractor Notices to Metro**

All Notices to Metro under this Contract shall be to Metro's Authorized Representative for the subject matter of the Notice, with a copy to the Contracting Officer. No Notice shall be effective unless it was delivered to the designated Authorized Representative and to the Contracting Officer as provided in this Contract.

## GC-04 CONTRACTOR'S OBLIGATIONS

### 4.1 Overview of Contractor's Responsibilities

#### 4.1.1 General:

Contractor shall furnish the following on the Project, in accordance with Metro-furnished Contract Documents and all other requirements set forth in the Contract:

- A. Design Services – The Contractor shall furnish the design of the Project in a timely manner, including design management, the preparation of all drawings and materials necessary to complete the Design Documents, participation in the design review process, and the completion and delivery of AFC Design Documents. The Contractor shall perform the Design in accordance with all professional architectural and engineering principles and practices generally accepted as standards of the industry in the State of California, free from defects, errors, omissions, and inconsistencies.
  - B. Construction Services –The Contractor shall construct the Project as designed in a timely manner, including roadway work, structures, and grading, and shall furnish all materials, equipment, systems, signage, appliances, tools, and labor of every kind required for the Construction Work (other than those items expressly stated in the Contract Documents as being provided by others), in accordance with the Contract, the STATEMENT OF WORK, and the AFC Design Documents and Construction Documents. The Contractor shall perform all construction work in accordance with all construction practices generally accepted as standards of the industry in the State of California, in a good and workmanlike manner, free from construction defects, on or before the Completion Deadlines specified in the Article entitled CONTRACT TIME AND COMPLETION DEADLINES in the SPECIAL PROVISIONS.
  - C. Operations and Maintenance Services –The Contractor shall operate and maintain the Project and perform all required operations and maintenance services, in accordance with the requirements of the Contract Documents and consistent with the professional practices generally accepted as standards of the industry.
- 4.1.2 Compliance with Requirements – Contractor shall perform all services set forth in Paragraph entitled GENERAL above (in this section), provide all materials and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts that the Contract Documents specify will be furnished by Metro or other persons) to construct the Project in accordance

with the requirements of the Contract Documents, the Schedule, all applicable Laws, all Governmental Approvals, Metro-Approved Quality Assurance & Quality Control Plans, Contractor's approved Safety Program, the Construction Documents provided to Metro, and all other applicable safety, environmental and other requirements, taking into account Right-of-Way constraints and other physical limits resulting from constraints affecting the Project, so as to achieve Substantial Completion and Final Acceptance and to perform all required tests by the deadlines specified herein, and otherwise to do everything required by and in accordance with the Contract Documents.

- 4.1.3 Professional Qualifications – Contractor shall perform the Work under the supervision of persons licensed to practice the applicable function/profession in the State of California, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract, and who shall assume professional responsibility for the accuracy and completeness of the Work prepared or checked by them.
- 4.1.4 Governing Dimensions – Before commencing any construction work, Contractor shall verify all governing dimensions at the Worksite, examine all adjoining work and activities that may have an impact on Work, and ensure that the Contract Documents (and any other documents related to the Work) accurately depict all governing and adjoining dimensions.
- 4.1.5 Scheduling – Contractor shall schedule and direct its work to provide an orderly work progression, achieve on-time completion of all Milestones set forth in the Schedule, and complete its work within the Contract Time. To accomplish this goal, Contractor shall furnish such employees, materials, facilities and Equipment, and work such hours (including extra shifts, overtime operations, Sundays and holidays), as may be necessary.
- 4.1.6 Means and Methods – Contractor shall be solely responsible for and shall have control over the performance of its Work in accordance with its own means, methods, sequences, techniques, and procedures, and shall be responsible for coordination of all portions of its Work in compliance with the Contract.
- 4.1.7 Performance During Disputes – At all times during the term hereof, including during any Dispute, Contractor shall perform as directed by Metro, and shall comply with all provisions of the Contract.
- 4.1.8 Ascertaining Facts – Contractor shall be solely responsible for its failure to ascertain the facts and take the actions described, represented, warranted and acknowledged in this Article, and no

provision of this Contract shall be construed to relieve Contractor from responsibility for such failure.

- 4.1.9 Subcontractors & Suppliers – Contractor shall be responsible for the acts and omissions of its Subcontractors and Suppliers.
- 4.1.10 Assistance to Metro – Contractor shall provide such assistance as is reasonably requested by Metro in dealing with any Government Entity, or in prosecuting and defending Environmental lawsuits in any and all matters relating to the Work. Such assistance may include providing information and reports regarding the Work, as well as executing declarations and attending meetings and hearings. In no event shall the Contractor be required to provide legal services.
- 4.1.11 Cooperation – Contractor shall cooperate with Metro and its Authorized Representatives, in their review(s) and/or inspection(s) of any portion or phase of the Work, and other matters relating to the Work.
- 4.1.12 Mitigation – Contractor shall mitigate Delay in all circumstances, to the extent reasonably possible, including the re-sequencing, reallocating or redeploying of its forces to other work, as appropriate.
- 4.1.13 Payment of Taxes – Contractor shall pay all applicable Federal, State, and local sales, consumer, use, property, and similar taxes, and any other, fees, charges, or levies imposed by a Government entity relating to, or incurred in connection with, the performance of the Work.

## 4.2 Contractor's Representations, Warranties and Covenants

Contractor represents, warrants and covenants for the benefit of Metro that:

- 4.2.1 Status – If it is a corporation, limited partnership, general partnership, and/or joint venture, it is duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation, and has full power and authority to own and operate its business and properties and perform the Work within the State of California.
- 4.2.2 Contractor & Subcontractor Qualifications – It and all of its Subcontractors are, and will be and will remain, fully experienced and properly qualified to perform the Work, and are, and throughout the term of this Contract shall remain, properly licensed, equipped, organized and financed to perform the Work hereunder and shall perform it in accordance with the Contract and in accordance with professional standards of skill, care, and

diligence adhered to by firms recognized for their expertise, experience and knowledge in performing Work of a similar nature.

- 4.2.3 Control of Employees and Subcontractors – It shall maintain complete control of its employees, and its Subcontractors and Suppliers of all tiers, and shall not assign or transfer Work from itself or any listed Subcontractor or Supplier to itself or any other Subcontractor or Supplier without the written consent of the Contracting Officer.
- 4.2.4 Review of Information and Inspection of Worksites – It has, in accordance with prudent and generally accepted engineering and construction practices:
- A. Reviewed all of the information provided in the Contract (including reports provided by Metro);
  - B. Inspected and evaluated the Worksite and surrounding locations to the extent the Contractor deems necessary or advisable for performing all portions/phases of the Work under the Contract. These inspections and evaluations include without limitation:
    - 1. Constraints related to the design and engineering of the Work.
    - 2. Character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Worksite, including review of the Contract Documents provided by Metro.
    - 3. Conditions bearing upon transportation, disposal, handling, and storage of materials, Goods, and Equipment;
    - 4. Availability of labor, water, electric power, and roads;
    - 5. Uncertainties of weather, or physical conditions at the Site;
    - 6. Conformation and conditions of the ground;
    - 7. Character of Equipment and facilities needed preliminary to and during Work performance; and
    - 8. Conditions bearing upon security and protection of material, Goods, Equipment, and Work in progress.
  - C. Accepted responsibility for any conclusions or interpretations it makes based on its investigation of conditions affecting the

Work, including its interpretation of any Contract Documents and/or any Reference Documents made available by Metro

Any failure of the Contractor to take the actions described in this Article shall not relieve Contractor from responsibility for properly estimating the difficulty and cost of successfully performing the Work or for proceeding to successfully perform the Work without additional expense to Metro.

- 4.2.5 Physical Requirements – As a result of its inspection and examination of the Worksite, and other related and surrounding sites and conditions, it is familiar with and accepts the physical requirements of the Work.
- 4.2.6 Feasibility – As a result of its review of all the information and its inspection and examination of the Worksite, it has evaluated the feasibility of performing the Contract within the Contract Time and for the Total Contract Price, and has reasonable grounds for believing and does believe that such performance, including achievement of Substantial Completion of the Project within the Contract Time, for the Total Contract Price is feasible and practicable.
- 4.2.7 Legal Proceedings – There are no existing or threatened legal proceedings against Contractor that would have an adverse effect on its ability to perform its obligations under the Contract, its financial condition or its operations.
- 4.2.8 Governmental Approvals – Based upon its review of the Contract Documents, it shall be able to obtain and keep in effect throughout the Contract Time all Governmental Approvals the Contractor is obligated to obtain in accordance with the Contract.
- 4.2.9 Difficulty and Cost of Work – It has estimated the difficulty and cost of successfully performing the Work, and based upon that estimate has concluded that it can successfully perform the Work at the Total Contract Price.
- 4.2.10 Applicable Laws – It has familiarized itself with the requirements of any and all applicable Laws and shall be responsible for compliance with all such Laws during the performance of the Work.

### **4.3 Independent Contractor**

- 4.3.1 Contractor, and its Subcontractors and Suppliers of any tier, are independent contractors, and nothing in this Contract shall be construed to create the relationship of agent, servant, employee, partnership, joint venture or other association as between Contractor and Metro. The employees and agents of one party

shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

4.3.2 Contractor, as an independent contractor, shall have responsibility for and control over the details and means for performing the Work, provided that Contractor is in compliance with the terms of this Contract. Anything in this Contract that may appear to give Metro the right to direct Contractor as to the details of the performance of the Work, or to exercise a measure of control over Contractor, shall mean that Contractor shall follow the desires of Metro only as to the intended results of the Work.

#### **4.4 Compensation and Benefits**

Contractor shall be solely liable and responsible for providing all compensation and benefits to, or on behalf of, all persons performing Work pursuant to this Contract. Metro will have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor.

#### **4.5 Workers' Compensation Insurance and Liability (Reserved)**

#### **4.6 Data Collection & Reporting**

Contractor shall collect and preserve each of following types of data in written form contemporaneously during the Contractor's performance of the Work:

4.6.1 Monthly Utilization Report – A monthly report summarizing all manpower and equipment utilized to perform the Work during the month, broken down as follows:

A. Labor: By classification of management, engineering (if applicable), and other technical and trade personnel used on the job.

B. Material: By (general) major Equipment category.

4.6.2 Weekly Utilization Report – A weekly report of utilized manpower and equipment, broken down by Contractor and each Subcontractor, as well as by Contract activity (i.e., as depicted on the Critical Path Schedule, which is being actively prosecuted);

4.6.3 Daily Log – A daily log recording and summarizing, in a narrative form, all significant occurrences during the Work, including without limitation:

- A. Activity Log (i.e., a listing of each activity, depicted on the Critical Path Schedule, which is being actively prosecuted);
- B. Permit Issue Log (i.e., changes in permit status; permit problems; etc.);
- C. Delay Issue Log (i.e., unusual inclement weather; asserted Force Majeure events, and any other event and condition causing or threatening to cause any significant delay/disruption/interference with the progress of any of the Work);
- D. Safety Issue Log (i.e., significant injuries to persons or property, or events/situations which threaten significant injuries to persons or property);

4.6.4 PCA (Potential Change Alert) Report – A daily log recording all expenses for labor, materials and Equipment that are being incurred by reason of any event, condition, or circumstance which the Contractor believes is or may become the subject of a Request for Change (RFC) or Claim against Metro.

4.6.5 Operations and Maintenance Reports. – Regular reports on the operation and maintenance of the Project, including Incident Reports on a timely basis, in accordance with the SPECIAL PROVISIONS and GENERAL REQUIREMENTS.

At reasonable times as requested by Metro, Contractor shall provide Metro with a copy of each log/report described in this Section.

## **GC-05 CONTRACTOR'S REPRESENTATIVE, ORGANIZATION AND PERSONNEL**

### **5.1 Organization**

Before starting any Work, the Contractor shall submit for Metro review and approval, an organization chart showing the proposed organization established by the Contractor for the performance of the Work, including:

- 5.1.1 Lines of authority, responsibility, and communication;
- 5.1.2 Office organizations, if any; and
- 5.1.3 Names, titles, and functions of all the Contractor's Key Personnel.

### **5.2 Contractor's Representative (or Project Manager)**

5.2.1 Contractor shall have a Contractor's Representative (or Project Manager) with full authority to represent and act for the Contractor. Prior to Metro's issuance of a Notice to Proceed

(NTP), Contractor shall submit (for Metro's review and acceptance) the name, qualifications and experience of its duly authorized Contractor's Representative.

5.2.2 Contractor's Representative shall act for the Contractor in all matters concerning the Work, and, subject to all requirements of this Contract, shall have the following authority and obligations:

- A. Ability to so organize the Work, and the Work of its Subcontractors, to complete the Work in accordance with the Contract and the Critical Path Schedule.
- B. Ability to delegate defined authority to other Contractor personnel (who thus also become Contractor's Representatives, as provided in this Contract, to the extent specified), subject to written notice to, and approval by, the Contracting Officer.
- C. During performance of the Work, Contractor's Representative shall be present at the Worksite, or have its fully-empowered delegate present at the Worksite, at all times that any Work is in progress or at any time any employee or Subcontractor of the Contractor is present at the Worksite.

### **5.3 Change in Contractor's Representative and Key Personnel**

The Contractor shall secure the prior written acceptance of the Contracting Officer (or its Authorized Representative) for any change or reassignment of the Contractor's Representative(s) and other Key Personnel, submitting written documentation of the new individuals' qualifications and experience, which shall be comparable to those of the individual being replaced. The Contractor shall not reassign Key Personnel to other projects until a satisfactory replacement has been approved by Metro.

### **5.4 Removal of Contractor Personnel**

The Contracting Officer may require the Contractor to remove any person assigned by the Contractor, or by any Subcontractor or Supplier, to perform Work or furnish Goods under the Contract, if the Contracting Officer considers such removal in the best interest of Metro and the Work. The Contracting Officer's decision to require Contractor to remove any Contractor personnel, including Contractor's Representative, shall be final and binding on the Contractor. Upon such direction, Contractor shall remove the person(s) and resolve all employment or contractual issues at no cost or expense to, and shall fully indemnify, Metro. Any person(s) removed for any reason shall not be re-employed on any other Metro project.

## GC-06 SUBCONTRACTORS AND SUPPLIERS

### 6.1 Contractor Participation

- 6.1.1 Minimum Percentage – The Contractor shall perform at least the minimum percentage of Work specified in Contract Document SPECIAL PROVISIONS with its own organization. Where a percentage of the Work is to be subcontracted, the dollar value shall be based on the estimated cost of such Work, determined from information submitted by the Contractor and subject to written acceptance by the Contracting Officer. With the exception of Work performed under a Construction Equipment rental agreement and Goods purchased directly through Suppliers, Work, Goods, and Equipment furnished by other than the Contractor shall be deemed subcontracted.
- 6.1.2 Copies of Subcontracts – Upon Metro's request, the Contractor shall submit a copy of each executed Subcontract for any Subcontractor or Supplier of any tier, regardless of value of Work to Metro.

### 6.2 Performance of Work

- 6.2.1 Subcontracting and Contract Compliance – All subcontracting by the Contractor shall be in strict accordance with this Contract.
- 6.2.2 Subcontractor Coordination and Responsibility – The Contractor shall coordinate the Work performed by its Subcontractors and Suppliers, and be fully responsible to Metro for all acts and omissions of Subcontractors, Suppliers and their employees.
- 6.2.3 Subcontractor Acts and Omissions – Any provision of the Contract referring to the acts or omissions of the Contractor shall also refer to and include the acts and omissions of all Subcontractors and Suppliers.
- 6.2.4 Subcontractor Breach, Cure and Replacement – If any portion of the subcontracted Work is not performed in accordance with the Contract, or if a Subcontractor or Supplier commits or omits any act that would constitute a breach of the Contract, the Contractor shall cure the breach, and at the direction of the Contracting Officer, shall replace the Subcontractor or Supplier. The Subcontractor or Supplier shall not be employed again on the Work.
- 6.2.5 Contract and Subcontract Organization – The organization of the Contract into Contract Documents, Articles, Sections, Paragraphs, and Subparagraphs, as well as the arrangement and titles of the Contract Specifications and Contract Drawings, shall not control

the Contractor in dividing the Work among Subcontractors, nor in establishing the extent of Work to be performed by any trade.

### **6.3 Addition or Substitution of Subcontractors\***

#### **6.3.1 Contracting Officer's Approval of Addition of Major Subcontractors:**

Prior to soliciting any bids for performance of work or labor, or rendering of services in or about the construction of the Project, or for special fabrication and installation of a portion of the Work, Contractor shall comply with the following provisions:

- A. Contractor shall submit to the Contracting Officer, for review and Approval, a reasonable procedure for the conduct of the bidding and approval process applicable to all Major Subcontracts. Such procedure shall also be in compliance with the requirements of the Article entitled SUBCONTRACT ADMINISTRATION, herein. Contractor shall promptly notify the Contracting Officer in writing of the identity of each Subcontractor selected. Contractor may enter into Subcontracts with the Subcontractors identified in the Article entitled SUBCONTRACTORS AND SUPPLIERS in Contract Document SPECIAL PROVISIONS without following such process, but shall not enter into any other Major Subcontracts, except in accordance with the foregoing procedure.
- B. Once Contractor has entered into any Major Subcontract, Contractor shall not have the right to make any substitution of such Major Subcontractor except as specified in the Section entitled CONTRACTING OFFICER'S APPROVAL OF SUBSTITUTIONS in this Article, and Contractor shall not amend any existing Major Subcontracts resulting in an aggregate increase of ten percent (10%) or more in the Subcontract price, without the Contracting Officer's prior written Approval.

6.3.2 Contracting Officer's Approval of Substitutions – Contractor shall not make any substitution of any Major Subcontractor (whether listed under the Article entitled SUBCONTRACTORS AND SUPPLIERS in Contract Document SPECIAL PROVISIONS, or selected in accordance with Paragraph 6.3.1 above) except with the prior written Approval of the Contracting Officer, in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 et seq. The Contracting Officer's Approval shall also be required for any substitutions of DBE or SBE Subcontractors.

6.3.3 Conditions of Approval – The Contracting Officer shall not unreasonably withhold approval of Subcontractors submitted for

Approval under Paragraph 6.3.1 above, provided that the Contracting Officer has first determined that such firm has the demonstrated competence and professional qualifications necessary for the satisfactory performance of the Work, and that the designated key personnel at such firm have sufficient experience with the requirements applicable to the Work.

6.3.4 Design Firms –The Contractor shall not at any time change the designated design firm(s), permit changes in the designated key personnel for any design firm, nor shift work from one design firm to another, without the prior written Approval of the Contracting Officer.

6.3.5 Third Party Beneficiary – Metro will be a third party beneficiary of all Subcontracts, including those for design and engineering services.

6.3.6 Substitution Request Form – Requests for Approval hereunder shall include information in the same form and content as in the bid/proposal form required to be utilized in the Contractor's original bid/proposal, as well as any additional information necessary for the Contracting Officer to make a determination. Contractor shall also comply with all applicable requirements of the Contract Document CONTRACT COMPLIANCE MANUAL.

#### 6.4 Debarred Subcontractor\*

In accordance with Public Contract Code §6109(a), Contractor shall not perform Work with any Subcontractor who is ineligible to perform work on a public works project pursuant to Labor Code §1777.1 or 1777.7.

**In accordance with Public Contract Code §6109(b) any contract on a public works project entered into between the Contractor and a debarred Subcontractor is void as a matter of law.** A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by the Contractor on the project shall be returned to the awarding body. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

Contractor shall strictly comply with the above Laws and will act on information related to any debarred Subcontractor in accordance therewith.

#### 6.5 Pre-Qualification\*

Prior to performing Work of one hundred thousand US Dollars (\$100,000) or more under this Contract, Subcontractors shall pre-qualify under Metro's Pre-Qualification process.

## 6.6 Flow-down Requirements \*

The Contractor shall incorporate into each Subcontract, and require insertion into all lower tier Subcontracts, all Required Subcontract Provisions as follows:

- 6.6.1 All Articles, Sections, Paragraphs, and/or Subparagraphs of the Contract noted by an asterisk ("\*").
- 6.6.2 All provisions required by Law or otherwise required in this Contract.
- 6.6.3 The following provisions:

Contractor and Subcontractor acknowledge and agree:

- A. All Work being performed and Goods being furnished by the Subcontractor under this Subcontract shall comply with the Contractor's Contract with Metro.
- B. The Subcontractor shall have the same duties and obligations to the Contractor with respect to its performance of its own Work as the Contractor has to Metro under its Contract. Metro is the third-party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit.
- C. The Subcontractor shall make such Schedule commitments, submit such Schedules and scheduling information, and submit any other required information to Contractor as is necessary for Contractor to comply with its Schedule and reporting commitments to Metro, under the Contract.
- D. All guarantees and warranties, express or implied, shall inure to the benefit of both Metro and the Contractor during the performance of the Work; upon final completion of the Work, such guarantees and warranties shall inure to the benefit of Metro.
- E. Nothing contained in the Subcontract shall be deemed to create any privity of Contract between Metro and the Subcontractor, nor shall it create any duties, obligations, or liabilities on the part of Metro to the Subcontractor except those required by Law. In the event of any claim or dispute arising under the Subcontract or the Contract with Metro, the Subcontractor shall look only to the Contractor for any payment, redress, relief, or other satisfaction.

- F. This Article does not and shall not operate to relieve the Contractor of any duty or liability under the Contract, nor does it create any duty or liability on the part of Metro. The Contractor shall have sole responsibility for promptly settling any disputes between its Subcontractors and between the Subcontractors and any of their Subcontractors of any tier.

## **6.7 Insurance**

No Subcontractor of any tier shall be permitted to perform Work at the Worksite until the Contractor has supplied satisfactory evidence of required insurance to Metro, in compliance with the Contract.

## **GC-07 SUBCONTRACT ADMINISTRATION**

In accordance with 49 CFR Part 26, the Contract Document entitled COMPENSATION AND PAYMENT and the Sub-Article entitled PROMPT PAYMENT TO SUBCONTRACTORS, Metro has elected to implement the following requirements related to the Work that is performed by all Subcontractors of any tier under this Contract.

### **7.1 Executed Subcontract Agreements**

The Contractor shall submit to Metro Contracting Officer complete copies of all executed Subcontracts and/or Purchase Orders within fourteen (14) calendar days after the Contractor, or its Subcontractors, executes each Subcontract or Purchase Order. Contractor shall also submit copies of all Changes Orders, Modifications, Addendums or Amendments to such Subcontracts and Purchase Orders within fourteen (14) calendar days after execution. Contractor shall not darken out or delete any information from the submitted Subcontract and Purchase Order documents. The Subcontract and Purchase Order prices shown in the submitted documents shall not be cause for any reason by any Party to make an adjustment to the Contract Price and such pricing information will only be used to implement the provisions hereunder and in the Contract Document entitled COMPENSATION AND PAYMENT related to Subcontractor payments and retention.

### **7.2 Subcontract Values**

The Contractor shall, in accordance with the Specification entitled COST/SCHEDULE INTEGRATION SYSTEM, breakdown the Schedule of Values and its monthly Application for Progress Payment making all work activities, the value thereof, payments made to date and retention withheld, distinguishable between the Contractor, its Subcontractors and Suppliers, inclusive of the baseline Work and all Contract Modifications.

### **7.3 Releases**

In accordance with the requirements set forth in the Contract Document entitled COMPENSATION AND PAYMENT and the Article entitled

PROGRESS PAYMENTS and the Article entitled PROMPT PAYMENT TO SUBCONTRACTORS, Contractor shall cause that its Subcontractors and Suppliers complete and provide Conditional and Unconditional Waiver and Release forms, attached hereto as [Exhibits SA-1 and SA-2], for Contractor to submit with its Applications for Progress Payment and Request for Final Payment. In the event Contractor fails to submit the required Waiver and Release form then any money's due for that Work performed shall not be paid and will be carried over to the next Progress Payment, or the Final Payment delayed, until such time Contractor submits the required Waiver and Release form. Any such payment withheld shall not be cause for a Contract Change, Claim, or subject to any accrued interest.

#### **7.4 Survival of Obligations**

Without limiting any other provision of the Contract relating to continuing obligations that extend beyond Final Acceptance of the Work or any Subcontractors' or Suppliers' Work under this Contract, the Contractor's responsibility for injury to persons and/or property arising from its duties and obligations under the Contract, including without limitation, the Articles entitled LIABILITY AND INDEMNIFICATION, GOODS AND EQUIPMENT, and WARRANTY, shall survive Acceptance and any payment to Contractor by Metro for any element of the Work performed by a Subcontractor or Supplier under this Contract.

#### **7.5 Undisclosed Incomplete Work**

The Contractor will not be relieved of its obligations to complete any element of the Work, or any portion or item thereof, the non-completion of which was not disclosed to Metro prior to Final Acceptance of the Contract, regardless of: (1) whether such nondisclosures were fraudulent, negligent, or otherwise; and (2) Metro having inspected or accepted the element of the Work, having accepted Contractor's certification that the element of the Work is completed, having made payment to Contractor for the element of the Work, or Contractor having made final payment, including a release of retention to its Subcontractor or Supplier for that element of the Work. Contractor shall remain obligated to correct all such items after Final Acceptance of the Contract under this Article and all other provisions of the Contract that, expressly or by their nature, extend beyond or survive Final Acceptance.

#### **7.5 No Exception**

Inspection of a Subcontractor's work, under the terms of this Article, shall not constitute an exception for Acceptance as contemplated by the Article entitled PERFORMANCE AND INSPECTIONS, sub-article 24.1.4, unless it is specified in writing as stated therein.

#### **7.6 Contractor Responsibilities**

The terms of this Article, as it relates to the Article entitled PERFORMANCE AND INSPECTIONS, sub-article 24.1.4, creates an

Metro obligation to make inspections of Subcontractors' completed work for the limited purpose of implementing the terms of this Article, but such inspections shall not relieve Contractor of any of its responsibilities under this Contract.

#### **7.7 Additional Costs**

After the Contractor has notified Metro that a Subcontractor's work is complete, Metro may charge the Contractor for any additional costs Metro incurs for the inspections when the Work is not ready at the time indicated in the notice or when an additional inspection is necessitated by prior rejection.

#### **7.8 No Basis for Change**

The Contractor shall consider and plan for the requirements of this Article, and any delay in any Critical Path, or other interruption to the Contractor, resulting from any inspections or other terms of this Article shall not, for any reason, result in an increase to the Contract Price or Time, nor entitle Contractor to any recovery of any costs, or delay, or interest payments occasioned thereby.

#### **7.9 Warranties**

Notwithstanding any terms of this Special Provision, the terms of Warranty, either express or implied in this Contract remain unchanged.

#### **7.10 Contracting Plan**

7.10.1 Requirement. -- All Work must be carried out by the Contractor in accordance with a Contracting Plan developed by the Contractor and approved in writing by Metro.

7.10.2 Submittal to Metro. -- The Contractor shall submit to Metro, within ten (10) Days after receipt of the Notice to Proceed, the Contracting Plan for the Design Work, the Construction Work and the Operations and Maintenance Work. The Contracting Plan shall be subject to the review and approval of Metro. Prior to commencing the Construction Work and the Operations and Maintenance Work, the Contractor shall submit to Metro, for its approval, any necessary revisions and updates to the Contracting Plan.

7.10.3 Contents of Plan. -- The Contracting Plan shall identify the delivery or subcontracting method that will be used for each element or package of the Work. The allowable methods for performing Work (including supply of machinery, equipment, and materials) are as follows: (1) self-performance by the Contractor; (2) performance by a Major Subcontractor identified in the Contractor's Proposal; or (3) performance by a Major Subcontractor subsequently selected in accordance with a competitive process approved by Metro as

described below. The Contracting Plan shall include provisions to ensure that no Subcontract is entered into with a firm that is ineligible to perform work on public works projects pursuant to Section 1777.1 or 1777.7 of the California Labor Code. (The Contractor is permitted to rely on Subcontractor's self-certifications for the Plan). Metro reserves the right, through its approval of the Contracting Plan, to concur in the allocation and process of the work as described in this subsection.

7.10.4 Subcontractor Pre-Qualification. – The Contractor shall be responsible and ensure that any Subcontractor with a subcontract value of \$100,000 or more complies with and satisfies the Metro Pre-Qualification Application requirements, before a subcontract is awarded.

7.10.5 Self Performance. -- The Contracting Plan must provide that not less than thirty percent (30%) of the Work (based on the Total Contract Price for the Work) will be self performed by the Contractor.

7.10.6 Full and Open Competition for Major Subcontracts. -- Metro shall have sole discretion to disapprove any proposed procurement process for Major Subcontracts that Metro determines does not provide for full and open competition. Metro's approval will not be unreasonably withheld for the following procurement procedures: (1) Work to be subcontracted through low-bid, with the bids publicly solicited and a fixed price contract awarded to the responsive and responsible bidder whose bid, conforming to the material terms and conditions of the invitation for bids, is lowest in price; (2) Work to be subcontracted through value based selection, with the request for proposals publicized, evaluation factors identified in the solicitation document and used to review proposals, and awards made to the firm whose proposal is most advantageous or offers the best value to the Project, with price and other identified factors considered; and (3) Work to be subcontracted under a Sole Source Award where justified. The Contractor acknowledges that it will be responsible for demonstrating to Metro that the cost of any Work not competitively procured is fair and reasonable or otherwise in the best interest of Metro.

7.10.7 Inclusion of DBE Firms. -- The Contracting Plan shall include an identification of the Work that will be performed, or is anticipated to be performed, by DBE firms in order to achieve the DBE goals. In addition, the Contracting Plan shall assure that the process of procuring and awarding subcontracts is designed and carried out to assure good faith efforts to encourage DBE participation.

## 7.11 Disadvantaged Business Enterprise Requirements

7.11.1 General Requirements. -- The Contractor is subject to Metro's Diversity and Economic Opportunity Programs, including the

Disadvantaged Business Enterprises (DBE) Program and Equal Employment Opportunity and Affirmative Action Program as set forth in Metro's DIVERSITY & ECONOMIC OPPORTUNITY DEPARTMENT CONTRACT COMPLIANCE MANUAL (FEDERAL - FHWA). In addition, in carrying out the Project, the Contractor shall comply with the Disadvantaged Business Enterprise (DBE) Regulations of the Department of Transportation, as set forth in 49 C.F.R. Part 26, and with the DBE Program set forth in the Contract Documents.

- 7.11.2 Required Goals. – Metro has established the DBE participation Contract goal set forth in the Article entitled DBE PARTICPATION, in the Contract Document SPECIAL PROVISIONS. The Contractor's commitment level for UDBE participation for each segment of the Work, as set forth in the Contractor's bid or proposal, is the UDBE commitment in the awarded Contract that will be enforced by Metro. Metro will monitor both UDBE and DBE participation.
- 7.11.3 DBE Performance Plan. -- The Contractor shall submit to Metro, within ten (10) Days after the Notice to Proceed, a Contracting Plan for the utilization of DBE Subcontractors to achieve the goals specified in subsection 7.11.2 above. The plan shall include (A) an estimated dollar amount to be awarded to DBE firms per year; (B) an identification of the areas of work (in Design, Construction, and Operations and Maintenance) to be subcontracted to DBEs, specifying the areas in which DBE firms have already been selected and the areas in which DBE firms are anticipated to be used; and (C) a description of the good faith efforts the Contractor has made to date, and will make in the future, to meet the DBE goals.
- 7.11.4 Identification of DBE Subcontractors. -- The Contractor shall have provided Metro, as part of its proposal/bid for this Contract, a complete list (with names and addresses) of all certified DBE Subcontractors, and non-DBE Subcontractors, that will perform any portion of the Design Work and the Operations and Maintenance Work, together with a description of their Work and the dollar amount of their participation. The Contractor shall provide Metro, within one hundred-eighty (180) Days after the issuance of the NTP, a complete list (with names and addresses) of all certified DBE Subcontractors, and all non-DBE Subcontractors with a subcontract value equal to 0.5% of the Total Contract Price, that will perform any portion of the Construction Work. The identification of DBEs submitted hereunder shall be consistent with, and shall supplement, any DBE information submitted with the Contractor's proposal/bid for this Contract. If the Contractor fails to submit a complete list, after NTP, within the time period set forth above, then a special assessment shall be

levied against the Contractor in the amount of \$5,000 per day until such time as the complete list is submitted to Metro.

- 7.11.5 Good Faith Efforts. -- If the information provided under subsection 7.11.4 above indicates that a DBE goal will not be met, the Contractor shall, at the request of Metro, provide evidence of good faith efforts to meet that goal, as a supplement to any information previously provided. If the Contractor fails to meet a DBE goal during the implementation of the Work, Metro will make a fair and reasonable judgment whether the Contractor has made adequate good faith efforts, based on the standards in the DBE Program and Appendix A to 49 CFR Part 26. In making this judgment, Metro will consider the quality, quantity, and intensity of the efforts that the Contractor has made to obtain the required DBE participation.
- 7.11.6 Replacement of DBEs. -- In accordance with 49 C.F.R. 26.53(f), the Contractor shall obtain Metro's written consent prior to terminating any DBE Subcontractor and then self-performing the terminated Work, and the Contractor shall make good faith efforts to find a substitute DBE Subcontractor to replace any DBE Subcontractor that is terminated or fails to complete its Work for any reason.
- 7.11.7 Remedies. -- Metro may utilize the available administrative remedies in the DBE Program in the event the Contractor fails to comply with the requirements of this Section, including withholding amounts from monthly invoices or otherwise delaying payment to the Contractor, in accordance with the DBE Program.
- 7.11.8 Reports. -- The Contractor shall provide reports to Metro monthly, and otherwise upon request by Metro, regarding the progress of the DBE Program participation. The Contractor shall attach to the reports written confirmation from identified DBE's that they are participating in the Work. If, based on the reports provided by the Contractor, Metro determines, in its judgment, that the Contractor is not complying with the DBE Program, then Metro shall so advise the Contractor in writing and the Contractor shall have ten (10) working days after receipt of such notice to meet with Metro and agree upon a course of action which will demonstrate to Metro that the Contractor will comply with the program. Provision of acceptable evidence of good faith efforts and pursuit of the agreed upon course of action are conditions on Metro's obligation to process and pay invoices of the Contractor.
- 7.11.9 DBE Compliance Workshop. -- The Contractor, including its Project Manager and an individual designated by the Contractor as the DBE Officer for the Project, shall participate in a workshop that will explain the DBE Program requirements and provide guidance on how to complete all required forms and reports.

## **GC-08 SURETY - PERFORMANCE BONDS, PAYMENT BONDS**

### **8.1 General Requirement**

Concurrently with the execution of the Contract, Contractor shall provide Metro Performance Bonds and Payment Bonds.

### **8.2 Performance and Payment Bonds**

The Performance and Payment Bonds shall satisfy the following requirements:

- 8.2.1 Performance and Payment Bonds shall be in the form supplied by Metro;
- 8.2.2 Performance and Payment Bonds shall be issued by a Surety with an A.M. Best Rating of A- or better and Class VII, unless otherwise approved by Metro, and authorized to issue such bonds in the state of California;
- 8.2.3 Performance and Payments Bonds shall remain in effect for the entire Contract Time at one hundred percent (100%) of the Total Contract Price as specified. After Final Acceptance of the Demonstration Services in accordance with the Article entitled REQUEST FOR FINAL ACCEPTANCE OF THE WORK in Contract Document SPECIAL PROVISIONS, the Contractor shall be released from the Performance Bond and shall also be released from the Payment Bond, subject to satisfaction of the requirements of applicable State law regarding the release of Payment Bonds; and
- 8.2.4 The Payment Bond shall meet all of the requirements of Civil Code Section 3247 et seq.

### **8.3 Warranty Bond**

The Contractor shall provide a Warranty Bond to guarantee performance of work following Substantial Completion, including any required Warranty work, in an amount equal to ten percent (10%) of the Total Contract Price and in a form satisfactory to Metro, in its sole discretion. The Warranty Bond shall remain in effect for the one (1) year Warranty period established in the Article entitled WARRANTY AND RELIABILITY.

### **8.4 Replacement of Surety**

If Metro finds any Surety at any time as unsatisfactory, it will provide written notice to the Contractor to replace the Surety. No further payments shall be due, nor will Metro make any payments under the

Contract, until a new Surety shall qualify and be accepted by Metro. Any delays in replacement of a Surety shall not form the basis for a delay claim or any claim against Metro. Contractor shall pay all costs of compliance with this Article.

#### **8.5 Changes in Work or Contract Time**

Changes in the Work or Contract Time made pursuant to the Contract shall in no way relieve the Contractor or Surety from its obligations. Surety shall waive Notice of such Changes.

#### **8.6 No Relief From Obligations**

Performance by a Surety of any of the obligations of the Contractor shall not relieve the Contractor of any of its responsibilities under this Contract.

### **GC-09 NOTICE TO PROCEED (NTP)**

#### **9.1 Commencement Date**

Except as specifically authorized in writing by the Contracting Officer, the Contractor shall not perform any portion of the Work under the Contract until the Commencement Date stated in the Notice to Proceed (NTP). The Contracting Officer will issue the NTP, and the Commencement Date for the Work will be no later than **thirty (30) Days** after the following conditions have been satisfied (not necessarily in this order):

- 9.1.1 Metro's receipt of the Contractor's bonds and required insurance certificate(s), and Contractor's completion of all other requirements that are conditions precedent to the issuance of the NTP;
- 9.1.2 Metro's receipt of the Contractor's Contracting Plan; and
- 9.1.3 If any construction shall commence on the Commencement Date, Contractor has satisfied the requirements in the Article entitled PREREQUISITES FOR START OF CONSTRUCTION.

#### **9.2 Contractor's Obligations**

- 9.2.1 Concurrently with the execution of the Contract, Contractor shall submit all required bonds and insurance certificate(s) specified in the Contract.
- 9.2.2 All other requirements listed in this Article under the section entitled COMMENCEMENT DATE, shall be completed by the Contractor in a timely fashion, and completed in such a manner that there is no negative impact to the dates set forth for any Milestones in the Critical Path Schedule.

9.2.3 In the event Contractor delays Metro's issuance of the NTP, the Contract Time shall be reduced on a day for day basis, for each day the Contractor is delinquent in completing any of the obligations provided in this Article.

### **9.3 Contract Time**

The Contract Time shall commence on the Commencement Date stated in the NTP. Upon the Commencement Date, Contractor shall commence and diligently prosecute the Work to completion within the Contract Time.

## **GC-10 PREREQUISITES TO START OF CONSTRUCTION**

### **10.1 Prerequisite Events**

The Contractor shall not start construction of any portion of the Project prior to the occurrence of all of the following events:

10.1.1 The Contractor has developed and submitted to Metro, and Metro has approved, a Critical Path Schedule, the Transportation Management Plan, and the Storm Water Pollution Prevention Plan.

10.1.2 The Contractor obtained all Governmental Approvals required for construction of the applicable element(s) of the Work, and any conditions of those Governmental Approvals have been performed;

10.1.3 The Contractor has satisfied all other requirements related to the commencement of construction of the applicable element(s) of the Work, including surveys, notices to adjacent landowners necessary rights of access, and applicable mitigation measures; and

10.1.4 The Contractor has also completed all required design needed for the proper initiation, execution, and construction of the applicable element(s) of the Work, and subject to the Section in this Article entitled Work Prior to Metro Design Approval has issued/distributed all corresponding AFC Design Documents.

### **10.2 Work Prior to Metro Design Approval**

If Contractor performs any Construction Work prior to the date that Contractor's Design Documents (corresponding to the Construction Work in question) become AFC Design Documents in accordance with the requirements of the Contract, Contractor shall make any and all construction modifications necessary, without limitation, to conform to the latest AFC Design Documents, including demolition and replacement of completed in-place constructed Work. Contractor shall comply with the

requirements of this Section at its sole expense, and with no extension in Contract Time.

## **GC-11 PROJECT SCHEDULE AND CONSTRUCTION STAGING**

### **11.1 Preparation and Submittal**

Contractor shall prepare and submit to Metro a detailed resource loaded, Critical Path Schedule, along with a detailed plan of the Work, for acceptance by the Contracting Officer, and shall prepare and shall submit all updates to the Critical Path Schedule and the plan, incorporating all changes to the Schedule and the Work. Contractor shall indicate on the Critical Path Schedule the anticipated dates for completing the various stages of construction and for providing the Toll Collection Equipment and Systems and shall keep Metro informed of any Delays. The Schedule shall include projected delivery dates for all required Contract deliverables and dates for all required Metro inspections and Approvals.

### **11.2 Impacted Schedule**

To the extent that there are pending Modifications which may affect the Schedule, Change Orders, known Delays or Claims of Delay for whatever cause that are not included in the current Critical Path Schedule, and whether they are Excusable, Inexcusable or Concurrent (as defined in the Article entitled EXTENSION OF TIME herein), Contractor shall also submit an adjusted Critical Path Schedule, as impacted by all such pending Modifications, Change Orders, known Delays and Claims of Delays, representing its best estimate of actual performance ("Impacted Schedule").

### **11.3 Electronic Copy**

Contractor shall submit to Metro by electronic mail or by Compact Disc (CD-R or CD-ROM), electronic write-protected copies of the Critical Path and Impacted Schedules, using a commercially available software program containing direct file interchange capability with Primavera Project Planner.

### **11.4 Subcontractor Schedules and Schedule Commitments**

11.4.1 The Critical Path Schedule shall include all activities to be performed by Subcontractors. Contractor shall submit to Metro all Subcontractor schedule commitments, with a certification from the Subcontractor that it has reviewed and accepted the schedule commitment.

11.4.2 If the Subcontractor will perform all activities at the direction of the Contractor, without a Subcontractor Schedule commitment, Contractor may request a waiver from Metro of the Subcontractor Schedule commitment. Metro's Approval shall be subject to such

Contractor assurances and documentation as it deems necessary to ensure timely Subcontractor performance.

## **11.5 Use of Critical Path Schedule**

11.5.1 The Critical Path Schedule shall be the Contractor's working Schedule and shall be used to plan, organize and execute the Work; record and report actual performance and progress; and forecast remaining Work. The Schedule shall indicate the anticipated dates for completing the various Contract Milestones, shall incorporate the Work Completion Schedule set forth in Appendix A to the SPECIAL PROVISIONS, and shall include completion of all Work by the Scheduled Substantial Completion Date.

11.5.2 Upon approval of the Critical Path Schedule by the Metro, it shall be deemed incorporated into and shall become a material part of the Contract.

## **11.6 Changes to Critical Path Schedule**

After the Contracting Officer's approval of the baseline Critical Path Schedule, Contractor's additions, deletions and other changes to the Schedule shall be subject to the acceptance of the Contracting Officer. All changes to all activities on the Critical Path Schedule, including without limitation changes arising out of Delays, and all new activities, shall be included in changes to the Critical Path Schedule. If any changes are pending, they shall be included in the Impacted Schedule.

## **11.7 Supplementary Information**

The Contractor shall provide such supplementary written information with its submittals as Metro may require to adequately evaluate the Critical Path Schedule and the plan of the Work.

## **11.8 Coordination With Schedule of Values**

The Contractor shall coordinate the Critical Path Schedule with the SCHEDULE OF VALUES, as specified in the Article entitled PAYMENTS in Contract Document COMPENSATION & PAYMENT PROVISIONS.

## **11.9 Float**

All Float in the Critical Path Schedule and the Impacted Schedule, is not for the exclusive use or benefit of either Metro or Contractor, but is an expiring resource available to both parties on a nondiscriminatory basis. All Float shall be shown as such in the Project Schedule and on each affected schedule path. The Contractor shall monitor, account for, and maintain Float in accordance with critical path methodology.

## **11.10 Recovery Schedule**

If at any time the Critical Path Schedule reflects seven (7) or a greater negative number of total Days of Float, the Contractor shall, within ten (10) Days after first becoming aware of such schedule delay, prepare and submit to Metro for its review and approval, a Recovery Schedule demonstrating the Contractor's proposed plan to regain lost schedule and progress, to minimize the impact of delay events, and to achieve the original Milestones, to the maximum extent feasible. Metro shall notify the Contractor within ten (10) Days after the receipt of the proposed Recovery Schedule whether it is approved or rejected. If rejected, the Contractor shall submit a revised Recovery Schedule to Metro within five (5) Days, addressing Metro's comments. Upon approval of a Recovery Schedule, the Contractor shall, within five (5) Days after such approval, incorporate such Schedule into the Critical Path Schedule. All costs incurred by the Contractor in preparing, implementing, and achieving the Recovery Schedule shall be borne by the Contractor.

#### **11.11 Coordination with Other Contractors and Metro Operations**

If applicable, the Contractor shall schedule performance of its Work in such a manner as to minimize interference with other Contractors and with Metro's operations.

### **GC-12 PROJECT DEFINITION DOCUMENTS**

#### **12.1 Description and Limitations**

Metro has made available to the Contractor information described in the Project Definition Documents, including any documents described therein. Contractor specifically acknowledges and agrees that:

- 12.1.1 Contractor has full responsibility for the design of the Work and Metro has not furnished the Contractor with the design of the Work;
- 12.1.2 The Project Definition Documents are preliminary and conceptual in nature;
- 12.1.3 Contractor shall not rely on and has not relied on any documents or information provided by Metro outside of the Contract Documents, and is not entitled to rely on and has not relied on the Project Definition Documents as to accuracy or as including a defect-free preliminary definition of the Work;
- 12.1.4 Contractor may rely on the Project Definition Documents only with respect to the definitions of Metro provided Worksite and description of the Work therein, for the limited purposes permitted by this Contract;
- 12.1.5 Contractor shall ascertain whether there are any design errors, omissions, inconsistencies or other defects inherent in the defined

Work, and notify Metro's Authorized Representative in writing regarding such errors, omissions, inconsistencies or defects and potential resulting problems; and

- 12.1.6 Contractor shall verify all calculations and quantity takeoffs contained in the Project Definition Documents or otherwise provided by Metro.

## **12.2 Definition/Scope of Work**

The Project Definition Documents are Contract Documents to the extent that they set forth the basic definition/scope of the Work or describe the Worksite. Accordingly, any deviation by the Contractor from the design recommendations or other requirements or constraints set forth in the Project Definition Documents shall require prior written approval by the Contracting Officer or a Modification hereunder.

## **12.3 Contractor's Use of Information**

Metro will not be responsible or liable in any respect for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by Contractor, its employees, agents, officers or Subcontractors or any other persons for whom Contractor may be legally or contractually responsible, by reason of Contractor's use of any information available in or referred to in the Project Definition Documents, or for any actions of forbearance in reliance thereon, other than the information identified in Section 12.4 below. Contractor further acknowledges and agrees that:

- 12.3.1 If and to the extent Contractor or anyone on Contractor's behalf uses any of such information in any way, such use is made on the basis that the Contractor, not Metro, has approved and is responsible for said information;
- 12.3.2 Contractor is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information; and
- 12.3.3 Any use of such information is entirely at the Contractor's own risk and at its own discretion.
- 12.3.4 METRO DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE PROJECT DEFINITION DOCUMENTS OR ANY REFERENCED DOCUMENTS IS EITHER COMPLETE OR ACCURATE OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS. EXCEPT FOR WORK DESCRIBED IN THE PROJECT DEFINITION DOCUMENTS TO BE PERFORMED BY OTHERS AND NOT WITHIN THE CONTRACTORS SCOPE OF WORK, METRO DOES NOT REPRESENT OR WARRANT THE ACCURACY OR

COMPLETENESS OF ANY ITEM DESCRIBED IN THE PROJECT DEFINITION DOCUMENTS.

## **12.4 EXCEPTION FOR RELIANCE DOCUMENTS**

The Contractor may rely on the accuracy of the Geometric Approval Drawings (GAD) report, approved mandatory design exceptions, and the geotechnical reports and investigations for boring locations and core results.

## **GC-13 CONTRACTOR-FURNISHED DOCUMENTS AND METRO REVIEWS**

### **13.1 Submittal Requirements & Schedule – Design Documents**

13.1.1 Concurrently with the Project Quality Program Manual (PQP) for the Design Work, Contractor shall provide to Metro's Authorized Representative, for Metro's review and Approval, a listing and description of, and submittal schedule for, all Design Documents to be furnished by the Contractor on the Project ("Design Document Listing & Schedule").

13.1.2 In its Design Document Listing & Schedule, Contractor shall distinguish between those Design Documents it recommends should be reviewed and Approved by Metro, versus those it recommends should only be provided to Metro for record purposes only. After Metro completes its review of Contractor's Design Document Listing & Schedule, Metro shall notify Contractor which Design Documents shall be submitted for its review/Approval, and which for record only, at the sole discretion of Metro. In its subsequent submittals of the actual Design Documents to Metro, Contractor shall clearly note/stamp "Provided to Metro For Record Only" or "Provided to Metro For Review and Approval" on all Design Documents, accordingly.

13.1.3 The Design Document submittal requirements and process set forth in this Article shall apply both to the Design Documents for the Construction Work and to the Design Documents for Equipment and Systems.

### **13.2 Submittal Requirements & Schedule – Construction Documents**

13.2.1 Not later than **thirty (30) Days** prior to beginning any element of construction work, Contractor shall provide to Metro's Authorized Representative, for Metro's review and approval, a listing and description of, and submittal schedule for, all applicable Construction Documents to be furnished by the Contractor relating to the construction work ("**Construction Document Listing & Schedule**").

- 13.2.2 In its Construction Document Listing & Schedule, Contractor shall distinguish between those Construction Documents it recommends should be reviewed and Approved by Metro, versus those it recommends should be provided to Metro for record purposes only. After Metro completes its review of Contractor's Construction Document Listing & Schedule, Metro shall notify Contractor which Construction Documents shall be submitted for its review/Approval, and which for record only, at the sole discretion of Metro. In its subsequent submittals of the actual Construction Documents to Metro, Contractor shall clearly note/stamp "Provided to Metro For Record Only" or "Provided to Metro For Review and Approval" on all Construction Documents, accordingly.
- 13.2.3 The Construction Document submittal requirements and process set forth in this Article shall also apply to documents for the Equipment and Systems.

### **13.3 Contractor Submittal, Metro Review, and Document Revision Requirements**

- 13.3.1 Contractor Submittal – In accordance with the requirements of the Contract, Contractor shall submit all Contractor-furnished documents (described in the above Sections of this Article) to Metro either for its review and Approval or for record only, within the time periods set forth in the Schedule.
- 13.3.2 Metro Review – Metro will have the right to review and comment on all Contractor-furnished documents (described in the above Sections of this Article) for compliance with the requirements of the Contract. Unless explicitly stated as otherwise in an Metro-furnished Contract Document, for those Contractor-furnished documents which have been designated as requiring Metro review and Approval (in accordance with the above Sections of this Article), Metro shall complete its review, issue its comments, and confirm its approval/rejection, within **thirty (30) Days** of Metro's receipt of a properly-submitted Contractor-furnished document.
- 13.3.3 Contractor Analysis of Metro Review Comments – Contractor shall notify Metro within **seven (7) Days** after receipt of any Metro comments, if Contractor determines that incorporation of any comment(s) would cause the Contractor-furnished Document(s) in question to become Deficient in any respect, or would otherwise adversely affect in any manner the Work or the Contract Schedule. Upon receipt of notification from Contractor, Metro will have the right to modify the comment(s) in question. Contractor's failure to so notify Metro shall constitute Contractor's full acceptance of Metro's comments, Contractor's full acceptance of all responsibility for resulting changes to the Contractor-furnished documents, and shall thereafter be deemed Contractor's changes.

13.3.4 Contractor Revision & Re-submittal (due to Metro Review Comments) – Unless explicitly stated as otherwise in a Metro-furnished Contract Document, or as otherwise agreed upon in writing between Contractor and Metro, Contractor shall revise and modify all Contractor-furnished documents to include all Metro comments within **fourteen (14) Days** after receipt of the comments (including modifications to previous comments). Contractor shall deliver all final Contractor-furnished documents to Metro, in accordance with the requirements of the Contract.

13.3.5 AFC Design Documents – Design Documents Approved for Construction (whether by Metro or the Contractor, as required) shall become AFC Design Documents, as defined and referred to in this Contract.

### **13.4 Contractor Design Reviews with Other Local Agencies & Stakeholders**

13.4.1 For all Contractor-furnished documents, Contractor shall be responsible for handling any required design reviews with the following stakeholders, as applicable;

- A. Caltrans (i.e., in connection with Work to be performed by Contractor on property owned by Caltrans);
- B. Any Federal agency, to the extent of such agency's jurisdiction to review the documents in question;
- C. All other local agencies; and
- D. All other property and/or utility owners (i.e., in connection with Work to be performed by Contractor on property and/or utilities owned by other parties).

13.4.2 Administration and attendance to such design reviews by Contractor is considered a basic part of the Work, and thus Contractor shall not be entitled to any additional compensation from Metro for such reviews.

### **13.5 Review and Corrections**

The Contractor shall be responsible for correcting all errors, omissions, inconsistencies, and other defects in the Design Documents and the Construction Documents, at its own cost and expense, and shall not be entitled to an increase in the Contract Price or an extension of the Contract Time by reason of any such correction.

### **13.6 Ownership of Contractor-furnished Documents**

13.6.1 Pursuant to the provisions set forth in the Article entitled RIGHTS IN CONTRACTOR-FURNISHED DOCUMENTS, SHOP

DRAWINGS, SAMPLES, TECHNICAL DATA, PATENTS AND COPYRIGHTS herein, Contractor-furnished documents shall become Metro property upon their preparation by the Contractor, Subcontractors, or Suppliers of any tier.

13.6.2 Information obtained by Contractor in connection with the performance of its obligations under this Contract, including studies, technical and other reports, customer account data and information, and the like, shall become the property of Metro upon preparation or receipt thereof by the Contractor.

### **13.7 Submittals Prior to Final Acceptance**

Pursuant to the provisions set forth in the Article entitled FINAL INSPECTION AND ACCEPTANCE OF THE WORK herein, Contractor shall furnish Metro with final "as-built" revisions of all Contractor-furnished documents used during the prosecution of the Work

## **GC-14 GOVERNMENTAL APPROVALS**

### **14.1 Licenses and Permits**

14.1.1 Contractor Responsibility - Except for the permits listed in the Article entitled METRO-FURNISHED PERMITS in Contract Document SPECIAL PROVISIONS, prior to beginning any related Work, the Contractor shall identify and obtain, at its sole expense, all necessary licenses, permits and other Governmental Approvals required for the timely prosecution of the Work, and shall furnish Metro's Authorized Representative with fully executed copies.

14.1.2 Contractor's Representation - Contractor acknowledges that prior to entering into the Contract, it familiarized itself with the requirements of all applicable Laws, and the requirements for applicable licenses and permits, and other Governmental Approvals.

14.1.3 Compliance with Laws - Contractor shall comply with all Laws and license/permit requirements. Furthermore, Contractor shall comply with changes to applicable Laws, and to any changed conditions of any required licenses or permits, that occur at any time prior to Final Acceptance of the Work by Metro, including changes prior to award. Subject to Contractor's entitlement to a Time Extension in the event of Force Majeure, and the terms in this Contract for Compensable Delay, Contractor shall comply with the provisions set forth in this Paragraph, regardless of whether such compliance would require additional Work, Construction Equipment, and/or Goods not expressly described in the Contract.

### **14.2 Payment**

Contractor shall obtain and pay for all permits, licenses, and bonds required for all Work, including all utility connections, traffic signal, street

lighting relocation and installation, and street improvement work. The Contractor shall be liable for any Delay by a Government Entity in the granting of such permits or bonds, except when such Delay is due solely to the fault or negligence of Metro.

#### **14.3 Issuance to Metro**

If any Governmental Approval required to be obtained by the Contractor must formally be issued in the name of Metro, the Contractor shall undertake all efforts to obtain such approvals subject to Metro's reasonable cooperation with the Contractor, including execution and delivery of appropriate applications and other documentation in a form accepted by Metro. Contractor shall assist Metro in obtaining the approvals and any amendments thereto, including providing information requested by Metro, and participating in meetings regarding such approvals.

#### **14.4 Maintenance of Governmental Approvals**

Contractor shall undertake all actions necessary to maintain in full force and effect, all Governmental Approvals, including performance of all environmental mitigation measures required by the Contract or by Law, except to the extent that responsibility for performance of such measures is expressly assigned to any other Party to the Contract or any other person.

#### **14.5 New Approvals**

The Contractor shall be responsible for obtaining any new Governmental Approval that becomes required during the performance of the Work and was not known at the time of Contract execution, other than any such Governmental Approval that only Metro or another public entity may obtain. The Contractor shall be responsible for the cost of obtaining and complying with any such new Governmental Approval, and shall not be eligible for an increase in the Contract Price or an extension in Contract Time by reason thereof, unless the need for such Approval arises from a Change in Law or from a Metro-Directed change.

### **GC-15 WORKMANSHIP\***

#### **15.1 General**

Contractor shall perform all Work in a skillful and workmanlike manner. All workers shall have sufficient skill and experience to perform the Work assigned to them.

#### **15.2 Metro Rejection of Work**

In accordance with the Article entitled PERFORMANCE AND INSPECTIONS herein, Metro may reject as defective all workmanship not conforming to the requirements of applicable Law, and/or the Contract.

## **GC-16 GOODS AND EQUIPMENT**

### **16.1 General**

16.1.1 The Contractor shall furnish all Goods and Equipment required to complete the Work, except those designated, as identified in the Appendix entitled METRO FURNISHED GOODS AND EQUIPMENT, to be furnished by Metro.

16.1.2 The Contractor shall be responsible for ensuring that all Goods and Equipment incorporated into the Work are new, of good quality, of the grade specified for the purpose intended, and have the specified capacity, functionality and features required by, and otherwise conform to, the requirements of the Contract Documents.

16.1.3 Metro may reject Goods and Equipment not conforming to the requirements of the Contract.

### **16.2 References to Trade Names, Makes, or Catalog Numbers**

Unless otherwise specifically stated, reference to Goods or patented processes by trade name, make, or catalog number shall be regarded only as a means of establishing a standard of quality; such references shall not be construed as limiting competition. Subject to prior written consent of the Contracting Officer, which consent shall be in the sole and absolute discretion of Metro, the Contractor may use any Goods that are Equivalent to those named.

### **16.3 Preservation & Inspection**

Contractor shall transport, handle, and store all Goods purchased under the Contract in a manner that facilitates inspection and ensures the preservation of its quality, appearance, and fitness for the Work, and shall be stored in a manner that facilitates inspection.

### **16.4 Risk of Loss**

The Contractor shall bear the full risk of loss of any and all Goods until such Goods are accepted by Metro pursuant to the terms of this Contract.

## **GC-17 METRO FURNISHED GOODS AND EQUIPMENT \***

### **17.1 Furnished Goods**

Metro may furnish Goods and Equipment to the Contractor for installation in the Work or other use in carrying out Work under the Contract. Metro furnished Goods and Equipment will be available as specified in the Appendix entitled METRO-FURNISHED GOODS AND EQUIPMENT.

## **17.2 Contractor Responsibilities**

17.2.1 General – Contractor shall store, protect, handle and transport Metro furnished Goods and Equipment at its expense, including necessary loading and unloading.

17.2.2 Failure to Take Delivery – Contractor shall pay all demurrage and storage charges incurred as a result of its failure to take delivery on the date the Goods and Equipment are scheduled and available for delivery by Metro.

## **17.3 Contractor Liability**

The Contractor shall be liable to Metro for the cost of replacing or repairing Metro furnished Goods or Equipment that are lost or damaged from any cause whatsoever after receipt by the Contractor or after the Contractor has failed to take delivery on the scheduled delivery date. Metro may deduct the costs from any monies due or to become due the Contractor.

## **17.4 Scheduling**

The Contractor shall include delivery of Metro furnished Goods and Equipment in its Critical Path Schedule, which shall be subject to Approval by Metro. The Contractor shall identify delivery dates in the Critical Path Schedule, as required in the Contract Documents. When appropriate, Contractor shall schedule delivery dates for the return of any Metro furnished Goods and Equipment in a like manner.

## **GC-18 COOPERATION, COORDINATION AND ACCESS\***

### **18.1 Cooperation and Coordination with Other Contractors and/or Metro Operations**

18.1.1 Metro reserves the right and may undertake or award other contracts for additional Work on or near the Worksite.

18.1.2 Contractor warrants that it has carefully reviewed the Contract Documents and all other pertinent information made available by Metro that relate to the nature and scheduling of other contracts that may be awarded, and to constraints related to Metro operations, and in submitting its bid/proposal and executing this Contract, has taken into account the need to coordinate its Work with that of other contractors and/or Metro Operations.

18.1.3 It is the express obligation and duty of the Contractor under the Contract to coordinate its Work with the work of others. The following shall apply:

- A. Contractor shall not have exclusive access to or use of Work areas or the Worksite. Metro may require that Contractor use certain facilities and areas concurrently with others.
- B. Metro will endeavor to advise the Contractor of the other known parties, including Metro Operations.
- C. Contractor shall cooperate and communicate with any other contractor performing Work that may connect, complement, and/or interfere with the Contractor's Work, and resolve any disputes or coordination problems with such contractor.

**18.2 Site Access Requirements**

Any specific Site access availability or requirements are set forth in the Article entitled TEMPORARY EASEMENTS AND RELATED ACCESS in Contract Document SPECIAL PROVISIONS.

**18.3 Contractor Dependency on Work by Others**

If any part of Contractor's Work depends on the work of any other contractor or Metro for proper execution or results, prior to proceeding with its own Work, Contractor shall notify Metro of any discrepancies, defects, or failures to perform or complete said other work that would preclude or hinder the proper execution or achievement of the Contractor's Work.

**18.4 Coordination Meetings**

Contractor's Representative (or its fully-empowered delegate) shall attend such meetings and conferences, including a pre-construction meeting, arranged by Metro for the purpose of coordinating the Work. Attendance to such meetings and conferences by Contractor's Representative is considered a basic part of the Work, and thus Contractor shall not be entitled to any additional compensation from Metro for such attendance.

**GC-19 TEMPORARY FACILITIES**

**19.1 Personnel and Public Safety**

The Contractor shall provide and maintain such lights, protective devices, barricades, jersey barriers, mobile variable message signs (VMS), and warning signs as are necessary for the safety of personnel and the public, or as otherwise required by Metro. The Contractor shall be responsible for the timely erection, maintenance, repair, replacement, and removal of such safeguards, without specific instructions from Metro, or anyone else.

**19.2 Signs and Billboards**

No signs, billboards or any types of advertising are permitted on, about or adjacent to the Worksite, or on any structure on the Worksite, except by written consent of Metro.

### **19.3 Offices and Utilities**

19.3.1 The Contractor shall provide, furnish, and maintain the integrated project office and/or other field offices in accordance with General Requirements Section 01590, and may provide other temporary office facilities that it determines to be necessary for the performance of the Work. The Contractor shall provide utility services required at all such offices, and shall make all arrangements with utility companies and governmental agencies to secure such services. All costs incurred shall be at the sole expense of the Contractor.

19.3.2 All temporary services shall be furnished, installed, connected and maintained by the Contractor in a manner satisfactory to Metro, and shall be removed by the Contractor in like manner at its sole expense only after achieving Final Acceptance and consistent with General Requirement Section 01590.

### **19.4 Sanitary Facilities**

19.4.1 Contractor shall provide and maintain adequate sanitary convenience of an acceptable type for the use of persons employed on the Worksite, and properly secluded from public view. Contractor shall properly maintain these conveniences at all times and shall strictly enforce their use.

19.4.2 Upon completion of the Work, Contractor shall remove all temporary sanitary facilities from the Worksite in like manner at its sole expense, leaving the Worksite clean and free from nuisance.

## **GC-20 WORKSITE MAINTENANCE\***

### **20.1 General Maintenance and Clean Up**

20.1.1 Throughout all phases of design and construction, and until Final Acceptance of the Work, Contractor shall keep the Worksite, including storage and laydown areas used by Contractor, clean and free from rubbish, graffiti, and debris.

20.1.2 Before completing the Work, Contractor shall remove from the Worksite any rubbish, tools, scaffolding, Goods and Equipment that are not the property of Metro.

20.1.3 Upon completing the Work, Contractor shall make its own arrangements for disposing of waste and excess substances generated from Contractor's performance of the Work at a legal disposal site outside the Worksite, and shall pay all associated costs and obtain necessary permits, if any, and shall leave the

Worksite in a clean, neat, and orderly condition satisfactory to Metro.

## **20.2 Dust Abatement**

Contractor shall abate dust nuisance by cleaning, sweeping and sprinkling with water.

## **20.3 Spillage on Haul Routes**

Contractor shall take care to prevent spillage on haul routes. Contractor shall remove any such spillage immediately and clean the area.

## **GC-21 EMERGENCIES\***

The Contractor shall notify Metro immediately of any Emergency. In the absence of specific instructions from Metro as to the manner of dealing with the Emergency, Contractor shall take appropriate action at its own discretion. As Emergency Work proceeds, Metro may issue specific instructions, which the Contractor shall follow. The amount of compensation to which the Contractor is entitled, if any, because of Emergency Work, shall be determined in accordance with the Article entitled CHANGES herein.

## **GC-22 UNAUTHORIZED WORK\***

### **22.1 Additional Work by Contractor**

22.1.1 Contractor shall not perform work in addition to the Work described in the Contract Documents.

22.1.2 Any additional Work must be authorized by Metro pursuant to the Article entitled CHANGES herein, or by a Contract Modification.

### **22.2 Unauthorized Work by Contractor**

Unauthorized Work will not be paid for, will not receive an extension of Contract Time, and may be ordered removed at the Contractor's sole expense. The failure of Metro to order the removal of unauthorized Work shall not constitute acceptance of such Work, nor shall it relieve the Contractor from any liability on account thereof. If the Contractor does not comply with an order of Metro to remove unauthorized Work, Metro may remove the Work at the Contractor's sole expense.

## **GC-23 SURVEY AND VERIFICATIONS**

### **23.1 Performance and References**

Contractor shall perform all surveying necessary for its performance of all elements of the Work, and as required by the Contract Documents. The Contractor shall preserve all construction survey references and marks

("Survey References") for the duration of their usefulness. If Contractor loses or disturbs any Survey References and Metro needs to replace them, such replacement shall be at the sole expense of the Contractor.

### **23.2 Conformance with Plans and Variations**

23.2.1 All Work upon completion shall conform to the lines and elevations shown in the Contract Documents.

23.2.2 Contractor shall report any variation to Metro in writing, and may request approval of a variation from the Contracting Officer. If the Contractor fails to report or does not obtain approval of variations by Metro, the Contractor shall correct the Work, and/or replace such Work to comply with the requirements of this Section, at its own expense.

### **23.3 Verification of Governing Dimensions**

Before commencing the Work, the Contractor shall verify all governing dimensions at the Worksite and shall examine all adjoining Work on which its Work is in any way dependent, according to the Contract Documents. The Contractor shall notify Metro of any defective or non-conforming governing and adjoining dimensions that are observed before the Contractor begins that part of the Work.

## **GC-24 PERFORMANCE AND INSPECTIONS**

### **24.1 Inspection and Testing During Contractor Performance**

24.1.1 Metro shall, at all times during the Contract Time, have access to the Work at all Worksites, and all documents on which the Work is based.

24.1.2 At any time during the Contract Time, upon reasonable notice, Metro may review the documents on which the Work is based, inspect the Worksite, and review, inspect and test all Work, Construction Equipment and all other materials wherever located (collectively "Inspect" or "Inspection").

24.1.3 Such Inspection will be for the sole benefit of Metro, and is in addition to those inspections and tests the Contractor is required to perform as part of its Quality Control responsibility.

24.1.4 Except to the extent specified in writing by Metro, no Inspection shall be construed as constituting or implying Acceptance, and Metro may reject or accept any Work, request Changes, or identify additional Work which must be done at any time prior to Final Acceptance of the Work.

- 24.1.5 At all points in performance of the Work which specific inspection or Approvals by Metro are required by the Quality Management Plan, the Contractor shall not proceed beyond that point until Metro has made such inspection or has given written authorization to the Contractor to proceed with such inspection.
- 24.1.6 Metro will not be obligated to make any Inspections and neither the Inspection of the Work, nor the lack thereof, shall relieve the Contractor of its responsibility for providing the Goods, and completing all other elements of the Work, in accordance with the terms of the Contract Documents, nor shall it relieve the Contractor of any of its indemnification or warranty obligations.
- 24.1.7 Provided Metro has given the Contractor reasonable time in its notice to prepare for any Inspection, Metro may charge the Contractor for any additional costs it incurs for the Inspections, when Work is not ready at the time indicated in the notice or when an additional Inspection is necessitated by prior rejection.
- 24.1.8 Metro will have access, at all reasonable times, to the Contractor's documents, calculations, supporting materials, data, and information concerning the Work, including computer programs and printouts, which Metro determines are required to review the Work properly and expeditiously.

## **24.2 Metro's Remedies for Deficient Work**

If any Work provided by the Contractor is Deficient, Metro, by providing written notice to Contractor of such Deficiencies, may thereafter do any or all of the following:

- 24.2.1 Require the Contractor to promptly segregate and remove rejected Work from the Worksite at its own expense and without any extension of Contract Time;
- 24.2.2 Require the Contractor re-perform such Work and repair or replace the Work, Goods or other material or items at the Contractor's own expense and without any extension of Contract Time;
- 24.2.3 Withhold payments otherwise due to Contractor hereunder;
- 24.2.4 Seek Liquidated Damages as provided in the SPECIAL PROVISIONS;
- 24.2.5 Have such Work performed and Goods provided by others at the sole expense of the Contractor;

24.2.6 Terminate the Contract in accordance with the Article entitled TERMINATION FOR DEFAULT herein, and obtain the remedies provided for therein.

Corrected or re-performed Work and replaced or repaired Goods shall be subject to all of the requirements of the Contract, including without limitation all standards of performance set forth in this Contract.

### **24.3 Work Performed without Inspection**

24.3.1 At all times before Final Acceptance, Contractor shall remove or uncover such portions of the finished construction Work as directed by Metro. After examination by Metro, Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work, and recovery of any delay to any Critical Path occasioned thereby, shall be at Contractor's cost, and Contractor shall not be entitled to any time extension.

24.3.2 Any Work done or materials used without adequate notice to and opportunity for prior inspection by Metro, or without inspection in accordance with Metro-Approved Quality Assurance & Quality Control Plans, may be ordered uncovered, removed or restored at Contractor's cost and without a time extension, even if the Work proves acceptable after uncovering.

24.3.3 Except with respect to Work done or materials used as described in the foregoing Subparagraph 24.3.2, if Work exposed or examined under this Section is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a delay caused by Metro, and Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.

### **24.4 Work Performed Outside of Regular Work Day**

When Work is to be performed during hours other than the Standard Work Day, the Contractor shall notify Metro in writing not less than twenty-four (24) hours in advance, unless such Work is to be performed on Saturdays, Sundays or legal holidays, in which case such notice shall not be less than seventy-two (72) hours in advance.

### **24.5 Inspection by Government Entities and Others**

The Contractor shall make the Work available to Authorized Representatives of Government Entities, affected railroads and Utilities,

and property owners for the purpose of observing the Work associated with their respective interests. Visits will be coordinated through Metro.

## **24.6 Inspection of Off-Site Facilities**

24.6.1 Metro and the other authorized agencies may inspect the following:

- A. Contractor's production of Goods at off-site facilities, including any manufacturer's plant; and
- B. Contractor's Design Documents, AFC Design Documents, and/or Construction Documents, whether located at its project office(s), or its home office.

24.6.2 Adequate facilities shall be made available for the necessary inspections and free access to all parts of the Work shall be available at all reasonable times. The Contractor shall have appropriate provisions inserted into each Subcontract it enters into providing for document, facility and/or in-plant inspection by Metro.

## **24.7 Operations and Maintenance Inspections and Corrections and Adjustments**

24.7.1 In addition to Metro's other inspection rights under this Article, all operations and maintenance services performed, materials provided or utilized in the performance of such services, and workmanship in the performance of such services, shall be subject to inspection and testing by Metro at all times and at all places during the OM Term. All Metro inspections shall be made in such manner as to not unduly delay or interrupt operations and maintenance work.

24.7.2 If the operations or maintenance work or services performed are not in conformity with the requirements of the Contract Documents, Metro shall provide notice thereof to the Contractor and shall have the right, in addition to all other remedies for Deficient Work under this Article, to (A) reduce the compensation paid to the Contractor to reflect the reduced value of the work or services performed; and (B) require the Contractor to demonstrate that it is taking all necessary steps to assure that the future performance of the work and services will be in conformity with the requirements of the Contract Documents

## **GC-25 RIGHT OF WAY ACQUISITION; ACCESS TO SITE**

### **25.1. ROW Acquisition Schedule and Acquisition Timing**

Metro has developed a ROW Acquisition Schedule, set forth in Appendix C to the SPECIAL PROVISIONS, identifying the ROW parcels to be acquired and the estimated acquisition dates. Metro shall be responsible for acquiring ROW, and for providing the Contractor with access to each parcel listed in this ROW Access Schedule. The time periods for access shown in such Schedule are for planning purposes; actual access dates shall not exceed sixty (60) calendar days from the time periods shown in the Schedule, unless otherwise specifically noted by the Metro. The Contractor shall determine which parcels on the ROW Access Schedule are on a Critical Path, and establish late dates to be included in the Schedule for activities associated with provision of access, which shall in all events allow the latest feasible time for provision of access. The Schedule must be structured to provide reasonable work-arounds and re-sequencing to progress the Project until the scheduled access date for each parcel, and to reasonably minimize dependence on the acquisition process.

## **25.2. Encroachment Permits**

The Contractor (and not Metro) shall be responsible for obtaining encroachment permits to gain access to areas within the jurisdiction of Caltrans, Local Agencies, or railroads, at its cost.

## **25.3. Unavailability of Parcels**

Metro shall promptly notify the Contractor in writing if it becomes apparent that Metro will not be able to obtain access to any parcel(s) included in the ROW Access Schedule, and the Contractor shall take action as necessary to accommodate that unavailability.

## **25.4. Delays in Access to Parcels**

25.4.1 Notice of Delay. -- If Metro determines that it will be unable to provide access to a particular parcel or parcels within the time period provided in the ROW Access Schedule, Metro shall notify the Contractor regarding the revised projected date for delivery of access. The Contractor shall cooperate with Metro to work around such parcel until access can be provided, including rescheduling or re-sequencing Work so as to avoid any delay to the overall Project.

25.4.2 Notice of Schedule Impact. -- As a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Deadline based upon Metro's delay in delivery of access to a parcel, the Contractor shall, within ten (10) Days after it is advised of a projected delay, provide Metro with a written notice specifying the Critical Path Schedule activity number associated with the parcel in question, and advising Metro of any potential impacts to the Critical Path and potential costs that may be incurred as the result of a delay.

25.4.3 Eligibility for Change. -- An unavoidable delay to a Critical Path that is directly attributable to the delay in providing access to a parcel will be considered a Metro caused delay. If such a delay occurs, the Contractor shall take all appropriate actions to minimize the cost and time impact thereof. The Contractor shall be responsible for justifying how the delay is unavoidable and for providing a detailed cost proposal in accordance with the Article entitled CHANGES.

## **25.5 Temporary Easements and Access**

Except for any temporary easements or access provide by Metro as set forth in the Article entitled TEMPORARY EASEMENTS AND OTHER ACCESS in Contract Document SPECIAL PROVISIONS, the Contractor shall be solely responsible for acquisition, at its cost, of any temporary easements in or access to property which the Contractor deems to be necessary, desirable, or advisable in order to perform its Work and complete the Project. The Contractor shall pay the costs of all such temporary easements and access directly. If Metro acquires any such temporary property interest at the request of the Contractor, the Contractor shall reimburse Metro for all costs incurred.

## **25.6 Additional Properties**

If the Contractor determines that additional property is necessary to carry out the project, and Metro acquires such property, the Contractor shall reimburse Metro for the acquisition costs (including attorney's and accountant's and expert witness fees and costs).

# **GC-26 TRANSPORTATION MANAGEMENT PLAN**

## **26.1 General Responsibility.**

The Contractor shall perform all Work necessary to meet the requirements for maintenance of traffic as set forth in this Article, the STATEMENT OF WORK, and other Contract Documents, including providing for the safe and efficient movement of people, goods, and services through and around the Project while minimizing negative impacts to residents, commuters, and businesses.

## **26.2 Requirement for Plan**

The Contractor shall develop, implement, and maintain a Transportation Management Plan for the construction staging and sequencing, in accordance with this Article and the STATEMENT OF WORK. The Plan shall be based on the TMP provided by Metro. The Contractor shall submit the Plan to Metro for its review and approval within sixty (60) Days after the NTP.

### **26.3 Elements of Plan**

The Transportation Management Plan shall be designed to minimize Project-related traffic delay and potential accidents, and shall include the following: (1) methods and frequency of inspection and maintenance of all traffic control throughout the Project limits; (2) procedures to identify and incorporate the needs of emergency service planners, law enforcement entities, and other related corridor users, including procedures to assure access for emergency service providers to all parts of the Site during an emergency; (3) description of contact methods, personnel available, and response times for responses to conditions needing attention during off-hours; (4) procedures for coordination and liaison with Metro's public information officer, to assure timely notification to the public regarding traffic management and maintenance issues; (5) on-going traffic analysis during Construction and testing, including identification and estimated duration of any lane closures or traffic delays; and identification of detours and alternative routes; and (6) plans for the installation and maintenance of traffic signs and temporary signalization on and adjacent to the Site.

## **GC-27 STORM WATER POLLUTION**

### **27.1 Development of Plan**

Prior to any construction activities, the Contractor shall develop and submit to Metro a Storm Water Pollution Prevention Plan (SWPPP) or a Water Pollution Control Program (WPCP), as applicable. The SWPPP/WPCP shall provide detailed guidance for construction personnel and activities relating to the management of stormwater during construction in accordance with the requirements of the Contract Documents.

### **27.2 Implementation**

Following Metro's approval, the Contractor shall be responsible for ensuring that all plans and specifications are consistent with the approved SWPPP/WPCP, and that all storm water pollution control measures are implemented with accordance with the approved SWPPP/WPCP. The Contractor shall also be responsible for ensuring that the Site and all activities thereon are in compliance with the applicable National Pollution Discharge Elimination System (NPDES) Permit.

## **GC-28 ENVIRONMENTAL COMPLIANCE\***

### **28.1 Compliance with Environmental Laws**

28.1.1 Contractor shall comply with all applicable standards, orders, and requirements issued under any and all Environmental Laws, including those related to Hazardous Substances; and all interpretations, guidelines, clarifications, and any other

requirements of Governmental Entities having jurisdiction related to such Laws.

28.1.2 Contractor shall be responsible for the performance of the mitigation measures, set forth in the Final Environmental Impact Statement/Environmental Impact Report for the Project which are identified as the Contractor's responsibility in the Contract Documents, and shall provide periodic reports to Metro regarding the performance of all such mitigation measures. The Contractor shall also be responsible for performance of and compliance with all other environmental requirements in the Governmental Approvals.

28.1.3 Without in any way limiting the foregoing, Contractor shall comply with all rules, regulations, and ordinances of the SCAQMD that apply to any Work performed pursuant to the Contract. Contractor, Subcontractors, and Suppliers shall submit evidence to Metro that the governing air quality control criteria and requirements are being met.

28.1.4 Contractor shall comply with the applicable requirements of the SCAQMD governing solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Contract. Containers of paints, thinner, curing compound, or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.

28.1.5 Contractor shall comply with all California Laws regarding pollution controls in purchasing and leasing new motor vehicles with Contract funds.

28.1.6 Contractor shall not burn any Goods that it disposes.

### **28.3 Environmental Protection Agency (EPA) Regulations**

Without in any way limiting the foregoing, Contractor shall comply with all applicable regulations (40 CFR Part 15) of the Environmental Protection Agency (EPA). Contractor shall not use any facility in the performance of the Contract that is listed on the EPA List of Violating Facilities, unless and until the EPA eliminates said name of such facility from said listing. Contractor shall promptly notify Metro of the receipt of any communication from the Director, Office of Federal Activities, EPA (or any successor agency), indicating that a facility to be used by Contractor is under consideration for listing on the EPA List of Violating Facilities. Contractor shall also report violations to Metro, to the FTA/FHWA, and to the EPA Assistant Administrator for Enforcement.

### **28.4 Energy Conservation**

In addition to all other Contractual requirements, Contractor shall comply with all mandatory standards and policies relating to energy efficiency contained in the California energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6321 et. seq.).

## **28.5 Inclusion in Subcontracts**

Contractor shall include the requirements of this Article in every Subcontract that is more than one hundred thousand dollars (\$100,000), and shall take such action as Metro's Authorized Representative directs to enforce these requirements.

## **GC-29 DIFFERING SITE CONDITIONS (DSC)\***

### **29.1 Notice of Discovery of Subsurface Conditions**

Contractor shall, before any of the subsurface conditions are disturbed, provide immediate oral and/or electronic mail notice of the discovery of such conditions to Metro's Authorized Representative, followed by written notice to the Contracting Officer of the discovery within twenty-four (24) hours thereafter, of any of the following subsurface conditions:

29.1.1 Type 1 Condition: Subsurface or latent physical conditions at the Worksite differing materially from those indicated in the Contract.

29.1.2 Type 2 Condition: Unknown physical conditions at the Worksite of any unusual nature that differ materially from those ordinarily encountered in and generally recognized as inherent in Work of the character provided for in the Contract.

29.1.3 Type 3 Condition: Substances that Contractor believes may be Hazardous Substances that are required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Law.

### **29.2 Contractor Discovery of a Suspected Type 1 or Type 2 Condition**

If Contractor encounters substances or conditions during performance of the Work that it reasonably believes to be a Type 1 Condition or Type 2 Condition, Contractor shall not disturb the condition or interfere with Metro's right or ability to investigate, but may continue Work in the area.

### **29.3 Contractor Discovery of a Suspected Type 3 Condition**

29.3.1 If Contractor encounters substances during performance of the Work that it reasonably believes to be a Hazardous Substance, a Type 3 Condition, Contractor shall not disturb the condition and shall suspend Work in the immediate area of the suspected Hazardous Substances until Metro authorizes it to resume.

29.3.2 Metro reserves the right to use other labor forces to investigate and to perform work to determine the nature and extent of any suspected Type 3 Condition and to handle and/or remove the Hazardous substance(s) from the area.

#### **29.4 Metro's Responsibility and Determination**

Metro will promptly investigate the conditions, and if it finds the conditions do Materially Differ, or do involve previously unknown Hazardous Substances, and cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, that condition shall constitute a Differing Site Condition and Metro will make an adjustment in Contract Time and/or Total Contract Price in accordance with the Article entitled CHANGES herein or in accordance with any other provision of the Contract providing for compensation to Contractor under these circumstances.

#### **29.5 Claims**

Contractor shall not be entitled to any remedy for an asserted Differing Site Condition if it does not give Metro both:

29.5.1 Timely notice of the asserted Differing Site Condition, as required in this Article and in the Article entitled CLAIMS herein; and

29.5.2 An opportunity to investigate prior to the asserted Differing Site Condition being disturbed.

#### **29.6 Proceed With Work**

If a Dispute arises related to a claim of a Differing Site Condition, Contractor shall proceed with all Work to be performed under the Contract and shall not be excused from any provision of the Contract, including without limitation, the Scheduled Completion Date.

### **GC-30 HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL AND SCIENTIFIC DISCOVERIES\***

All things of historical, archaeological, paleontological, or scientific interest encountered by the Contractor during progress of the Work shall be reported immediately to Metro. Construction in the vicinity of the discovery shall be halted in order to preserve and protect it until its significance can be determined by Metro. Metro will issue instructions to the Contractor with respect to the disposition of the discovery.

### **GC-31 SAFETY AND LOSS PREVENTION**

#### **31.1 Contractor Actions**

Contractor shall be responsible for safety at the Site and shall at all times conduct its operations in such a manner as to avoid risk of bodily harm to

persons or damage to property. Contractor shall promptly take all reasonable precautions to safeguard against such risks and shall make regular safety inspections of its operations. Contractor shall be solely responsible for the discovery, determination and correction of any unsafe conditions related to Contractor's performance of the Work or Goods supplied by Contractor.

### **31.2 Compliance with Laws**

Contractor shall comply with all applicable safety Laws, including any safety program established by Metro. Contractor shall cooperate and coordinate with Metro and with other Metro contractors on safety matters, and shall promptly comply with any specific safety instructions or directions given to Contractor by Metro. Notwithstanding, Contractor shall remain responsible for Worksite safety.

### **31.3 Safety Practices**

Contractor shall inform its personnel of Metro's safety practices and the requirements of Metro's safety program. If any of Contractor's personnel are required to visit any Worksite, Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel. This Article is to be construed in its broadest sense for the protection of persons and property by Contractor, and no action or omission by Metro, the Contracting Officer, any Authorized Representative or any other person shall relieve Contractor of any of its obligations and duties hereunder.

### **31.4 Public /Personnel Safeguards and Loss Prevention**

In performing its obligations hereunder, Contractor shall at a minimum provide for protecting the lives and health of employees and other persons; preventing damage to property/goods; and avoiding work interruptions. For these purposes, the Contractor shall, at no additional cost:

- 31.4.1 Provide appropriate protective devices, safety barricades, jersey barriers, mobile variable message signs (VMS), warning signs, and signal lights;
- 31.4.2 Comply with the safety policies of Metro and all applicable Laws;
- 31.4.3 Take additional measures Metro determines are reasonably necessary for this purpose. This determination, when delivered to Contractor, Contractor's Representative, or Contractor's agent, shall be deemed sufficient notice from Metro of noncompliance, and Contractor shall immediately take corrective action. If Contractor fails or refuses to take corrective action promptly, Metro may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. Contractor shall not

base any claim or request for equitable adjustment for additional time or money on any Stop Order issued under these circumstances;

- 31.4.4 Maintain an accurate record of exposure data on all occurrence(s) incident to Work performed under the Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. Contractor shall report this data in the manner prescribed by Metro; and
- 31.4.5 Be responsible for compliance with this Article by its Subcontractors of any tier.

### **31.5 Site Security**

The Contractor shall provide security for the Worksite in compliance with the requirements of the Contract Documents, and shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at or on the Site, whether owned by the Contractor, Metro, Caltrans, or any other person. The Contractor shall secure the Work areas from public access during performance of the Construction Work.

## **GC-32 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT & VEGETATION\***

### **32.1 Protection**

Contractor shall protect existing structures, equipment and vegetation (collectively "Existing Improvements") within and adjacent to the Worksite and shall exercise due caution to avoid damage to such Existing Improvements.

### **32.2 Repair and Replacement**

Unless otherwise provided, Contractor shall repair or replace all Existing Improvements damaged or removed by Contractor. Repairs and replacements shall be at least equal to Existing Improvements and shall match them in finish and dimension.

### **32.3 Costs**

All costs for protecting, removing and restoring Existing Improvements shall be the sole expense of Contractor. If Contractor fails or refuses to make timely repairs, Metro may make the repairs. All costs incurred by Metro, as determined by Metro, for such repairs shall be repaid by Contractor by cash payment upon demand or, without limitation of any of Metro's rights and remedies provided by Law or under this Contract, Metro may deduct the cost from any amount due under this Contract.

## **GC-33 DAMAGE TO WORK AND RESPONSIBILITY FOR GOODS\***

### **33.1 Responsibility for Work**

Except as otherwise specified in this Article, Contractor shall be solely responsible for Goods delivered and Work performed until the Contracting Officer issues a Certificate of Substantial Completion, or Certificate of Final Acceptance, if no Certificate of Substantial Completion is issued. Partial Substantial Completion of a portion of the Work shall only relieve Contractor of responsibility for the Goods delivered and Work performed that are covered by the partial Substantial Completion.

### **33.2 Risk of Loss**

Except as otherwise specified in this Article or in the California Public Contract Code §7105, Contractor shall bear the risk of injury, loss, or damage to any and all parts of the Work from whatever cause, whether arising from the execution or from the non-execution of the Work. Contractor shall properly rebuild, repair, or restore the portions of the Work that have been damaged or destroyed from any causes prior to Acceptance as provided in the Section entitled RESPONSIBILITY FOR WORK in this Article, bearing the expense thereof.

### **33.3 Protection of Structures – Security and Drainage**

Contractor shall supply security and drainage and erect any temporary structures as necessary to protect the Work from damage. Contractor shall be responsible for Goods not delivered to the Worksite for which any Progress Payment has been made to the same extent as if the Goods were so delivered.

## **GC-34 ACCEPTANCE OF ELEMENTS OF THE WORK\***

### **34.1 Definitions**

Unless explicitly identified as otherwise, the following term(s) used in this Article, when capitalized, shall have the meaning set forth in this Section.

Person – Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization or Government Entity.

### **34.2 General**

Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by reviews, tests, inspections, statements of no objection, consents or approvals performed by any Persons, or by any failure of any Person to take such action. The reviews, inspections, tests, statements of no objection, consents, and approvals conducted by Metro, its Authorized Representatives, and

others Persons, do not constitute Acceptance of the materials or Work reviewed, tested or inspected, and Metro may reject or accept any Work or materials, request changes and/or identify additional work which must be done at any time prior to Final Acceptance, whether or not previous reviews, inspections, tests or approvals were conducted by Metro, its Authorized Representatives, or any such other Persons.

### **34.3 Partial Acceptance**

If portions of the Work are completed in advance of the deadlines specified herein (due to having independent utility or due to a subcontract being fully completed), Metro shall have the right to accept them in advance of the deadline for completion of the entire Project. Any such partial Acceptance shall follow a procedure similar to that required for Substantial Completion, modified as specified by the Contracting Officer. The Contracting Officer will also determine the effect of such partial Acceptance on Contractor's responsibility for maintenance during construction and on its Warranty obligations.

## **GC-35 SUBSTANTIAL COMPLETION\***

### **35.1 Notice**

Contractor shall provide Notice of Substantial Completion to the Contracting Officer when all of the following have occurred with respect to the Work or for an element thereof:

- 35.1.1 Contractor has completed the Work (except for Punch List items and final clean-up).
- 35.1.2 Contractor has ensured that all Work has been performed and substantially completed in accordance with the requirements of the Contract.
- 35.1.3 All Deficiencies in the Work have been corrected (other than Punch List items).
- 35.1.4 Contractor has submitted a completed As Built Schedule (except for Punch List Items).
- 35.1.5 The Contractor has completed all Work required in order to allow the entire Project to be open to operations and has ensured that all aspects of the Work are ready for operation.
- 35.1.6 The Contractor has ensured that the Project may be used without damage to the Project or any other property on or adjacent to the Site, and without injury to any Person.
- 35.1.7 Metro has received all Safety Certifications as required by the Contract Documents.

- 35.1.8 The Contractor has received all applicable Governmental Approvals required for Project use.
- 35.1.9 The Contractor has successfully completed all Commissioning and Acceptance testing of the Equipment and Systems, as required by the Contract Documents, including Acceptance Testing.
- 35.1.10 The Contractor has established any required accounts services, management services, and financial services and systems, as required in the Contract Documents that are necessary for commencement of operations and maintenance of the project.

## **35.2 Inspection**

Within a reasonable time after the Contractor provides the Contracting Officer with Notice of Substantial Completion of the Work or an element thereof, Contractor and Metro's Authorized Representative shall make an inspection of the element that is the subject of the Notice to determine its status of completion.

## **35.3 Substantial Completion**

Substantial Completion of the Work or element thereof, or Milestone shall occur on the date:

- 35.3.1 The Contracting Officer determines that the Work or element thereof, or Milestone, respectively, has been completed in accordance with all requirements of the Contract;
- 35.3.2 Contractor has corrected all Deficiencies and deviations with respect to the Work and the Contracting Officer has notified the Contractor in writing of its Approval and Acceptance of the correction of all Deficiencies;
- 35.3.3 The Contracting Officer has accepted the As Built Schedule.
- 35.3.4 Metro and Contractor have agreed to a Punch List, if any, of items remaining to be completed or corrected prior to Final Acceptance; and
- 35.3.5 The Work or element thereof, or Milestone, shall be completed and ready for use for the purpose intended.
- 35.3.6 Upon Substantial Completion, the Contracting Officer will issue a Certificate of Substantial Completion for the completed Work or element thereof, or Milestone.

## **35.4 Metro Acceptance**

35.4.1 The Contracting Officer may either:

- A. Reject the Contractor's Notice of Substantial Completion because the applicable element of the Work does not meet the requirements for Substantial Completion, describing Deficiencies and/or deviations from the Contract requirements; or
- B. Issue a Certificate of Substantial Completion and issue the agreed Punch List, if any, of Work items remaining.

35.4.2 If the Contracting Officer rejects the Contractor's Notice of Substantial Completion, the Contractor shall, at its own cost and expense, promptly comply with all requirements for Substantial Completion. Thereafter, the Contractor shall again give the Contracting Officer a written Notice of Substantial Completion, in accordance with the above process, until the requirements have been met.

## **35.5 Completion of the Punch List**

35.5.1 All Work items on the Punch List shall be completed prior to Final Acceptance and final payment.

35.5.2 After Substantial Completion, Metro will allow the Contractor reasonable access to the Worksite to complete the items on the Punch List.

## **35.6 Responsibility for Maintenance, Loss and Damage**

The Contracting Officer's issuance of a Certificate of Substantial Completion shall not relieve the Contractor of the following obligations and responsibilities:

35.6.1 The Contractor's obligations to complete the Work or any element thereof, the non-completion of which was not disclosed to Metro (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise);

35.6.2 Responsibility arising from the Contractor's action, negligence or breach of this Contract or the warranty that causes loss or damage to the Work or any element thereof;

35.6.3 Responsibility for the Work or any element thereof that remains within the custody or control of the Contractor; or

35.6.4 Any responsibility that remains with the Contractor pursuant to the terms of the Certificate of Substantial Completion.

In addition, the Contractor will be responsible for the overall operation and maintenance of the Project following issuance of the Certificate of Substantial Completion and upon Metro's issuance of a Notice to Proceed with the operations and maintenance work.

### **35.7 Responsibility to Complete the Work**

Notwithstanding any other provision of this Contract that could be interpreted to the contrary (including in Contract Documents of higher precedence), it shall be the Contractor's continuing responsibility to complete and deliver every element, and the integrated whole, of the Work in accordance with all of the requirements of the Contract. The issuance of a Certificate of Substantial Completion by the Contracting Officer for any element, or for the whole of the Work, shall not be construed to relieve the Contractor of this responsibility, or any part thereof. If, after the issuance of a Certificate of Substantial Completion, Metro discovers any Deficiency, or item not completed or otherwise requiring correction or remedial action, whether or not the item appears on any Punch List or other list of clean up items, the Contractor shall correct the Deficiency, complete the item or otherwise remedy the condition to bring it in to full compliance with the Contract.

## **GC-36 FINAL INSPECTION AND ACCEPTANCE OF THE WORK\***

### **36.1 Punch List and Other Obligations**

Promptly after Substantial Completion of the Work or element thereof, the Contractor shall perform all Punch List Work, if any, which was not completed for purposes of Substantial Completion, and shall satisfy all of its other obligations under the Contract, including submittal of all applicable "As-Built" drawings for the Work or applicable element(s) thereof, subject to final review and Approval by the Contracting Officer (or its Authorized Representatives), and delivered to Metro as follows:

36.1.1 Hardcopy, as well as electronic, submittal, in the form, file format, and quantity specified in the Contract, or otherwise instructed in writing by the Contracting Officer.

### **36.2 Request for Final Acceptance**

Within ten (10) Days after the Contractor determines that all Work as required in the Contract is fully completed, and all required submissions and deliveries to Metro specified in the Contract have been made, it shall give the Contracting Officer a written Request for Final Acceptance specifying that the Work is completed, the date on which it was completed and stating:

36.2.1 Contractor has determined that the entire Work is fully completed, including satisfactory completion of inspections, tests, and

documentation, including without limitation the As Built Schedule, specified in the Contract and all Caltrans Safety Committee review items.

36.2.2 All Punch List and clean-up items are completed.

36.2.3 The Contracting Officer has received and accepted the assignment of all Subcontractor's, manufacturer's and Supplier's Warranties, all "As-Built" drawings and all other deliverables required under the Contract.

36.2.4 All Equipment, Systems, special tools, spare parts or other Goods purchased or otherwise provided by the Contractor as required by the Contract have been delivered to and accepted by the Contracting Officer and are free and clear of Liens.

36.2.5 All of the Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities have been removed from the Worksite.

36.2.6 Contractor has complied with all requirements associated with closeout of the Contract.

36.2.7 Contractor has delivered to the Contracting Officer a Notice of Completion for the Work in recordable form and meeting all statutory requirements.

36.2.8 Contractor has delivered to Metro a certification representing that there are no outstanding Claims of the Contractor, or Claims, liens, or stop notices of any Subcontractor or laborer with respect to the Work, together with unconditional releases from all Subcontractors that have filed stop notices during the term of the Contract.

### **36.3 Metro Inspection and Acceptance**

36.3.1 Metro will inspect the Work and within sixty (60) Days thereafter will either:

- A. Reject the Request for Final Acceptance, specifying the Deficiencies or uncompleted portions of the Work; or
- B. Issue an executed Certificate of Final Acceptance and record the Notice of Completion with the County Recorder.

36.3.2 If the Contracting Officer rejects the Request for Final Acceptance, specifying Deficiencies or uncompleted portions of the Work, the Contractor shall, at its own cost and expense, promptly remedy the Deficiencies or uncompleted portions of the Work. Thereafter, the Contractor shall again give the Contracting Officer a written

Request for Final Acceptance of the Work, in accordance with the above process.

#### **36.4 No Implied Acceptance**

Any failure by Metro to inspect or reject the Work or to reject the Contractor's Request for Final Acceptance as set forth above shall not constitute or imply Acceptance by Metro of the Work for any purpose, nor imply approval of the Contractor's Request for Final Acceptance.

#### **36.5 Survival of Obligations**

Without limiting any other provision of the Contract relating to continuing obligations that extend beyond Final Acceptance, the Contractor's responsibility for injury to persons and/or property arising from its duties and obligations under the Contract, including without limitation, the Articles entitled LIABILITY AND INDEMNIFICATION, GOODS, and WARRANTY herein, shall survive Final Acceptance. In addition, Final Acceptance shall not prevent Metro from recovering from the Contractor or its Sureties any overpayment sustained for failure of the Contractor to fulfill all its obligations under the Contract Documents; nor shall it affect the Contractor's obligations during the OM Term.

#### **36.6 Undisclosed Incomplete Work**

Contractor will not be relieved of its obligations to complete any element of the Work, or any portion or item thereof, the non-completion of which was not disclosed to Metro (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise) prior to Final Acceptance of the Contract. Contractor shall remain obligated after Final Acceptance of the Contract, under this Article and all other provisions of the Contract that expressly or by their nature extend beyond and survive Final Acceptance, to correct all such undisclosed items.

### **GC-37 OPERATIONS AND MAINTENANCE RESPONSIBILITY**

The Contractor shall commence the operations and maintenance demonstration period of the Project, in accordance with the SPECIAL PROVISIONS and other Contract Documents, upon Metro's issuance of a Certificate of Substantial Completion and upon Metro's issuance of a Notice to Proceed with operations and maintenance services. Nothing in this Article will be interpreted to prevent Contractor from performing tasks and mobilization activities necessary to successfully complete Acceptance Testing and the start of the operations and maintenance demonstration period promptly upon NTP.

### **GC-38 WARRANTY AND RELIABILITY\***

#### **38.1 Warranty and Reliability**

38.1.1 Warranties -- The Contractor warrants that:

- A. The Work shall be free of Deficiencies, shall be fit for use for the intended function, and shall meet all of the requirements of the Contract.
- B. The Equipment, Systems, and Goods furnished shall be new and of a quality that meets all of the requirements of the Contract.
- C. Contractor further warrants that all design Work, based on the Contract Documents and depicted in the AFC Design Documents, shall conform to all professional architectural and engineering principles generally accepted as standards of the industry in the State of California, that Work shall be constructible as designed and that the Work shall be operable and maintainable as designed.

38.1.2 Warranty of Reliability -- In addition to the other warranties provided in this Article, the Contractor further warrants the reliability of Equipment, Systems, Components, Work and parts requirements in the Statement of Work and Technical Specifications. Any test, review, or evaluation of the systems that indicates a failure to comply with any of the specified requirements, or falls below any of the requirements prescribed in the Contract Documents, shall constitute a Deficiency. Contractor shall, at its sole cost, and without cost or expense to Metro, take all actions required to promptly correct the Deficiency to achieve the specified reliability.

## **38.2 Commencement and Duration**

38.2.1 General Warranty -- Warranties shall commence upon the Contracting Officer's issuance of a Certificate of Substantial Completion ("Warranty Commencement Date") and shall remain in effect until one year (1) after the Warranty Commencement Date or such longer period as may be specified in the Contract ("Warranty Period"). Subcontractor's, manufacturer's or Supplier's Warranty Periods shall be for the longer of the above stated Warranty Period or the Warranty Period specified in the particular Warranty.

38.2.2 Landscape Warranty – The Contractor completely warrants all plant materials for one (1) year from the date of Landscape Acceptance. Any plant material deemed deficient during this one (1) year warranty period shall be replaced in-kind by the Contractor at no additional cost to the Project, and shall be warranted for one (1) additional year by the Contractor. Any additional one (1) year period beyond the initial one (1) year warranty period will be considered an extended warranty period. Another inspection will

be conducted at the request of the Contractor at the end of the extended warranty period to determine Acceptance or rejection.

### **38.3 Warranty Claims**

If Metro determines that any of the Work contains Deficiencies any time within the Warranty Period, Metro will claim and Contractor shall correct, repair or replace such Work at its sole expense. Contractor shall respond to Metro's Warranty claim within three (3) working days, and shall repair the Deficiency within ten (10) Days thereafter. If the Deficiency cannot be repaired within said ten (10) Days, Contractor, within that ten days, shall submit a schedule for completion of repairs, subject to the acceptance of the Contracting Officer, and shall diligently proceed to complete the repairs within the approved schedule. If any Deficiency affects operation of the Work, or any essential element thereof, Metro may, in its sole discretion, require Contractor to complete repairs in less than ten (10) Days.

### **38.4 Warranty on Corrected Deficiencies**

Contractor's Warranty shall continue, as to each corrected Deficiency, until the later of:

38.4.1 The remainder of the Warranty Period; or

38.4.2 One (1) year after Acceptance by Metro of any corrected Work.

### **38.5 Metro Right to Correct Deficiencies**

If Contractor fails to remedy Deficiencies or otherwise comply with this Warranty or any other Warranty in this Contract, or fails to propose a timely and adequate remedy, Metro, after notice to Contractor, may perform or have performed by Third Parties the necessary remedy, and the costs thereof shall be borne by Contractor.

### **38.6 Emergencies**

In case of an Emergency or hazard to health or safety requiring immediate curative action, Metro will notify Contractor, and Contractor shall immediately take such action(s) as it deems necessary, notifying the Contracting Officer of the action(s) taken as soon as possible but no later than **one (1) working day** thereafter. If Contractor does not undertake immediate curative action, Metro may without prior notice undertake such action as is necessary to correct the hazard or deal with the Emergency, and the cost thereof shall be borne by the Contractor.

### **38.7 No Waiver**

Nothing in this Contract shall be construed to constitute a waiver or disclaimer, or limit, negate, exclude or modify in any way any warranty in this Contract.

### **38.8 Acceptance of Non-Conforming Work**

If the Contracting Officer accepts any nonconforming Work without requiring it to be fully corrected, Contractor shall reimburse Metro a portion of the Total Contract Price in an amount equal to the greater of:

38.8.1 The difference in the value of the Work, plus the present value of additional operating costs over a period of five (5) years, if any, caused by such nonconforming Work; or

38.8.2 Contractor's cost savings in not correcting the Work, measured by the present value of the Work not performed.

In either case above, Contractor shall, in addition, reimburse Metro's costs to make the determination, including but not limited to staff costs, experts, tests and other actions necessary to make a determination. Such reimbursements shall be payable to Metro within **ten (10) Days** after the Contractor's receipt of Metro's demand for payment.

### **38.9 Subcontractor's Warranties**

38.9.1 Without in any way limiting Contractor's Warranties with respect to the Work, Contractor shall obtain from all Subcontractors, manufacturers and Suppliers, and assign and deliver to Metro all Warranties, including extended Warranties provided by such Subcontractors, manufacturers and Suppliers and from all other persons extending Warranties. All such Warranties shall:

- A. Survive Final Acceptance, and all Metro and Contractor inspections, tests and acceptances, and;
- B. Shall run directly to and be enforceable by the Contractor and Metro.

38.9.2 Upon receipt from Metro of notice of a failure of any of the Work to satisfy any Subcontractor or Supplier Warranty or other obligation, Contractor shall enforce or perform any such Warranty or other obligation as a part of Contractor's other Warranty obligations hereunder. Metro's rights under this Section shall continue until the expiration of the later of the Contractor's Warranty (including extensions for rework) or Subcontractor's or Supplier's Warranty or extended warranty. Until such expiration, the cost of any Work (including re-engineering, if applicable) or Goods (including taxes and shipping) shall be at the sole cost and expense of the Contractor.

### **38.10 Other Remedies**

The Warranties herein are in addition to all rights and remedies available under the Contract or applicable Law, and shall not limit Contractor's

liability or responsibility imposed by the Contract or applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud.

To the extent that any Warranty from any person other than the Contractor would be voided in whole or part by reason of any act or omission of the Contractor, Contractor shall be fully liable to the extent of said Warranty.

### **38.11 Actual Damages**

Contractor shall be liable for actual damages resulting from any breach of an express or implied Warranty or any Deficiency in the Work.

### **38.12 Spare Parts**

Metro's spare parts shall not be used to repair warrantable failures and defects. The security, control, shipping, and disposition of Contractor-owned parts shall be the responsibility of Contractor. Damage to Metro's property caused by the Contractor shall be the sole responsibility of the Contractor and shall be corrected at Contractor's expense.

### **38.13 Bond**

The Surety shall be liable to Metro under the Warranty Bond required under the Article entitled SURETY – PERFORMANCE BONDS, PAYMENT BONDS, for any breach of Contractor's obligations hereunder.

### **38.14 Disputes**

In the event of a dispute between Metro and Contractor relating to this Article, Contractor may file a claim in accordance with the Article entitled CLAIMS herein.

### **38.15 All Contract Warranties Apply**

This Warranty provision is not exclusive. Contract provisions containing Warranties, including without limitation documents incorporated by reference or relied upon in any Contract Document, shall apply in accordance with their terms.

### **38.16 Warranty Beneficiaries**

In addition to benefiting Metro and its successors and assigns, the Warranties provided under this Article, including Subcontractor's Warranties and Warranties on Corrected Deficiencies, shall inure to the benefit and shall be directly enforceable by the Government Entity with ownership or control over the Worksite or the completed Work. Any such Government Entity shall have the direct right to pursue any remedies

available herein and at law against the Contractor for Deficiencies in the Project, including design defects and construction defects.

## **GC-39 TITLE\***

### **39.1 Transfer**

Title to portions of the Work for which Progress Payments or other payments are made shall pass to Metro at the time of payment. The title transferred as described above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances. Contractor shall promptly execute, acknowledge, and deliver to Metro proper bills of sale or other written instruments of title in a form as required by Metro. If title has not been vested in Metro previously, title shall pass to Metro upon Final Acceptance.

### **39.2 Encumbrances after Transfer of Title**

Contractor shall not pledge or otherwise encumber Work to which title has been transferred to Metro in any manner that would result in any lien, security interest, charge, and/or claim upon or against said Work.

### **39.3 Transfer of Title Not Acceptance**

The transfer of title of Work to Metro shall not constitute or imply Metro's Acceptance of any Work. Notwithstanding the transfer of title, Contractor shall retain sole care, custody, and control of the Work, shall exercise due care with respect thereto, and shall continue to be liable and responsible to Metro for any damage to or loss of Work until the Work is Accepted by the Contracting Officer.

### **39.4 Delivery**

To transfer title, Contractor shall promptly execute, acknowledge, and deliver to the Authorized Representative proper bills of sale or other written instruments of title in a form as required by the Contracting Officer; said instruments shall convey to Metro title to Goods free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances. Contractor at its own expense shall conspicuously mark such Goods as the property of Metro; shall not permit such Goods to become commingled with non-Metro-owned Goods; and shall take such other steps the Contracting Officer may require or regard as necessary to vest title to such Goods in Metro free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

## **GC-40 EXTENSION OF TIME**

### **40.1 Critical Path Schedule**

All Work shall be performed in accordance with the requirements of the Contract and the Critical Path Schedule approved by the Contracting

Officer. The Critical Path Schedule shall indicate planned Milestone dates for completing all Contract tasks and the Scheduled Completion Date for completion of all Work, and Contractor shall provide Metro notice of any Delay in the Critical Path Schedule.

#### **40.2 Inexcusable Delay**

An Inexcusable Delay is any Delay, including Delay in starting the Work after the Commencement Date set forth in the NTP that is not an Excusable Delay. An Inexcusable Delay shall not be a cause for granting additional Contract Time or compensation, and shall be cause for termination of the Contract, if the Contracting Officer chooses to exercise this right, under the Article entitled TERMINATION FOR DEFAULT herein.

#### **40.3 Excusable Delay**

A delay to the Critical Path shall be an "Excusable Delay" to the extent that:

40.3.1 Contractor provides notice to the Contracting Officer describing the act or event that Contractor asserts was the cause of the Delay not more than **five (5) Days** after the day the act or event occurs;

40.3.2 The act or event has caused, or will result in, an identifiable and measurable disruption of the Work which has consumed all available Float and extended the Work required for Substantial Completion or Final Acceptance beyond the applicable completion deadline;

40.3.3 The Delay to the Critical Path Schedule could not reasonably have been avoided by Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work.

40.3.4 The act or event, and its causes and effects, were beyond the control of, and were not due to, the fault or negligence of the Contractor, and did not arise out of Contractor's failure to perform or meet the requirements of the Contract;

40.3.5 The act or event causing the Delay is not excluded from Excusable Delays under any other provision of the Contract; and

40.3.6 A specific remedy for the Delay is not provided by any other provision of the Contract.

Contractor will have the burden of proving the Delay occurred, the Delay was an Excusable Delay (as defined above), the Delay could not be fully mitigated, and the length of time of the Excusable Delay. Contractor will not receive compensation for an Excusable Delay unless it is also a

Compensable Delay, as provided in the Section entitled COMPENSABLE DELAY in this Article. Upon adequate proof of an Excusable Delay, Contractor will be granted an extension of time and will not be assessed with liquidated damages to the extent of the Excusable Delay to the Critical Path Schedule.

#### **40.4 Force Majeure and Severe Weather**

Subject to Contractor meeting the requirements of the Section entitled EXCUSABLE DELAY in this Article, and the following requirements, Contractor will receive an extension of Contract Time for an Excusable Delay caused by a Force Majeure event or severe weather:

40.4.1 Contractor has taken reasonable precautions to prevent further Delays arising out of such Force Majeure event or severe weather; and

40.4.2 Contractor provides written notice to Metro describing the Force Majeure event or severe weather and the cause(s) of the Delay within five (5) Days after the beginning of such Delay.

Metro will grant an extension of time for severe weather Delays only to the extent the Work is actually delayed as determined by Metro. Metro will determine the extension of time for severe weather, if any, in accordance with the Article entitled WEATHER DELAYS CAUSED BY RAIN in Contract Document SPECIAL PROVISIONS. Contractor's exclusive remedy for any Excusable Delay arising out of a Force Majeure event or severe weather shall be an extension of Contract Time, as provided in this Article.

#### **40.5 Weather Delays Caused by Rain**

For purposes of granting time extensions pursuant to this Article resulting from rain more severe than normal which was not foreseeable, the impact of normal rainfall for which Contractor is not entitled to a time extension is defined in the Article entitled WEATHER DELAYS CAUSED BY RAIN in Contract Document SPECIAL PROVISIONS

#### **40.6 Compensable Delay**

An Excusable Delay shall be a Compensable Delay if the performance of all or any part of the Work is delayed or interrupted:

40.6.1 By an act of an Authorized Representative of Metro in the administration of this Contract that is not expressly or impliedly authorized by this Contract,

40.6.2 By a failure of Metro or a Third party to act within the time specified in this Contract, or the applicable Cooperative Agreement, or within a reasonable time if not specified; provided

that the Contractor has provided properly-submitted Contractor-furnished documents or otherwise supplied the information or materials required; or

40.6.3 By any Change in Law, as defined in this Contract.

**A Claim for a Compensable Delay shall not be allowed for any costs incurred more than five (5) Days** before the Contractor shall have notified the Contracting Officer of the act or Event causing the Delay.

40.6.4 Contractor will have the burden of proving that the Delay is both an Excusable Delay and a Compensable Delay. If an Excusable Delay is found to be a Compensable Delay, Metro will, by Modification, extend the Contract Time for the increase in the time of performance, and will adjust the Total Contract Price (excluding profit). The Modification will be Contractor's sole remedy arising out of the Compensable Delay.

40.6.5 If and to the extent that any provision of this Contract providing for the payment of Delay Compensation as Contractor's sole remedy for Compensable Delays is adjudged to be illegal or unenforceable under the terms of CPCC Section 7102 et seq., the Contractor shall be entitled to recover costs for Compensable Delays as if this provision was not part of the Contract, and such adjudication shall be deemed severable and applicable only to the Compensable Delay that is the subject matter of the adjudication, and shall not render invalid or void any other application of the provision.

#### **40.7 Basis for Delay Compensation**

If the SCHEDULE OF QUANTITIES AND PRICES submitted by the Contractor in its bid or price proposal included a daily rate for Delay Compensation, then Delay Compensation shall be paid for Compensation Delays at that rate. The estimated quantity for Delay Compensation in the Contractor's SCHEDULE OF QUANTITIES AND PRICES is for bidding/proposal purposes only; the Contractor will be paid only for actual Compensation Delays. If the SCHEDULE OF QUANTITIES AND PRICES does not include a daily rate for Delay Compensation the basis for delay compensation shall be allowable, allocable, reasonable and verifiable actual costs, in accordance with the Article entitled BASIS FOR ESTABLISHING COSTS ASSOCIATE WITH A CHANGE.

#### **40.8 Concurrent Delay**

If Contractor is delayed by any act or event that would otherwise be a Compensable Delay, but the Delay is concurrently caused by any Excusable (but not Compensable) Delay or any Inexcusable Delay, Contractor's remedy shall be the same as for an Excusable Delay, and

Metro will, by Change Order or other Modification, extend the Contract Time. Contractor will not be entitled to any change in the Total Contract Price or any other compensation. Delays will not be Concurrent to the extent that one Delay affects the Critical Path Schedule and the other Delay does not. In that event, the sole Delay will be the one that affects the Critical Path Schedule. The Change Order or other Modification extending Contract Time for a Concurrent Delay will be Contractor's sole remedy arising out of the Concurrent Delay.

#### **40.9 Delay due to Shortage of Goods**

##### **40.9.1 Compensable Delay due to Shortage of Goods:**

Except for a Delay in delivery by Metro of Metro-furnished Goods (which may constitute a Compensable Delay if it meets all other qualifying criteria), a shortage of Goods shall not constitute a Compensable Delay.

##### **40.9.2 Excusable Delay due to Shortage of Goods:**

- A. Contractor may be entitled to an Excusable Delay if, in addition to meeting all other requirements for an Excusable Delay:
1. It supplies Metro with documented proof that it made every effort to obtain such Goods from every known source within reasonable distance of the Work; and
  2. The inability to obtain such Goods when originally planned, did in fact cause a Delay in final completion of the Work that could not be fully mitigated by revising the sequence of its operations.
- B. Only the physical shortage of Goods will be considered as a basis for an Excusable Delay. No consideration will be given to any claim that Goods could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of Metro that:
1. The Goods could have been obtained only at exorbitant prices or;
  2. The prices were entirely inconsistent with current rates, taking into account the quantities involved and the usual practices employed in obtaining such quantities; and
  3. The facts could not have been known or anticipated at the time the Contract was executed.

#### **40.10 Multiple Causes of Delay**

If a Delay arises out of more than one cause, to the extent that the Delay is Excusable or Compensable, subject to all the requirements of this

Article, Contractor will be entitled to one extension of Contract Time for the cumulative change to the Critical Path Schedule.

#### **40.11 Submittal of Information regarding Delay**

Contractor shall submit the following information to the Contracting Officer at the earliest possible date after Contractor provides notice to the Contracting Officer of the asserted Delay, as provided in this Article, and shall thereafter supplement information as it becomes available:

40.11.1 A detailed description of the events causing the Delay;

40.11.2 An analysis of the impact of the claimed act or event causing the Delay upon the then-current Critical Path Schedule, identifying the affected activities, the actual impacts and the number of days delayed; and

40.11.3 Proposals and measures taken to mitigate the claimed Delay, and the effects thereof.

#### **40.12 No Metro Waiver**

Metro's granting of an extension of time or the Acceptance of any part of the Work after the time specified shall not constitute a waiver of any of Metro's rights under the Contract other than those specifically provided for in the extension or Acceptance.

#### **40.13 No Release of Surety**

An extension of Contract Time granted shall not release Contractor's Surety from its obligations.

### **GC-41 CHANGES**

#### **41.1 General**

41.1.1 The Contracting Officer may direct Changes within the general scope of the Contract without notice to Sureties, and may in its discretion direct immediate implementation of Changed Work by a Change Order (CO), as provided herein. Upon receipt of such direction, Contractor shall promptly proceed with the Work in accordance with the applicable conditions of the Contract. No direction, order, statement, or conduct of Metro, other than written direction by Metro's Contracting Officer, shall constitute or be the basis for a Modification or otherwise entitle Contractor to additional Compensation or Contract Time.

41.1.2 Contractor shall promptly submit a Request for Change (RFC) when it receives direction, instruction, interpretation, or determination from any person, other than Metro's Contracting

Officer, to perform Work that would constitute Changed Work. Contractor shall not proceed with any such Work until directed in writing by Metro's Contracting Officer as provided in this Article.

#### **41.2 Request for Information (RFI)**

41.2.1 Contractor may submit a Request for Information (RFI) on any portion of the Work.

41.2.2 Except under extraordinary circumstances, Contractor shall submit RFI(s) a minimum of **thirty (30) Days** prior to the need date for the information. Metro will provide a timely response, and if a Change or other Modification is required, initiate a CN, CO or other Modification.

41.2.3 If Contractor performs any Work that is the subject of an RFI prior to Metro's written response to the RFI, it shall be at the Contractor's risk.

#### **41.3 Request for Change (RFC)**

41.3.1 Contractor may submit a Request for Change (RFC) to Metro's Authorized Representative describing any proposed Change. Contractor shall describe the discovery of conditions or the occurrence of an event (discovery and occurrence shall collectively be referred to as "**Occurrence**" and conditions discovered or an event shall be referred to as an "**Event**") supporting the RFC, identifying Metro-furnished Contract Document that it proposes to change, and stating the reasons for the Change, including relevant circumstances and impacts on the Schedule. If Contractor is requesting a Modification to the Total Contract Price or Time, it shall submit the following with its RFC:

- A. A Detailed description of the facts underlying the RFC, the reasons why Contractor believes additional compensation or time will or may be due, and the date of the Event;
- B. The name, title, and activity of each Metro Authorized Representative knowledgeable of the facts underlying the RFC;
- C. Such other information as the Contracting Officer may deem necessary to evaluate the RFC;
- D. If Contractor estimates the cost to implement the requested Change will be less than one-hundred thousand US Dollars (**\$100,000**), Contractor shall also submit the following with its RFC:

1. Contractor's CSP, as provided in the Section entitled CONTRACTOR'S COST AND SCHEDULE PROPOSAL (CSP) below (in this Article),
2. Recommended Contract Modifications, including specific reference to the Contract Documents, Articles, Sections and Paragraphs of the contract affected, or other basis of entitlement to the Change, and

E. For changes affecting Schedule, a fragnet analysis showing how the Critical Path will be impacted by the Change.

41.3.2 Contractor shall submit RFCs **within ten (10) Days** after the Occurrence of the Event that is the basis of the RFC. If Contractor delivers any RFC later than ten (10) Days after the Occurrence of the Event (which shall be when Contractor first discovered or should have discovered the Occurrence of the Event in the exercise of reasonable prudence) described in the RFC, Contractor shall not have, and will be deemed to have waived, any Claim to any increase in Total Contract Price or Time arising out of the Event for the period prior to the date of delivery of the RFC.

41.3.3 If an RFC concerns any Event related to the Articles herein entitled DIFFERING SITE CONDITIONS (DSC), HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL AND SCIENTIFIC DISCOVERIES, or CONDITIONS AFFECTING THE WORK, Contractor shall immediately provide notice of the Event to Metro's Authorized Representative, and shall afford Metro the opportunity to inspect such Event before it is disturbed. If Contractor does not provide Metro such a timely opportunity, it shall be deemed to have waived the right to claim any increase in Total Contract Price or Time in connection therewith.

41.3.4 If Contractor fails to provide an RFC within **sixty (60) Days** after any Occurrence of an Event, Contractor shall not have, and will be deemed to have waived, any Claim to any increase in Total Contract Price or Time arising out of the Event, unless Contractor can show, based on a preponderance of the evidence, that:

- A. Metro was not materially prejudiced by the lack of notice; or
- B. Metro's Authorized Representative had actual knowledge of the Event prior to the expiration of the sixty (60) Day period.

41.3.5 If Metro approves the RFC, it will issue a CN, CO or other Modification.

41.3.6 Contractor Review of Subcontractor Requests for Change and Claims:

- A. Prior to submission by Contractor of any RFC which is based in whole or in part on a request by a Subcontractor (to Contractor) for a price increase or time extension under its Subcontract, Contractor shall have reviewed all claims by the Subcontractor which constitute the basis for the Change Request and determined in good faith that each such claim is justified hereunder, and that Contractor is justified in requesting an increase in the Contract Price and/or Contract Time/Schedule in the amounts specified in the Change Request.
- B. Each Change Request shall include a summary of Contractor's analysis of all components of the Subcontractor claims and a sworn certification in a form acceptable to Metro, signed by Contractor's Representative, stating that Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested, has reviewed and verified the adequacy of all back-up documentation and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any RFC involving Subcontractor Work that is not accompanied by such analysis and certification shall be considered incomplete.

**41.3.7 Notwithstanding anything that could be interpreted to the contrary in this Article, an RFC shall be at Contractor's risk. Contractor shall not be relieved from performing the Work during the time Metro considers the RFC and will not receive any adjustment in Total Contract Price or Time if Metro's Contracting Officer determines the subject matter of the RFC is not a Change or other Modification.**

**41.4 RESERVED**

**41.5 Change Notice (CN)**

The Contracting Officer may issue a Change Notice (CN) to the Contractor, describing a proposed Change to the Contract and requesting the Contractor to submit a Contractor's Cost and Schedule Proposal (in the form prescribed by Metro). A CN does not authorize the Contractor to commence performance of the proposed Changed Work. Any Change implemented by Metro will be incorporated into a CO or other Modification.

**41.6 Change Orders (CO) and Bilateral Modifications**

41.6.1 Metro's Authorized Representative may unilaterally, or by agreement with Contractor, issue a Change Order (CO) directing

Contractor to proceed with a Change in the Work. The CO shall contain a Not to Exceed (NTE) amount to set the maximum limit that may be expended by the Contractor under the CO. Metro's Authorized Representative may unilaterally, or by agreement with the Contractor, revise the NTE amount, based upon additional information or forward pricing subsequent to determination of the NTE amount.

- 41.6.2 Contractor shall not commence performance of the Work described in the CO until Metro's Authorized Representative executes the CO and transmits it to Contractor.
- 41.6.3 Until such time as the Parties agree to any Changes arising out of the CO and execute a bilateral Modification, Contractor shall maintain its records in accordance with the Article entitled BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE herein.
- 41.6.4 Contractor shall maintain contemporary records as necessary to distinguish the cost of Changed Work performed under a CO from the cost of other Work until the Parties execute a bilateral Modification, or they resolve any Dispute through the Alternative Disputes Resolution (ADR) Process; the latter resolution shall constitute a bilateral Modification. Payment for the Work shall be pursuant to the Article entitled BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE herein. Contractor shall submit reports of Work on forms prescribed by Metro within one (1) Day after performance of the Work. All back-up records and reports shall be made immediately available to Metro upon request. All reports shall be certified by the signature of the Contractor's Representative and acknowledged by Metro's Authorized Representative. All submittals shall be subject to audit and determinations of the accuracy of the submitted information.
- 41.6.5 **Under no circumstance will Metro be liable for or pay any amount in excess of the applicable CO NTE amount.** Contractor shall notify Metro when eighty percent (80%) of the NTE amount has been expended, and provide an estimate of the cost to complete the Changed Work. Metro and Contractor shall then forward price the CO to complete the Work, using the CSP (in accordance with the below Section entitled CONTRACTOR'S COST AND SCHEDULE PROPOSAL in this Article), and both Parties shall negotiate a bilateral Modification to perform the Changed Work pursuant to the Article entitled BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE herein. If no bilateral Modification is finalized, the last agreed-upon (and finalized) CO NTE amount shall continue to apply.
- 41.6.6 Any bilateral Modification executed by both Parties arising out of a CO shall:

- A. Expressly state that the Work described therein is Changed Work.
- B. Include all Changes to the Critical Path Schedule, the Total Contract Price, and all costs of any nature arising out of the Changed Work and shall be accompanied by a Certificate of Current Cost or Pricing Data.
- C. Contain a statement that the adjustment to the Contract Time and Total Contract Price, if any, includes all time and amounts to which Contractor is entitled as a result of the Changes giving rise to the CO.

**41.6.7 The execution of a bilateral Modification by Metro and Contractor shall be deemed to be an unconditional agreement to all Work, and all adjustments to Total Contract Price and Contract Time related to the Change. There will be no reservation of rights by either Party on a bilateral Modification.**

**41.7 Contractor's Cost and Schedule Proposal (CSP)**

41.7.1 Contractor shall submit a Contractor's Cost and Schedule Proposal (CSP) to Metro's Authorized Representative within the time limits below, after receipt of a CN or CO from Metro:

<b>Proposed Value</b>	<b>Owner Directed Changes</b>	<b>Contractor Requested Changes (RFC)</b>
< \$100,000	Five (5) Working Days	With RFC as required above
≥ \$100,000	Fifteen (15) Working Days	Fifteen (15) Working Days

41.7.2 In preparing the CSP, Contractor shall:

- A. Use the forms provided or approved by Metro, and the components set forth in the Section entitled BASIS FOR ESTABLISHING COSTS herein, to identify all costs of the Change, including overhead and profit.
- B. Identify the impacts of the Change on, and integrate the Change into the Critical Path Schedule.
- C. Follow **Construction Specifications Institute's (CSI) Master Format** classification system in describing the Change.
- D. Base the proposal on Contractor's actual, expected construction productivity rates (and provide appropriate

support for those productivity rates); not on published or trade association composite rates.

- E. Identify any prices or other elements of the CSP that are conditional, such as time-sensitive orders or events.
- F. Certify the CSP upon Metro's request.
- G. Include a Certificate of Current Cost or Pricing Data as described in the Article entitled AUDIT herein.
- H. If the CSP totals two hundred thousand US dollars (\$200,000) or more, include a CERTIFICATION OF CAMPAIGN CONTRIBUTIONS on the form provided by Metro.

41.7.3 If the Contractor does not submit the CSP by the required date, Metro reserves the right to issue a Change Order (CO) at a value the Contracting Officer determines is fair and reasonable.

41.7.4 If any prices or other elements of the proposal are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, Contractor shall identify these conditions in its proposal.

#### **41.8 Deleted Work**

When a Modification deletes Work from Contractor's scope, the amount of the reduction in the Total Contract Price shall be based upon an estimate including a bill of material, a breakdown of labor and equipment costs, and overhead and profit associated with the deleted work (pursuant to the provisions set forth in the Article entitled BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE herein). The amount of risk associated with such Work as of the date of execution hereof by Contractor shall be a factor in determining the mark-up for the deduction. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

#### **41.9 Audit**

Contractor's records pertaining to Changes pursuant to this Article are subject to audit as set forth in the Article entitled AUDIT herein.

#### **41.10 Limitations on Authority**

**Nothing in this Article shall be construed to bind Metro for acts of any person, including its Authorized Representatives, who exceed their authority as set forth in the Article entitled AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORIZED REPRESENTATIVES herein.**

#### **41.11 Work After Scheduled Completion Date, or During Suspension or Delay**

To avoid any duplicate payment of overhead or profit, if Contractor performs any Work under a CO or other Modification after the Scheduled Completion Date, or during a period of Suspension or Delay which results in a time extension, the mark ups for overhead and profit paid under this Article for the CO or other Modification for that period shall be deducted from any extended overhead or profit that may be otherwise payable to Contractor under this Contract for the Suspension or Delay.

#### **41.12 Interest**

Except as provided in Public Contract Code Section 20104, no interest shall be payable on any amounts until the later of **thirty (30) Days** after:

41.12.1 Execution to the Modification by both Parties; or

41.12.2 The amounts become due and payable under the terms of the Modification.

#### **41.13 Accord and Satisfaction**

The execution of a bilateral Modification by the Contracting Officer and Contractor's Representative shall constitute a full accord and satisfaction of all amounts payable, all time extensions allowable and all other Claims arising out of the Event or Work that is the subject matter of the bilateral Modification.

### **GC-42 BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE**

#### **42.1 General**

The amount payable for a Modification is the sum of all eligible costs the Contracting Officer determines are allowable, allocable and reasonable to perform the Work, and a mark-up for overhead and reasonable profit as set forth herein.

#### **42.2 Ineligible & Eligible Costs**

##### **42.2.1 Ineligible Costs:**

Any increase in the costs shall exclude:

- A. Costs caused by the breach of contract or fault or negligence, failure to act of Contractor, or any Subcontractor, or any other persons for whom Contractor may be contractually or legally responsible; and

- B. Costs which could reasonably be avoided by Contractor, including re-sequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work, adjusted for any additional costs reasonably incurred in connection with such reallocation or redeployment.

#### 42.2.2 Eligible Costs:

Eligible costs shall be only those costs identified as such in Sections 42.3 through 42.11 provided in this Article.

### **42.3 Construction Labor Costs**

42.3.1 General – Construction Labor costs shall be based, as a minimum, on the prevailing wage scale for each craft or type of Work used in the Changed Work, as well as payroll taxes and fringe benefits, as applicable. Payroll taxes shall be calculated on base wage only and not on fringe benefits. Fringe benefits shall be applied only to the straight-time component of cost and shall not apply to the premium-time component unless otherwise required by the California Labor Code.

42.3.2 Subsistence & Travel Allowance – If such charges are applicable, they shall be based on the actual allowance paid for the Changed Work.

42.3.3 Excluded Cost Items – Labor costs shall not include costs for management personnel above foreman, office personnel, timekeepers, and maintenance mechanics unless authorized by the Contracting Officer prior to the start of Changed Work.

42.3.4 Construction Labor Reports – Such reports shall include names, hours worked, and rates of pay for all classifications that are engaged in the actual direct performance of the Changed Work. The rates of pay to be furnished in this report shall be as set forth in Section 42.3.1 above.

### **42.4 Material Costs**

42.4.1 General – Material costs shall be the cost of all Goods purchased by Contractor and used in the Changed Work, including normal wastage allowance as per industry standards. The cost shall include freight, delivery, unloading, storage charges, taxes and all Supplier discounts.

42.4.2 Supporting Cost Data – The prices shall be supported by valid invoices, binding written quotations from reputable Suppliers, or shall be prices from existing purchase orders, blanket purchase orders or other ordering agreements standard in the industry.

42.4.3 Metro Review of Subcontractor & Supplier Invoices/Quotations – The invoices or quotations shall be made available to Metro upon request.

42.4.4 Other Metro Rights – Metro reserves the right to review and accept Goods and sources of supply of Goods to be furnished by Contractor or its Subcontractor(s), as well as the right to furnish the Goods to Contractor if necessary to facilitate the progress of the Work.

## **42.5 Construction Equipment Costs**

All Construction Equipment shall be in good working condition and suitable for the purpose for which it is to be used.

The rates described in this Section include the Construction Equipment, plus the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals, subject to the following:

### **42.5.1 Measurement of Construction Equipment Time:**

- A. Except as otherwise specified in this Article, the Construction Equipment Time shall:
  - 1. Be computed in half and full hours. In computing the time for use of Construction Equipment, less than thirty-one (31) minutes shall be considered one-half hour.
  - 2. Include the time required to move the Construction Equipment to the location of the Changed Work and return it to the original location (or to another location requiring no more time than that required to return it to its original location).
- B. Loading & Transportation Costs – Loading and transporting costs shall be allowed, in lieu of moving time, when the Construction Equipment is moved by means other than its own power. No payment for loading and transporting shall be made if the Construction Equipment is also used at the Worksite for any other work (other than the Changed Work).

### **42.5.2 Measurement of Construction Equipment Use Period:**

The Construction Equipment use period shall:

- A. Begin at the time the Construction Equipment is unloaded at the site of the Changed Work during standard work hours;

- B. Include each day that the Construction Equipment is at the Worksite of the Changed Work, excluding Saturdays and Sundays and other legal holidays unless such Work is performed on those days; and
- C. Terminate at the end of the day on which the Work is completed, or Metro's Authorized Representative instructs Contractor to discontinue the use of such Construction Equipment.

42.5.3 Fixed Costs – Equipment ownership fixed costs shall be limited to the following for multiple shift operations:

- A. Overhead: At the hourly overhead rate listed in the **Cost Reference Guide for Construction Equipment** for the first shift each day and at fifteen percent (**15%**) of that same hourly rate for the second shift each day. No additional overhead costs will be allowed for a third shift; and
- B. Depreciation: The hourly depreciation rate listed in the **Cost Reference Guide for Construction Equipment** for the first shift each day and at fifty percent (**50%**) of that same hourly rate for the second and third shifts each day.

42.5.4 Small Tools – Construction Equipment and tools having a replacement value of two-hundred US Dollars (**\$200**) or less, whether or not consumed or used, shall be considered small tools and no payment shall be made for them.

42.5.5 Excluded Cost Items & Construction Equipment:

- A. Excluded Cost Items – Construction Equipment costs shall not include costs for items normally considered Contractor plant or fixed costs items (such as buildings, trailers, office equipment, utilities, rail, piping, electrical distribution systems, processing plants, material handling facilities, work platforms, scaffolding, and concrete forms).
- B. Construction Equipment Already Onsite and/or in Use on the Work – No additional compensation shall be allowed for Construction Equipment used to perform Changed Work if such Equipment is already on the Worksite and being used or will be used for any other work (other than the Changed Work).

42.5.6 Construction Equipment Reports – Such reports shall include size, type, identification number, rental rate (if applicable), and hours of operation.

42.5.7 Rates for Standard Contractor-Owned Construction Equipment – Metro will pay Contractor for the use of Contractor-owned Construction Equipment at the total hourly cost rates listed for such Construction Equipment in the Cost Reference Guide for Construction Equipment (published by Dataquest of San Jose), which edition shall be the latest edition in effect at the time the Changed Work is performed. No adjustment to the total hourly cost rates listed in the Cost Reference Guide shall be made except as stated in this Paragraph for multiple shift operations and standby.

42.5.8 Rates for Specialized Contractor-Owned Construction Equipment – If Contractor deems it necessary to use Contractor-owned specialized Construction Equipment not listed in the applicable edition of the Cost Reference Guide for Construction Equipment (as noted in Paragraph 42.5.7 above), Contractor shall submit all cost data to Metro's Authorized Representative for its use in establishing the rate.

42.5.9 Rates for Rented/Leased Construction Equipment:

- A. Supporting Cost Data (for Rented Construction Equipment) – If Contractor deems it necessary to use rental Construction Equipment due to the lack of availability of Contractor-owned Construction Equipment to perform the Changed Work, Contractor shall submit supporting cost data to Metro's Authorized Representative, for Metro's use in estimating and verifying rental costs. Acceptable forms of cost data include the following:
1. Supporting Cost Data (prior to Start of Changed Work) – Signed/written Supplier quotes, or published price lists (rate sheets).
  2. Supporting Cost Data (after Changed Work) – Paid Supplier invoices.
- B. Contractor Submittal of Supporting Cost Data – Contractor shall submit its supporting cost data (for rented Construction Equipment) with its current reports; or, if not then available, submitted with subsequent reports.
- C. Metro Fair Cost Determination for Rented Construction Equipment – When Contractor invoices Metro for the Changed Work, if Contractor does not submit acceptable supporting cost data (after Changed Work) as noted above, or if in Metro's opinion the cost of such rented Construction Equipment is excessive, then the cost of such Equipment shall be determined utilizing the Cost Reference Guide for Construction Equipment (as noted in Paragraph 42.5.7 above).

D. Other Leasing/Rental Arrangements for Construction Equipment – Metro will pay for Construction Equipment rented under lease-purchase or sale-leaseback arrangements, or rented from an organization under control of Contractor or under common control with Contractor, at the rates set forth in the Cost Reference Guide for Construction Equipment (as noted in Paragraph 42.5.7 above).

42.5.10 Rates for (Manufacturer-Approved) Modified Construction Equipment – Unless otherwise specified, manufacturer-approved modifications shall be used to classify Construction Equipment for the determination of applicable rental rates.

42.5.11 Rates for Construction Equipment with No Direct Power Unit – Applicable rental rates for Construction Equipment that has no direct power unit shall be based on being powered by a unit of at least the minimum rating recommended by the manufacturer of that Construction Equipment.

42.5.12 Construction Equipment Operators – Such operators shall be paid for as stipulated in the earlier Section entitled CONSTRUCTION LABOR COSTS of this Article.

42.5.13 Idle/Standby Construction Equipment – After Construction Equipment is idle for sixteen hours (16-hr) in a twenty-four hour (24-hr) period it shall be deemed to be on standby, and Compensation for such Construction Equipment shall be limited to the sum of the hourly overhead and depreciation rates for eight (8) hours per twenty-four (24) hour period.

42.5.14 Inoperative Construction Equipment – Metro will not pay compensation for Construction Equipment while it is inoperative due to breakdown, routine maintenance or other Contractor controlled or planned down time.

## 42.6 Engineering Labor Costs

### 42.6.1 General:

- A. For the purposes of this Section, “**Design/Engineering Services**” includes design, geotechnical investigations, surveying, permits, environmental, and similar aspects of the Work, performed by Contractor’s employees who are licensed professional architects, engineers, or surveyors.
- B. For Design/Engineering Services that qualify as Engineering Labor (as set forth in this Section), Engineering Labor costs shall be based on the actual base salary rates for the professional classifications performing the Design/Engineering

Services, exclusive of any payroll taxes and fringe benefits, as applicable.

42.6.2 Engineering Labor Qualifications – Engineering Labor shall be limited to those direct labor costs that meet all of the following elements:

- A. The engineering costs do not arise from incidental engineering (as set forth in Subparagraph 42.7.3-B below).
- B. The engineering costs arise directly from design/engineering work specified in the Modification.
- C. The engineering costs are in excess of the total estimated cost of engineering for the Contract, as shown in the Escrowed Bid Documents (if Bid Documents are escrowed).

42.6.3 Non-qualifying Engineering Labor – Any design/engineering work which does not meet the criteria set forth above in this Section, shall be considered incidental engineering pursuant to the provisions set forth in Subparagraph 42.7.3 B below. The only exception to this shall be that design/engineering work that meets the criteria in the below Section entitled SUBCONTRACTOR COSTS of this Article, in which case the provisions set forth in that Section shall apply.

42.6.4 Engineering Labor Reports – Such reports shall include names, hours worked, and rates of pay for all professional classifications that are engaged in the actual direct performance of the Changed Work. The rates of pay to be furnished in this report shall be as set forth in Section 42.6.1 above.

## 42.7 Overhead and Profit

42.7.1 Mark-ups for forward-priced Changed Work – If prior to commencement of performance of Changed Work, the Parties agree on the amount of the direct costs of such Work, the mark-ups (for overhead and profit) Metro will pay to Contractor on such direct costs are:

- A. For **Construction Labor** costs (as set forth in Section 42.3 above): Twenty percent (**20%**);
- B. For **Material** costs (as set forth in Section 42.4 above): Fifteen percent (**15%**);
- C. For **Construction Equipment** use costs (as set forth in Section 42.5 above): Fifteen percent (**15%**); and

D. If applicable (as set forth in Section 42.6 above), for **Engineering Labor** costs: One-hundred fifty percent (150%).

42.7.2 Mark-ups for incurred-cost Changed Work – If the direct cost of the Work is based in whole or in part on Contractor's actual incurred costs, the mark-ups (for overhead and profit) Metro will pay to Contractor on such direct costs shall be subject to determination by Metro's Contracting Officer, based upon audited overhead rates and a reasonable profit, not to exceed the markups set forth in Section 42.7.1 above.

42.7.3 Overhead Mark-Up:

A. Included Costs – The mark-ups for overhead include, and are full compensation for, all indirect costs of any nature, including without limitation home and field office overhead, all taxes of any nature (except taxes covered herein under CONSTRUCTION LABOR COSTS and MATERIAL COSTS), all fringe benefits of any nature (except fringe benefits covered herein under CONSTRUCTION LABOR COSTS), Performance and Payment Bond premium adjustments, small tools, incidental job burdens, incidental engineering (as set forth in Subparagraph 42.7.3-B below), and all other indirect costs of the Changed Work.

B. Incidental Engineering – Incidental engineering costs, a cost element incorporated in the overhead mark-up (as set forth in Subparagraph 42.7.3-A above), shall include all time spent by engineers on:

1. Preparation, review, planning, coordination, and/or any other administration relating to Construction Documents, reports/logs, inspections scheduling, RFIs, RFCs, schedule/cost estimates, Modifications, Claims, and mix & shoring design;
2. Preparation, review, planning, coordination, and/or any other administration relating to any other submittals (except as otherwise stipulated in the Section entitled ENGINEERING LABOR COSTS of this Article);
3. Attendance at any meeting required by the Contract; and
4. All other tasks normally performed to support construction work under similar contracts (except as otherwise stipulated in the Section entitled ENGINEERING LABOR COSTS of this Article).

## 42.8 Subcontractor Costs

42.8.1 When a Subcontractor performs Changed Work, the mark-ups set forth above in the Section entitled OVERHEAD AND PROFIT shall

be applied to the Subcontractor direct costs. Metro will pay the Contractor one mark-up of five percent (5%) of the Subcontractor's direct costs, regardless of the number of intervening tiers of Subcontractors: This five percent (5%) mark-up shall not include any of the Subcontractor's indirect costs, such as its overhead and profit.

42.8.2 Metro will not pay markups for goods furnished by Suppliers, except Suppliers of major Goods specially fabricated either fully or partially or modified for use in the Contract shall be considered Subcontractors for the purpose of this Section.

42.8.3 Metro will not pay a mark-up for Units with Unit Prices established in the Contract.

42.8.4 Metro will not pay a mark-up for Goods furnished by Metro.

#### **42.9 Credit Items**

Where Contractor's or any tier Subcontractor's portion of a Change or other Modification involves credit items, or the proposed Change is a fully deductive Change or other Modification, Contractor shall utilize the same mark-ups in computing the value of the credit.

#### **42.10 Bond Costs**

Changes to the cost of Performance and Payment bonds arising directly out of the Change or other Modification are already included as part of the mark-up for OVERHEAD AND PROFIT, as set forth in Section 42.7 above.

#### **42.11 Equipment and Systems Costs**

If not otherwise established in this Article, Equipment and Systems costs (A) shall be the listed or catalogue price for the item in question if available in the Contractor's inventory; or (B) if not so available, shall be the price established by negotiation between Metro and the Contractor in accordance with the cost principles set forth in Part 31 of the Federal Acquisition Regulation, including the principles of cost allowability, allocability, and reasonableness in 48 CFR Subpart 31.2.

### **GC-43 LIABILITY AND INDEMNIFICATION\***

#### **43.1 Definitions**

Unless explicitly identified as otherwise, the following terms used in this Article, when capitalized, shall have the meanings set forth in this Section.

- 43.1.1 **Indemnitees** – Metro, its Authorized Representatives and subsidiaries, and their respective members, directors, officers, employees and agents.
- 43.1.2 **Indemnitors** – The Contractor, the Contractor's Representative, any other representative of the Contractor, any of its officers, employees, Subcontractors or Suppliers, or any person or organization directly or indirectly employed by any of them, in connection with or relating to the Work or the Contract.
- 43.1.3 **Indemnify** – To the fullest extent permitted by Law, and at the sole cost and expense of the Indemnitors, to fully defend, indemnify and hold harmless.
- 43.1.4 **Liabilities** – Any and all Claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses or expenses, including but not limited to workers compensation claims, and all fees of accountants, attorneys or other professionals related to any Claim or liability.
- 43.1.5 **Intellectual Property** – Patented, copyrighted, trademarked, or otherwise protected property, data, material, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction.

## **43.2 Contractor's Obligation**

The Contractor acknowledges and agrees that it has the obligation to design (if applicable) and construct the Work, or cause the design (if applicable) and construction of the Work, in accordance with the Contract Documents, and that Metro and the other Indemnitees are fully entitled to rely on the Contractor's performance of such obligation.

## **43.3 Indemnification for Other than Design Professional Work**

To the fullest extent permitted by law, the Contractor shall Indemnify Metro and the other Indemnitees from and against any and all Liabilities arising out of, in connection with, resulting from or related to, any act, omission, fault or negligence of the Contractor or any other Indemnitor in connection with or relating to, or claimed to be in connection with or relating to, the Work or the Contract, including without limitation to any Liability arising out of:

- 43.3.1 The personal injury to or death of any person (including employees of any Indemnitees) or for damage to or loss of use of property (including property of Metro); and
- 43.3.2 Metro's reliance upon the use of data or other information furnished or delivered by the Contractor pursuant to the Contract.

43.3.3 The indemnification specified in this Section of the Article shall apply even in the event of the act, omission, fault or negligence whether active or passive, of the party or parties to be indemnified, but shall not apply to Claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses arising from the willful misconduct of, or defects in design furnished by, the party or parties to be indemnified. Metro shall not be responsible for any negligence, willful misconduct or defects in design caused and/or furnished by the Contractor.

#### **43.4 Indemnification for Design Professional Work**

To the fullest extent permitted by law, the Contractor shall indemnify Metro and the other Indemnitees from and against any and all Liabilities, pertaining to or relating to the negligence, recklessness or willful misconduct of the Contractor or any other Indemnitor, in connection with or relating to, or claimed to be in connection with or relating to, the Work or the Contract, including but not limited to any Liability arising out of:

- 43.4.1. Personal injury to or death of any person (including employees of any Indemnitee) or for damage to or loss of use of property (including property of Metro); and
- 43.4.2. Metro's reasonable reliance upon the use of data or other information provided or delivered by the Contractor pursuant to the Contract.

#### **43.5 Defense of Intellectual Property Claims**

43.5.1 Defense – The Contractor shall conduct all negotiations with respect to, and settle or defend, all Intellectual Property claims against Metro or any other Indemnitee.

43.5.2 Remedies – Without thereby limiting any other right or remedy which Indemnitees may have under this Contract or at Law, if an Indemnitee is enjoined from using any portion of the Intellectual Property, Contractor shall, at its own expense, either:

- A. Procure promptly for such Indemnitee, the right to continue using the Intellectual Property;
- B. Promptly replace the Intellectual Property with non-infringing Intellectual Property which meets the requirements of the Contract, and the use of which does not violate the rights of the claimant;
- C. Promptly modify the Intellectual Property in a manner satisfactory to such Indemnitee to render use of Intellectual Property non-infringing;

- D. Subject to the determination by Metro's Authorized Representative that the Contractor will fully meet the requirements of the Contract by employing other means, remove the portion of the Intellectual Property whose use is restricted by the injunction; or
- E. Subject to the determination by Metro's Authorized Representative that the Project will perform satisfactorily without the use of the Intellectual Property, and Metro's acceptance of this alternative in its sole discretion, remove the portion of the Intellectual Property the use of which is restricted by the injunction, and refund to Metro, the purchase price thereof and any other costs incurred by Metro as a result of the injunction and the inability of Metro to use the Intellectual Property.

### **43.6 Environmental Indemnity**

43.6.1 Representations and Warranties – The Contractor represents and warrants that:

- A. It is aware of and understands the hazards which are presented to persons, property and the environment in the performing of transportation, storage, remediation or disposal Work related to the Project;
- B. To the extent that such Work is included in the Contract, the Contractor shall transport, store, remediate and dispose of Hazardous Substances in full compliance with all Laws;
- C. If the Contract requires off-site storage or disposal, the selected storage and disposal facilities described in the Contractor's work plan are currently appropriately licensed and permitted to store and dispose of the Hazardous Substances detailed within the work plan or otherwise discovered at the Worksite; and
- D. If the selected storage or disposal facility loses its permitted status hereafter during the term of the Contract, the Contractor shall promptly notify Metro of such loss and, if required by the Contract, secure an appropriately licensed and permitted alternative facility.

43.6.2 Environmental Impairment Losses - The Contractor shall indemnify Metro and the other Indemnitees from any and all present and future Environmental Impairment Losses that may arise out of the negligent performance of the activities or Work provided by the Contractor or any other Indemnitor under the Contract.

43.6.3 General Environmental Indemnification - In addition to any other indemnification provisions of the Contract, the Contractor shall Indemnify Metro and the other Indemnitees from and against any and all present and future Liabilities of every kind and nature, resulting, directly or indirectly, from any negligent or reckless act or omission (including failure to recognize or report the existence or location of Hazardous Substances) of any Indemnitor in its performance or failure to perform any Work, including without limitation, Liabilities arising from:

- A. Releases of Hazardous Substances;
- B. Remedial work required under any Environmental Law;
- C. All related fees from contractors, attorneys, and experts.

#### **43.7 Errors and Omissions**

43.7.1 Errors and Omissions Indemnification - Subject to the provisions of the Section entitled Restrictions on Indemnification in this Article, Contractor shall Indemnify Metro and the other Indemnitees from and against any and all Liabilities arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the AFC Design Documents furnished by the Contractor, regardless of whether such errors, omissions, inconsistencies or defects were also included in the Project Definition Documents or any Reference Documents (if applicable). The Contractor's indemnification obligation shall not apply, however, to liabilities that arise solely out of an error, omission, or defect in the documents on which the Contractor is permitted to rely under Section 12.4 entitled EXCEPTION FOR RELIANCE DOCUMENTS in the Article entitled PROJECT DEFINITION DOCUMENTS.

43.7.2 Status of Documents – The Contractor agrees that, because the Project Definition Documents and any Reference Documents (if applicable) are preliminary and conceptual in nature, and the Project Definition Documents and any Reference Documents (if applicable) are subject to review and modification by the Contractor, such documents shall not be deemed as “design furnished” by Metro or any of the other Indemnitees, as the term “design furnished” is used in Civil Code Section 2782 and in the Section below entitled Restrictions on Indemnification in this Article. The Contractor hereby waives the benefit (if any) of Civil Code Section 2782, and agrees that this Section (entitled Errors and Omissions) constitutes an agreement governed by Civil Code Section 2782.5.

### **43.8 Investigation of Potential Negligence**

43.8.1 Reimbursement of Costs - If the Contractor incurs costs to investigate any allegation by Metro of the Contractor's negligence in its performance of the Contract, Metro will reimburse the Contractor for its reasonable costs only if:

- A. Metro agrees that the Contractor was not negligent in its performance of the Contract; or
- B. It is found, pursuant to the Dispute resolution process described in the Article entitled DISPUTES herein, that the Contractor was not negligent and such costs are determined in that process.

43.8.2 Payment to Metro - If the Contractor is determined under the Dispute resolution process to have been negligent, the Contractor shall pay Metro's reasonable costs, as determined in the Dispute resolution process, to investigate and pursue its claim.

### **43.9 Employee and Third Party Claims**

43.9.1 Employee Claims – Claims against any Indemnitee or Indemnitor by any employee of the Contractor or any other Indemnitor, including claims under any workers' compensation act, disability benefit act or other employee benefit act or insurance, shall not in any way limit the indemnification obligations set forth in this Article.

43.9.2 Third Party Claims – Nothing contained in the Contract is intended to, nor shall have the effect of creating any rights in any third party against Metro. The inclusion of the Contract or any part thereof in any other document shall not be deemed to be creating or incorporating any obligation, duty, or liability on the part of Metro. The Contractor shall indemnify Metro in accordance with the provisions of this Article against any claim made by any third party claiming rights under the Contract.

### **43.10 Joint and Several Liability**

If the Contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the Contractor that are assumed under or arise out of the Contract. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of the Contractor contained in, resulting from or assumed under the Contract, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.

### 43.11 Restrictions on Indemnification

The following restrictions shall apply to the indemnities by Contractor set forth in this Article:

- 43.11.1 With respect to any Liabilities of the type covered by any required insurance provided under this Contract, the Contractor's indemnity obligation shall not extend to any Liabilities arising from the sole negligence or willful misconduct of an Indemnitee, or from defects in design furnished by an Indemnitee.
- 43.11.2 With respect to any Liabilities which are not of the type covered by any required insurance provided under this Contract, the Contractor's indemnity obligation shall not extend to any Liabilities to the extent that such Liabilities were caused by the negligence or willful misconduct of an Indemnitee, or by defects in design furnished by an Indemnitee (in other words, a comparative negligence standard shall apply).
- 43.11.3 Except as permitted by California Civil Code §2782.1, 2782.2 and 2782.5, such indemnities shall not inure to the benefit of an Indemnitee so as to impose liability on the Contractor for the active negligence of the Indemnitees or to relieve the Indemnitees of liability for such active negligence.

### 43.12 Consequential Damages

- 43.12.1 Exclusion. -- Except as provided in subparagraph 43.12.2 below, in no event shall either Party be liable to the other Party for any "consequential damages" arising out of performance of the Work or implementation of the Contract Documents (or failure to perform hereunder), and each Party hereby releases the other from such liability. The term "consequential damages" means those special, indirect, or incidental damages that flow naturally and inevitably from an action or failure to act, such as fare revenue losses, loss of use, cost of capital, debt service, loss of profit on related contracts, administrative costs, extended overhead, claims of taxpayers and other indirect damage. The foregoing shall apply to limit liability under actions brought under any theory of law, including actions in tort (including negligence) as well as in contract, and shall extend to Subcontractors provided that the originally executed Subcontract for such Subcontractor includes a similar release of liability in favor of Metro.
- 43.12.2 Exceptions to Exclusion. -- The exclusion of consequential damages set forth in subparagraph 43.12.1 above shall not exclude or affect:

- A. The Contractor's obligation to pay Liquidated Damages in accordance with the Article entitled LIQUIDATED DAMAGES in Contract Document SPECIAL PROVISIONS;
- B. Any liability for gross negligence, fraud, intentional misconduct, or criminal acts;
- C. Any liability with respect to indemnification for third party claims; and
- D. Any liability for any type of damage or loss, to the extent such loss or damage is covered by insurance required under this Contract or is covered by the actual amount of insurance applicable to the Project and the Work (regardless of whether required to be carried hereunder), whichever is greater.

### **43.13 Limitation on Liability**

- 43.13.1 Limitation -- The Contractor's liability to Metro for damages resulting from breach of the Contract shall not exceed the sum of (A) all those costs reasonably incurred by Metro or any party acting on Metro's behalf in completing or correcting the Work or having the Work completed or corrected by another Person; plus (B) an amount equal to fifteen percent (15%) of the Contract Price (which amount shall specifically include any Liquidated Damages paid pursuant to the Article entitled LIQUIDATED DAMAGES in Contract Document SPECIAL PROVISIONS as well as any payments made by the Contractor pursuant to this Article, but shall specifically exclude any amounts paid by the Contractor that are covered by insurance proceeds from coverages required by the Contract).
- 43.13.2 Exclusion From Limitation -- This limitation of liability shall not apply with regard to any illegal activities, fraud, criminal conduct, gross negligence or willful misconduct on the part of the Contractor, any Subcontractor, or any other party for which the Contractor is legally or contractually responsible.

### **43.14 Survival and Rights of Metro**

- 43.14.1 Survival - The Contractor's indemnification obligations under this Article shall survive the termination or closeout of the Contract, Final Acceptance of the Work, and Final Payment.
- 43.14.2 Reservation of Rights – The rights of Metro to indemnification under this Article are in addition to and do not limit any other rights or remedies that Metro may have under law or this Contract.
- 43.14.3 No Relief from Obligations – The Contractor agrees that any review, Approval and/or Acceptance by the Contracting Officer

or any Authorized Representative hereunder shall not relieve the Contractor of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.

- 43.14.4 Application of Funds – In the event of any Claim or demand made against Metro or any other Indemnitee, Metro may at its sole discretion reserve, retain, and/or apply any monies due the Contractor under the Contract for the purpose of resolving such Claims; provided however, that Metro may release such funds if the Contractor gives Metro reasonable assurance that Metro's interests will be protected. Metro shall, at its sole discretion, determine whether such assurance is reasonable.

## **GC-44 CLAIMS**

### **44.1 Notice of Intent to Claim (NOIC)**

- 44.1.1 Conditions to Claim - As a condition to pursuing any Claim under or in connection with the Contract, Contractor must meet all requirements set forth in this Article for submission of Claims.
- 44.1.2 Time Limits - Contractor shall, as a condition precedent to entitlement, submit a written Notice of Intent To Claim (NOIC) to the Contracting Officer within **ten (10) Days** after the Event or Occurrence giving rise to the potential Claim, in accordance with the provisions of this Article. Failure to comply with these requirements shall constitute a waiver by Contractor of any right, equitable or otherwise, to bring any such Claim against Metro.
- 44.1.3 Content - The NOIC shall set forth the reasons Contractor believes additional compensation or time is or will be due, the nature of the costs or Delay involved, and insofar as possible, the amount of the potential Claim.
- 44.1.4 Additional Work - If the Claim is for additional Work not yet commenced, Contractor shall, if possible, give the NOIC to the Contracting Officer prior to Contractor's start of performance of the Work.

### **44.2 Submittal of and Response to Claims**

- 44.2.1 Submittal and Review - Subject to having filed a timely NOIC as set forth in the Section above, Contractor shall file its Claim in writing within **sixty (60) Days** after the Occurrence of the act or Event giving rise to the Claim, in sufficient detail for Metro to ascertain its basis and amount. Contractor shall furnish, when requested by Metro's Authorized Representative, such further information and details as Metro may require to evaluate the

Claim. Contractor shall give Metro's Authorized Representative access to its Records in accord with the Article herein entitled AUDIT and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that Metro's Authorized Representative can fully investigate the Claim.

44.2.2 Delay Claims - Contractor shall submit to the Contacting Officer with each Claim for an adjustment on account of Delay for any cause a proposed revision to the Critical Path Schedule incorporating the effects of the Delay claimed. The Claim shall also contain reasonable proposals to minimize the Delay and its effects. If the Critical Path Schedule submitted to the Contracting Officer prior to the Delay for which relief is sought did not describe prior conditions affected by the Delay, then Contractor shall prepare a portion of the Critical Path Schedule reflecting these conditions as a baseline and submit it with the Claim. Contractor shall also submit an Impacted Schedule showing the proposed revision. The Impacted Schedule shall also contain all other pending Modifications, Change Orders, Delays or Claims of Delay that are not included in the current Critical Path Schedule.

44.2.3 Certificate of Current Cost and Pricing Data - All Claim submittals shall include a Certificate of Current Cost and Pricing Data. In addition, and except as otherwise provided in California Public Contract Code (CPCC) Article 1.5 (defined below), each Claim over fifty-thousand US Dollars (**\$50,000**) shall be accompanied by the following certification:

"I certify that the Claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Contract adjustment for which the Contractor believes Metro is liable; and that I am duly authorized to certify the Claim on behalf of the Contractor."

44.2.4 Ethics Declaration - For a Claim submittal of one-hundred thousand US Dollars (**\$100,000**) or more, Contractor shall submit an Ethics Declaration on the form provided by Metro.

#### **44.3 Claims Subject to CPCC Article 1.5**

44.3.1 CPCC (California Public Contract Code) Article 1.5 - This Contract is subject to the provisions of Sections 20104 et seq. of the California Public Contract Code (Article 1.5 of Chapter 1 of Part 3, entitled Resolution of Construction Claims – hereafter "**Article 1.5**"), and claims subject to said Article 1.5 shall be processed in accordance therewith.

44.3.2 Other Requirements - Depending upon the grounds for relief and the nature of relief sought, information and conditions to resolution

including additional submittals, not inconsistent with Article 1.5, may be required elsewhere in the Contract.

#### **44.4 Claims Not Subject to CPCC Article 1.5**

For Claims not subject to California Public Contract Code (CPCC) Article 1.5, the provisions of Article 1.5 are hereby incorporated and shall apply, except the sixty (60) Day response period set forth in Section 20104.2(c)(1) shall be **ninety (90) Days**.

#### **44.5 Government Code Claims**

44.5.1 Submittal - If Contractor disputes the Contracting Officer's decision, or if the Contracting Officer fails to make a decision with respect to the Claim, Contractor may file a Claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code ("**Government Code Claim**"), within the time limits set forth in Government Code.

44.5.2 Claims \$50,000 and Under – The commencement of the running of the period of time to file a Government Code Claim for fifty thousand US Dollars (\$50,000) or less shall be tolled until the Contracting Officer denies the Claim in writing pursuant to the process set forth in Section 20104.2(b) of CPCC Article 1.5. If the Contracting Officer does not deny the Claim in writing, the Claim shall be deemed denied by the Contracting Officer **fifteen (15) Days** after the date Contractor submits its final documentation as provided in Section 20104.2(b)(3). If the Contracting Officer denies the Claim in part, those parts of the Claim that are denied shall be subject to a Government Code Claim.

44.5.3 Claims over \$50,000 - The commencement of the running of the period of time to file a Government Code Claim for Claims over fifty thousand US Dollars (\$50,000) shall be tolled until the Contracting Officer denies the Claim in writing as a result of the "meet and confer" process pursuant to Section 20104.2(e) of CPCC Article 1.5. If the Contracting Officer does not deny the Claim in writing after the "meet and Confer" process, the Claim shall be deemed denied by the Contracting Officer fifteen (15) Days after the last day of the "meet and confer" process. If the Contracting Officer denies the Claim in part, those parts of the Claim that are denied shall be subject to a Government Code Claim.

#### **44.6 No Claim After Final Acceptance**

**Contractor shall not be eligible to, and shall not make any Claims after the Contracting Officer executes a Certificate of Final Acceptance under the Article entitled FINAL INSPECTION AND**

**ACCEPTANCE OF THE WORK herein.** Contractor's Request for Final Acceptance of the Work and the Contracting Officer's issuance of a Certificate of Final Acceptance shall constitute a full accord and satisfaction with respect to all Claims, actual or potential, known or unknown.

#### **44.7 Performance During Claim or Dispute**

Contractor shall proceed diligently with performance of the Contract pending resolution of any Claim, Dispute, appeal or action ensuing under the Contract, except for any performance the Contracting Officer determines in writing should be delayed, suspended or terminated as a result of such Claim or Dispute.

#### **44.8 Accord and Satisfaction**

A Claim resolved by a Change Order or bilateral Contract Modification shall constitute a full accord and satisfaction unless the resolution specifically provides otherwise, and contains a description of those elements of the Claim that are not resolved.

### **GC-45 DISPUTES**

#### **45.1 Administrative Process**

45.1.1 Negotiation - If a Dispute under the Contract arises, the Contracting Officer and Contractor's Representative shall make their best efforts to resolve the Dispute through negotiation.

45.1.2 Documentation - All Disputes and negotiations shall be documented by each Party in writing, and state the specifics of each Dispute and actions taken.

45.1.3 Agreement to ADR - If a Dispute cannot be resolved by the Contracting Officer and Contractor's Representative, they may agree to use an ADR process for settling the Dispute, as discussed in the Section entitled ALTERNATIVE DISPUTE RESOLUTION (ADR) below.

45.1.4 Determination by Contracting Officer - In the absence of resolution pursuant to an agreed-upon ADR process or other settlement, the Contracting Officer may, upon its own initiative, or upon the written request of Contractor, make a determination of the Dispute. Upon such determination, Contractor shall immediately comply with the determination.

45.1.5 Claims – If the Dispute involves a Claim by Contractor, Contractor shall comply with and be subject to the provisions of the Article entitled CLAIMS herein, including the time limits for the filing of a Government Code Claim.

## 45.2 Alternative Dispute Resolution (ADR)

If the Parties choose to use the ADR process to resolve a Dispute:

45.2.1 The results of the ADR shall not be binding on either Metro or the Contractor unless the Parties have separately agreed in writing, prior to the ADR, that the ADR will be binding, or thereafter agree by a separate settlement or other agreement that it will be binding. ADR alternative processes include a Disputes Review Board (DRB), mediation, or arbitration.

### 45.2.2 DRB

If the ADR is a DRB, the DRB shall consist of one (1) member selected by Metro; one (1) member selected by the Contractor; and a third member selected by the first two (2) members. The third member shall be the chairperson of the DRB. DRB members shall not have any conflict of interest or otherwise show any partiality to either Metro or to the Contractor.

Metro, the Contractor, and the three (3) DRB members shall execute a DRB Agreement prior to the commencement of any DRB proceedings.

After the conclusion of DRB hearings, the DRB shall submit to the Parties its written recommendations for the resolution of the matters in Dispute. If Metro and the Contractor agree to the DRB's recommendations, they will enter into a Modification to implement such recommendations.

### 45.2.3 Mediation

If the ADR is a mediation, it will not be binding, except by separate agreement as a result of the mediation, and in no event will a mediator make any findings.

Any separate agreement reached by the Parties as a result of a mediation shall be implemented as a Modification.

### 45.2.4 Arbitration

If the ADR is an arbitration (or other process in which findings are made), it will not be binding, except by separate agreement as a result of the arbitration. If an arbitrator finds a Claim to have merit, and Metro and Contractor accept the results, Metro and Contractor will enter into a Modification based upon such results.

The findings of an arbitration (or other process in which findings are made) may be used in any concurrent or subsequent Claim,

litigation or other action at Law or in equity, only to the extent and for the purpose that the Parties have agreed that the findings may be used.

#### 45.2.5 Past ADR

If the ADR does not resolve all issues and there are items to be negotiated in order to enter into a Modification, the Parties shall use their best efforts to negotiate those issues. If they are unsuccessful, the Parties may agree to return to the ADR for further proceedings on the open issues. If the Parties cannot agree, they shall proceed in accordance with the following Subparagraphs contained in this Article.

#### 45.2.6 Contracting Officer Determination

If a resolution is proposed by an ADR, and either party does not accept the result, or they are unable to reach agreement on a Modification, the Contracting Officer may make a determination, which shall be final, subject to Contractor's remedies under the Article entitled CLAIMS herein. In the absence of a determination by the Contracting Officer after conclusion of the ADR, the Contracting Officer's determination prior to the ADR shall apply, subject to Contractor's remedies under the Article entitled CLAIMS herein.

#### 45.2.7 Tolling of Claims

The Parties may agree that the time for the filing of a Government Code Claim, as defined in the Article entitled CLAIMS herein, shall be tolled during the pendency of an ADR process. The terms of the tolling agreement shall be subject to the agreement of the Parties.

### **45.3 Claim/Dispute Categories that are excluded from ADR**

In addition to those issues identified throughout Contract Document GENERAL CONDITIONS, the following categories of Claims/Disputes are excluded from consideration by an Alternative Dispute Resolution (ADR) process:

1. Interest (monetary) on Progress Payments or Final Payment.
2. Wage and hour Disputes.
3. Claims under the jurisdiction of the Owner's Controlled Insurance Program (OCIP) or Contractor's Automobile Insurance.
4. Delegated signature authority of Metro's Authorized Representatives.
5. Disputes regarding matters governed by Environmental Law or any Grant Agreement from any Governmental Entity.
6. Disputes on issues covered by policies of Metro Board of Directors.

7. Assessments made as a result of enforcement of the provisions set forth in the Article entitled ASSESSMENTS FOR SPECIAL CIRCUMSTANCES in Contract Document SPECIAL PROVISIONS.
8. Disputes regarding safety issues and/or matters under the jurisdiction of Cal-OSHA.
9. The right of Metro to issue unilateral changes (i.e., Change Orders).
10. Issues related to subcontractor substitutions governed by California Public Contracts Code §4100 et seq.
11. Stated dollar value of Liquidated Damages as shown in the Article entitled LIQUIDATED DAMAGES in Contract Document SPECIAL PROVISIONS.

## **GC-46 SUSPENSION\***

**The provisions of this Article shall only apply if a written order of suspension, Delay or interruption is issued by the Contracting Officer.**

### **46.1 Order of Suspension**

Metro may at any time and for any reason within its sole discretion issue a written order to Contractor suspending, delaying, or interrupting all or any part of the Work for a specified period of time.

### **46.2 Contractor Compliance**

Contractor shall comply **immediately** with any written order it receives from the Contracting Officer suspending the Work, and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of Work stoppage. Contractor shall continue the Work that is not included in the suspension at normal full strength and shall continue ancillary activities, as reasonably required to preserve property or as otherwise required by the Contracting Officer. Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction of the Contracting Officer.

### **46.3 Price and Time Adjustments**

Contractor may submit an RFC for an adjustment in the Total Contract Price (not to include profit) and/or an extension of the Contract Time, to the extent that cost or Delays are shown by Contractor to be directly attributable to any suspension. The RFC shall be filed within twenty (20) Days after the end of the Work suspension. However, no adjustment shall be made under this Article for any suspension, Delay or interruption to the extent that Contractor's performance would have been so suspended, Delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment to the Contact Price or an extension of Contract Time is provided for, or excluded under any other term or condition of the Contract.

#### **46.4 Work During Suspension**

If during the suspension, the Contracting Officer authorizes the Contractor to incur any costs or perform any Work related to the suspended Work, such authorization shall be by CO and shall identify the authorized Work, any staff required to achieve the level of effort authorized, and the not to exceed amount of the authorization. Metro will make partial payments up to the not to exceed (NTE) amount of the authorization against costs incurred by the Contractor in connection with the authorized Work.

### **GC-47 TERMINATION FOR CONVENIENCE OF METRO\***

#### **47.1 Notice of Termination**

Metro may in its sole discretion terminate Contractor's performance of the Work under the Contract, without cause, from time to time at any time, in whole or in part. Such termination will be effected by delivery of a Notice of Termination to the Contractor, specifying the extent to which performance of the Work under the Contract shall be terminated and the date upon which such termination shall become effective.

#### **47.2 Obligations Upon Termination**

After receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, Contractor shall:

- 47.2.1 Stop Work under the Contract on the date and to the extent specified in the Notice of Termination.
- 47.2.2 Place no further orders or Subcontracts for Goods or Work, except as may be necessary for completion of such portions of the Work expressly excluded from the Notice of Termination.
- 47.2.3 Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties, at any tier.
- 47.2.4 Terminate all orders and Subcontracts that relate to the performance of the Work terminated by the Notice of Termination.
- 47.2.5 Settle outstanding liabilities and claims arising out of such termination of orders and Subcontracts, with the Acceptance of the Contracting Officer if required (which Acceptance shall be final for the purposes of this Article).
- 47.2.6 Upon the Contracting Officer's written order, assign to Metro in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor in and to outstanding orders and Subcontracts affected by the termination.

47.2.7 Transfer title and deliver to Metro in the manner, at the times, and to the extent directed by Contracting Officer:

- A. Fabricated or unfabricated materials, supplies and Goods constituting Work in process, and all other products of uncompleted Work;
- B. Completed Work, supplies, and other Goods procured as a part of, or acquired in connection with, the performance of the Work terminated; and
- C. Completed or partially completed designs, plans, drawings, information, documentation and other items that would have been required to be completed and Furnished to Metro if the Contract had been completed.

47.2.8 Use its best efforts to sell the Goods referred to in this Article in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Contracting Officer, providing that the:

- A. Contractor is not required to extend credit to any purchaser;
- B. Contractor may acquire any such Goods under the prescribed conditions; and/or
- C. Proceeds of any such transfer or disposition shall be applied or otherwise credited to reduce payments made by Metro to the Contractor under the Contract.

47.2.9 Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which Metro has or may acquire an interest.

47.2.10 Comply with all other requirements of Metro as may be specified in the Notice of Termination.

47.2.11 Complete performance of that portion of the Work that has not been terminated by the Notice of Termination, as applicable and in accordance with the Contract.

### 47.3 Submittal and Review of Invoice

Within **sixty (60) Days** after Metro's delivery of a Notice of Termination for Convenience, Contractor shall submit a final invoice based on the percentage of the Work completed prior to the effective date of termination and other costs reasonably incurred by the Contractor to implement the termination. Metro will review and the Contracting Officer will approve the invoice, or approve the invoice as adjusted, based upon its determination of the amount due.

#### **47.4 Failure to Submit Termination Invoice**

Upon failure of the Contractor to submit its termination invoice within the time specified, the Contracting Officer will determine the amount due Contractor, if any, on the basis of information available, and will pay Contractor the amount so determined. Such payment shall constitute payment in full for the Work performed under the Contract. Any allowable costs incurred prior to the date of termination shall be handled in accordance with the Contract Document COMPENSATION & PAYMENT PROVISIONS.

#### **47.5 Partial Payments and Settlements**

47.5.1 Partial Payments – Under such terms and conditions as it may prescribe and at its sole discretion, Metro may make partial payments against costs incurred by Contractor in connection with the terminated portion of the Contract whenever the Contracting Officer decides that the aggregate of such payments is within the amount to which Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed-upon or determined to be due under this Article, such excess shall be payable by the Contractor to Metro upon demand, together with interest at a rate equal to that set forth in California Code of Civil Procedure Section 685.010.

47.5.2 Partial Settlements – Subject to the provisions of this Article, Contractor and the Contracting Officer may agree upon the total of partial amount to be paid to Contractor by reason of the total of partial termination of the Work pursuant to this Article. The Contract will be amended or revised accordingly and Contractor will be paid the agreed-upon amount. Nothing in that part of this Article referring to failure to reach agreement on the total amount to be paid to Contractor, shall be deemed to limit, restrict, or otherwise determine or affect the amount that may be agreed upon pursuant to this section.

#### **47.6 Payment Upon Failure to Agree**

If Contractor and the Contracting Officer fail to agree on the total amount to be paid to Contractor by reason of the termination of Work pursuant to this Article, Metro will pay Contractor the amounts determined by the Contracting Officer as follows, exclusive of any amounts already agreed upon in accordance with this Article:

47.6.1 The Total Contract Price allocable to the portion of the Work properly performed or Goods supplied by the Contractor as of the date of termination, as determined in accordance with Contract Documents FORM OF CONTRACT and COMPENSATION &

PAYMENT PROVISIONS, reduced by any sums previously paid to Contractor.

47.6.2 The cost of settling and paying Claims arising out of the termination of the Work under Subcontracts or orders as specified above, exclusive of the amounts paid or payable on account of Goods delivered or Work furnished by Subcontractors prior to the effective date of the Notice of Termination of Work under the Contract.

47.6.3 Profit on the cost of Work performed is included in the amount determined above. However, if Contractor would have sustained a loss on the entire Contract had it been completed, Contractor shall not be entitled to a profit and the settlement will be reduced to reflect the indicated rate of loss.

47.6.4 The reasonable cost of preserving and protecting property will also be paid, as well as any other reasonable costs incidental to the termination of the Work under the Contract, including those reasonable expenses incurred to determine the amounts due.

#### **47.7 Exclusions**

Except to the extent that Metro will have otherwise expressly assumed the risk of loss, the fair value (as determined by the Contracting Officer) of property that is destroyed, lost, stolen, or damaged (so as to become undeliverable to Metro or other buyer as described above) shall be excluded from the amounts paid to Contractor.

#### **47.8 Retention**

In arriving at the amount due Contractor under this Article, retention shall be made for the following:

47.8.1 The amount of any Claim that Metro may have against the Contractor in connection with the Contract; and

47.8.2 The agreed upon price for and/or proceeds from the sale of Goods or other items acquired or sold by Contractor that have not been otherwise recovered by or credited to Metro.

#### **47.9 No Damages or Anticipatory Profits**

Neither Contractor nor any Subcontractor, Supplier or any other third party shall be entitled to any damages, whether they be direct, indirect, special, anticipatory, consequential or any other damages, nor be entitled to any anticipatory profits on Work not yet performed, as a result of any termination under this Article. Payment to Contractor in accordance with this Article shall constitute Contractor's, Subcontractor's, Supplier's and any other third party's exclusive remedy for any termination hereunder.

#### 47.10 No Waiver

Notwithstanding anything contained in the Contract to the contrary, Metro's termination under this Article shall not waive any right Metro may have to claim damages, and Metro may pursue any cause of action that it may have by Law or under the Contract.

### GC-48 TERMINATION FOR DEFAULT\*

#### 48.1 Grounds for Termination for Default

Metro may terminate this Contract, in whole or in part, for default for any of the following:

- 48.1.1 Contractor fails or refuses to perform any obligation under the Contract or to perform any Work or provide any Goods within the Schedule (including the applicable notice and/or cure periods, if any) or any authorized extension thereof.
- 48.1.2 Contractor fails to perform or comply with any other provision of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms.
- 48.1.3 Contractor's violation of an order or requirement of the Contracting Officer authorized by or within the scope of the Contract.
- 48.1.4 Contractor's abandonment of the Work, which the Contracting Officer in its sole discretion may determine to exist if Contractor, without authorization ceases to perform substantial Work, which is not otherwise excused under the Contract, for **three (3) Days**.
- 48.1.5 Contractor assigns the Contract, or any portion thereof, or subcontracts any Work without prior written acceptance by the Contracting Officer.
- 48.1.6 Contractor's insolvency, bankruptcy, reorganization, or the filing of any related or similar proceeding; the appointment of a receiver or trustee for Contractor; the execution by Contractor of a general assignment for the benefit of creditors.
- 48.1.7 Failure of the Contractor to pay any amounts owing to any persons performing any portion of the Work, or the failure of the Contractor to pay its debts incurred on the Contract as they become due, providing that such failure continues for a period of ten (10) working days after written notice to Contractor by the Contracting Officer.
- 48.1.8 The attachment, levy, execution, or other judicial seizure of any portion of the Contractor's property, or any substantial portion of

the other assets of the Contractor, which is not released, expunged, or discharged within a period of **ten (10) working days**.

48.1.9 The violation or material failure to comply with any Law or order of a Government Entity, applicable to the Contractor, the Work or the Contract, including the submittal or pursuit of any false claim or any other act in violation of any Law relating to false claims.

48.1.10 Failure to indemnify any Party that the Contractor is obligated to indemnify under the Article entitled LIABILITY AND INDEMNIFICATION herein, and elsewhere under the Contract.

48.1.11 Failure to promptly correct any Deficiency, or to re-perform or replace rejected Work or Goods that do not meet Contract requirements.

48.1.12 Conviction of the Contractor or any of its officers, partners, principals, employees or any Contractor's Representative, for a violation of any Law related to Contractor's obligations under the Contract, including without limitation, in connection with the Work to be performed, Goods supplied, payments to be made or Claims submitted under the Contract.

48.1.13 Contractor's fraudulent representation or other material misrepresentation related to the Pre-qualification Application and process, or to any other representation or warranty under the Contract, including the filing of a False Claim under the California or Federal False Claim Acts.

48.1.14 Contractor's offering or giving of any improper consideration, in any form, either directly or through an intermediary, to any Metro member, officer, employee or Authorized Representative, with the intent of securing the Contract or the making of any determinations with respect to the Contractor's performance of the Work.

48.1.15 Contractor is placed on the California State Labor Commissioner's list of debarred contractors pursuant to Labor Code §1771.1 or §1771.7.

48.1.16 Contractor fails to maintain the insurance and bonds required under the Contract.

## **48.2 Insolvency and Bankruptcy Defined**

48.2.1 Insolvency – Contractor shall be deemed to be insolvent if it has ceased to pay or has admitted in writing its inability to pay its debts for at least **sixty (60) Days** in the ordinary course of business or cannot pay its debts as they become due, whether or

not a petition has been filed under the United States Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the United States Bankruptcy Code, provided that Contractor shall not be deemed insolvent if it has ceased in the normal course of business to pay its debts which are disputed in good faith and which are not related to this Contract.

48.2.2 Bankruptcy – Contractor shall be deemed to be bankrupt upon the filing of a voluntary or involuntary petition (which involuntary petition is not dismissed within sixty Days) regarding Contractor under the United States Bankruptcy Code.

### **48.3 Cure Notice**

#### 48.3.1 Cure Notice:

If the Contracting Officer determines the Contractor is in default of the Contract, the Contracting Officer will issue a Cure Notice to the Contractor describing the default.

#### 48.3.2 Failure to Cure and Notice to Surety:

If Contractor fails to cure the default within **five (5) Days** after receipt of such Cure Notice, or if the default cannot be cured within five (5) Days, Contractor fails to commence to cure within five (5) Days or fails to diligently proceed to cure or to cure the default within the time the Contracting Officer determines to be necessary, the Contracting Officer shall provide notice to the Surety of the Contractor's failure to cure or commence a cure; this notice to the Surety will be accompanied with a copy of the Cure Notice in question. The Contracting Officer may in its sole discretion demand that the Surety cure the default. Whether or not the Contracting Officer demands that the Surety cure the default, it may take any other actions it deems appropriate to cause the completion of the Work and to mitigate its damages. The Surety on the Performance Bond under the Contract shall not be entitled to take over the Contractor's performance of Work in case of termination under this Article, except with the consent of the Contracting Officer.

#### 48.3.3 Failure of Surety to Cure and Notice of Termination:

If the Contracting Officer demands that the Surety cure the default, and the Surety fails to cure the default within five (5) Days after receipt of the Cure Notice, or if the default cannot be cured within five (5) Days, and the Surety fails to commence to cure within five (5) Days and diligently proceed to cure within the time the Contracting Officer determines to be necessary, the Contracting Officer may, by written notice, terminate the Contract

or such part of the Contract as the Contracting Officer in its sole discretion deems to be in Metro's best interest.

**48.3.4 Contractor's Continuing Liability:**

Whether or not the Contract or any part thereof is terminated, Contractor shall be liable for any damages to Metro resulting from the Contractor's default.

**48.4 Contractor Obligations on Receipt of Notice**

Upon receipt of a Notice of Termination for default from Metro, Contractor shall:

48.4.1 Stop all Work under the Contract on the date and to the extent specified in the Notice of Termination.

48.4.2 Place no further orders or Subcontracts for Goods or Work except as may be necessary for completion of such portions of the Work expressly excluded from the Notice of Termination.

48.4.3 Communicate any Notice of Termination to the affected Subcontractors and Suppliers at all tiers.

48.4.4 Terminate all orders and Subcontracts that relate to the performance of Work terminated by the Notice of Termination.

48.4.5 Comply with all other requirements of the Contracting Officer as may be specified in the Notice of Termination or any subsequent notices related to the termination.

**48.5 Metro Completion of Work**

Upon Metro's termination of the Contract in whole or in part because of Contractor's default, Metro will have the right to complete the Work by whatever means and methods it deems advisable. Metro:

48.5.1 May take over the Work and complete it by contract or otherwise.

48.5.2 Will not be required to obtain the lowest prices for completing the Work, but shall make such expenditures that, in Metro's sole judgment, best accomplish such completion.

48.5.3 May take possession of and use any or all Contractor's Goods, plant, tools, Construction Equipment, and property of any kind, provided by or on behalf of Contractor for the purpose of completing the Work, or any portion thereof, and shall not be responsible to Contractor for fair wear and tear. Contractor shall have no rights in such property during its use by Metro.

48.5.4 May procure, upon such terms as Metro deems appropriate, all Goods and services necessary to complete the Work, and Contractor shall be liable for any and all excess costs incurred by Metro.

48.5.5 Charge to Contractor the expense of completing the Work together with a reasonable charge for engineering, managerial, and administrative services, as certified by Metro. Metro will deduct said amount out of such monies that may be due or may at any time thereafter become due the Contractor.

48.5.6 Charge all other excess costs to Contractor and deduct these costs from payments otherwise due at that time or thereafter.

If any costs and/or expenses incurred by Metro are in excess of the sum which otherwise would have been payable to Contractor, then Contractor shall promptly pay the amount of such excess to Metro upon notice of the excess so due.

#### **48.6 Transfer of Title and Delivery of Work**

If the Contract is terminated as specified in this Article, the Contracting Officer may direct the Contractor to, and Contractor shall, transfer title to and deliver all designated Goods, Equipment, documents, Work in progress, tools, dies, jigs, fixtures, plans, drawings, information, and other items that Contractor has produced or acquired for the terminated portion of the Contract and would have been required as furnished to Metro if the Contract had been completed.

#### **48.7 Preservation of Metro Property**

Contractor shall, at its sole expense, protect and preserve property in its possession in which Metro has an interest.

#### **48.8 If Contractor Not In Default**

If, after the Notice of Termination for Default, it is determined that Contractor was not in default, the termination shall be deemed to have been effected for the convenience of Metro in accordance with the Article entitled TERMINATION FOR CONVENIENCE OF Metro herein, and adjustment shall be made as provided in that Article.

#### **48.9 No Damages or Anticipatory Profits**

Neither the Contractor, nor any Subcontractor, Supplier or third party shall be entitled to any damages whether they be direct, indirect, special, anticipatory, consequential, or any other damages, nor be entitled to any anticipatory profits on Work not yet performed, as a result of any termination under this Article. Payment to Contractor, if applicable, in accordance with this Article shall constitute Contractor's, Subcontractor's,

Supplier's and any other third party's exclusive remedy for any termination hereunder.

#### **48.10 Metro Damages**

In the event Metro suffers damages as a result of the Contractor's breach or failure to perform an obligation under the Contract, Metro shall (subject to any limitations on liability under the Contract) be entitled to recover such damages from the Contractor regardless of whether that breach or failure is or becomes an Event of Default

#### **48.11 Remedies Not Exclusive**

The rights and remedies of Metro provided in this Article are in addition to any other rights and remedies provided by Law or under the Contract.

### **GC-49 COOPERATION IN EVENT OF TERMINATION**

#### **49.1 General**

49.1.1 Contractor understands and agrees that Metro has obligations that it cannot satisfy without use of the completed Work, and that a failure to satisfy its obligations under this Contract could result in irreparable damage to Metro and the persons and entities it serves. Therefore, Contractor agrees that in the event of any termination of all or any part of this Contract for any reason, Contractor shall fully cooperate with Metro in the transition of the Work to Metro or to a new contractor or provider of Goods and services, toward the end that there be no interruption of day-to-day operations due to the unavailability of the completed Work, or to related or existing facilities to the extent they are impacted by the termination of this Contract, during such transition.

49.1.2 Contractor shall have no right to withhold or limit any of the Work or any transition services on the basis of any alleged breach of this Contract by Metro, other than a failure by Metro to timely pay the amounts due based upon a properly submitted and approved invoice for Work rendered during the transition period or the amounts due for such transition services under this Article. Notwithstanding the provisions of the Article entitled DISPUTES herein, Metro will have the right to seek specific performance of this Article in any court of competent jurisdiction, and Contractor hereby waives any defense that damages are an adequate remedy. Compliance with this Article by either Party shall not constitute a waiver or estoppel with regard to any rights or remedies available to the Parties.

#### **49.2 Termination Transition Plan**

49.2.1 Upon the written direction from Contracting Officer included in the Notice of Termination, Contractor shall develop a Termination Transition Plan, to be completed within ten (10) Days after such

Notice. The Termination Transition Plan shall be subject to Metro's Acceptance.

49.2.2 If Contractor has not submitted, or Metro has not accepted, a Termination Transition Plan by the effective date of the termination of this Contract, the Contracting Officer may direct the Contractor to continue to perform Work in accordance with Contract requirements to the extent required by the Contracting Officer. This Section shall survive the termination of the Contract.

### **49.3 Acts Upon Termination**

49.3.1 Contractor shall:

- A. Meet with Metro' Authorized Representative as soon as practicable after a Notice of Termination has been given, to discuss the Termination Transition Plan or any potential modifications to the then most current Termination Transition Plan; and
- B. Use its best efforts to assist Metro in effecting a transition of the Work, in accordance with industry best practices, to Metro or another contractor chosen by Metro.

49.3.2 Provided that Metro is current in payment of the Contract amounts owed by Metro to Contractor (except for disputed amounts and withholds), Contractor shall continue to provide Work as well as transition services for a period defined in the Termination Transition Plan. In addition to the Work required of Contractor as set forth in this Contract, the transition services shall include, at a minimum, maintaining current data and records, providing services until transition to Metro or to a new contractor, providing on-site assistance, cooperating with Metro or its designated contractor, and providing such other services as shall be necessary or appropriate to facilitate, without interruption to the Work, the orderly transition of Work to Metro or its new contractor in accordance with industry best practices. If Contractor is providing any Work hereunder at the time of such transition utilizing any property or services of a Subcontractor or Supplier, Contractor shall, at the request of the Contracting Officer, assign such Subcontract to Metro.

## **GC-50 VALUE ENGINEERING PROPOSALS\***

### **50.1 Value Engineering Proposals (VEP) – General**

Contractor may submit to Metro, in writing, value engineering proposals (VEPs) for modifying the requirements of any Metro-furnished Contract Document for the purpose of reducing costs. The VEP shall not impair the essential functions or characteristics of the Project, including service

life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

## **50.2 Value Engineering Proposals (VEP) – Contents**

50.2.1 VEPs shall contain the following information:

- A. A general description of the original Contract requirements for the Work and the proposed changes;
- B. An itemized list of all the proposed modifications to the Contract Documents;
- C. An itemized list of all Work and Goods affected by the VEP;
- D. A detailed estimate of the costs based on the original Contract requirements and based on the proposed Changes;
- E. Any requested time extensions or reductions to the Contract Time or Contract Milestones;
- F. Statement that there will be a minimum twenty-five thousand US Dollars (**\$25,000**) net savings; and
- G. The date by which Contractor requires a decision from the Contracting Officer concerning the VEP.

50.2.2 The detailed estimate shall be supported by full and completely detailed estimates of costs by Contractor and its Subcontractors. The estimates of costs shall be determined in the same manner as if the Work were to be paid as a Change pursuant to the provisions in the Article entitled CHANGES herein. Contractor shall, upon the request of Metro, permit inspection of its original Bid/Proposal estimate, Subcontracts and purchase orders relating to the VEP.

## **50.3 Value Engineering Proposals (VEP) – Metro Review**

Metro will not be liable for Delays or damages to Contractor resulting from any failure of Metro to accept or act upon any VEP submitted pursuant to this Article. If a submitted VEP is similar to a Change already under consideration by Metro, Metro may make such Change pursuant to the Article entitled CHANGES herein without respect to the VEP.

## **50.4 Value Engineering Proposals (VEP) – Metro Approval**

50.4.1 Metro may accept, in its sole discretion, in whole or part, the VEP, and determine the estimated net savings. Until a Change Order is

issued based on a VEP, Contractor shall remain obligated to perform in accordance with the Contract Documents.

50.4.2 Unless Contractor has received specific written permission from Metro to proceed with VEP work pending approval of a VEP, Contractor shall not have the right to proceed with such work until the VEP. Furthermore, if Contractor proceeds with any work that might have been the basis for a VEP price increase based on savings in Metro's right of way costs, without first submitting a VEP, Contractor shall be deemed to have performed such work as a volunteer and shall not have the right to later submit a VEP hereunder.

## 50.5 Contract Price Adjustment

If Metro accepts a value engineering proposal (VEP) submitted by Contractor pursuant to this Article, the Total Contract Price shall be adjusted in accordance with the following:

50.5.1 In determining the Estimated Net Savings, Metro may disregard the original contract bid/proposal estimates for any related Work or Goods, which in the judgment of Metro, do not represent a fair measure of the value of the Work or Goods.

A. The term “**Estimated Net Savings**” as used in this Section shall mean:

1. The difference between the cost of performing the Work according to the Contract Documents and the actual cost to perform it according to the proposed change; less
2. The costs of studying and preparing the VEP as proven by Contractor and approved by Metro (in accordance with the Change Order procedures set forth herein); less
3. Any additional costs incurred by Metro resulting from the VEP.

50.5.2 Contractor is not entitled to share in either Collateral Savings or Future Contract Savings.

A. The term “**Collateral Savings**” as used in this Section shall mean those measurable net reductions in Metro's costs resulting from the VEP, including maintenance costs and cost of Metro-furnished property.

B. The term “**Future Contract Savings**” as used in this Section shall mean reductions in the cost of performance of future contracts for essentially the same item resulting from a VEP submitted by Contractor.

50.5.3 The Total Contract Price shall be reduced by an amount equal to the sum of:

- A. One hundred percent (**100%**) of any additional costs incurred by Metro resulting from the VEP; plus
- B. Fifty percent (**50%**) of the Estimated Net Savings (as the term is defined in Paragraph 50.5.1 of this Article), provided that Contractor's profit shall not be reduced by the deduction of Estimated Net Savings.

50.5.4 Contractor's share of any VEP cost savings shall be payable at such time as payments would have been made for the Work which is the subject of the VEP had the VEP not been implemented.

## **50.6 Modifications – Metro Issuance**

If the value-engineering proposal (VEP) is accepted by Metro, in whole or in part, Metro will accept by execution of a Modification, which shall specifically state that it is executed pursuant to this Article. Such Modification shall identify all the Changes in the Contract Documents, Contract Time, and Milestones, and specify the adjustment in the Contract Price.

## **50.7 Change Orders – Contract Review**

Contractor shall either accept or reject any proposed Modification executed by Metro pursuant to this section within **five (5) working days** of its receipt date from Metro. If the Contractor does not reject the proposed Modification in writing within the five (5) working days, the Modification will be deemed accepted by Contractor, and shall become a bilateral Modification to the Contract as if the Modification had been executed by Contractor. Contractor's acceptance, or deemed acceptance, of any Modification executed by Metro pursuant to this Article shall be unconditional and the compensation stated therein shall constitute full compensation for all Work and Goods covered by the Modification.

## **50.8 Use of Value Engineering Proposals (VEPs) by Metro**

All approved or disapproved VEPs will become the property of Metro, and shall contain no restrictions imposed by Contractor on their use or disclosure. Metro retains the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the VEP on any other or subsequent projects without any obligation to Contractor. This provision is not intended to deny rights provided by Law with respect to patented materials or processes.

## **GC-51 AUDIT\***

Metro's rights, Contractor's responsibilities, and other requirements with respect to Audit shall be as provided in the Article entitled AUDIT AND ACCESS TO RECORDS in Contract Document REGULATORY REQUIREMENTS, the Audit provisions in the Contract Document SPECIAL PROVISIONS, and the Article entitled AUDIT REQUIREMENTS FOR CONTRACT MODIFICATIONS AND PROVISIONAL SUM AUTHORIZATIONS in the Contract Document COMPENSATION AND PAYMENT.

## **GC-52 ASSIGNMENT\***

### **52.1 Consent**

52.1.1 Contractor or its Surety shall not assign, transfer, convey, delegate or otherwise dispose of the Contract or the right, title, or interest in it or any part of it (collectively "**Assign**" or "**Assignment**") without the prior written consent of Metro.

52.1.2 Any attempted Assignment without prior written consent of Metro shall be null and void.

52.1.3 No right under the Contract shall be asserted against Metro, in Law or in equity, by reason of any Assignment of the Contract, or any part thereof, unless authorized by Metro as specified in this Article.

### **52.2 Setoffs on Assignment Proceeds**

Any Assignment of proceeds of the Contract shall be subject to all proper setoffs and withholdings in favor of Metro and to all deductions specified in the Contract. All monies withheld, whether assigned or not, shall be subject to being used by Metro for completion of the Work, pursuant to the terms of the Contract. If Metro consents to such Assignment of monies, Contractor or the Surety shall give written notice thereof to Metro at least **ten (10) Days** before payment is due.

### **52.3 Continuing Responsibility**

Contractor's Assignment or delegation of any of its Work under the Contract shall be ineffective to relieve the Contractor of its responsibility for the Work assigned or delegated, unless Metro, in its sole discretion, has approved such relief from responsibility.

### **52.4 Assignment of Certain Legal Rights**

Contractor hereby agrees that the provisions of Public Contract Code §7103.5(b) are applicable to the Contract, and which provides as follows:

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This Assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

## **52.5 Assignment and Assumption Upon Completion and Final Acceptance of Civil/Construction Work**

52.5.1 Upon completion of the Civil/Construction work and Final Acceptance of that work by Metro, the responsibility for operations and maintenance of the work under this Contract may be duly assigned to and assumed by the Subcontractor, Joint Venture member, or other firm identified in the Contractor's proposal in response to the RFP as having responsibility for operations and maintenance of the Project. Any such assignment shall not relieve the Contractor of its contractual obligations for warranty, indemnification, insurance, and/or any other liabilities or responsibilities under the Contract associated with civil/construction work (including the supply of Equipment and Systems).

52.5.2 Any assignment under this section shall be implemented by a written Assignment Agreement between Metro and the firm to be responsible for operations and maintenance work. The Assignment Agreement shall specify the terms and conditions of this Contract which will apply to and be binding upon such firm in the performance of the operations and maintenance work, and may establish other terms and conditions applicable to that work, including any necessary and appropriate revisions to the amount and/or structure of compensation for that work.

52.5.3 Any request by the Contractor to assign the operations and maintenance work shall be submitted to Metro in writing no later than ninety (90) Days before the Substantial Completion Deadline.

52.5.4 Metro reserves the right, in its consideration of any request for an assignment under this section, to require the firm to be responsible for the operations and maintenance work to provide such evidence of financial capacity and technical qualifications to perform the work as Metro may require. A determination as to whether to enter into such an assignment shall be in the sole discretion of Metro.

## GC-53 PAYMENT OF PREVAILING WAGES

The Work described by this Contract is subject to payment of prevailing wages as determined by the State of California, including but not limited to the California Labor Code Sections 227, 1021, and 1720 through and including 1861, together with all relevant portions of the California Code of Regulations, including Section 16001 et. seq.; and by Federal law, including but not limited to the Davis-Bacon Act and Title 29 Code of Federal Regulations. In the event of a conflict between the prevailing wage, as determined by the State of California, and the prevailing wage, as determined by the US Department of Labor, the Contractor shall pay at least the higher of the two prevailing wages. All pertinent federal and state statutes and regulations, including but not limited to those referred to above are hereby incorporated by reference into this document as though set forth in their entirety.

The prevailing wage rate equals the basic rate plus fringe benefits. It is the Contractor's responsibility to select the correct construction trade classification and to ensure that the correct wage rate is paid. Contractor shall be sure to verify the wage rates for the classification(s) Contractor intends to employ on the project. A wage rate for an unlisted classification must be requested from the Division of Labor Statistics and Research at (415) 703-4774 or at the following website:

<http://www.dir.ca.gov>

For Federal: [www.access.gpo.gov/davisbacon](http://www.access.gpo.gov/davisbacon)

Note: Use Higher of State or Federal if contract is federally assisted.

## GC-54 STANDARD WORK DAY

Standard Work Day In accordance with State Law, **eight (8) consecutive working hours**, allowing a maximum of one (1) non-working hour for lunch and breaks, unless otherwise agreed to by the Contractor and Metro in writing.

54.1 Any provisions applicable to a Standard Work Day set forth in the Contract Document REGULATORY REQUIREMENTS will apply to this Article, and are hereby incorporated by reference.

54.2 Unless explicitly specified otherwise herein, a Standard Work Day will be pursuant to the provisions set forth in the Contract Document REGULATORY REQUIREMENTS.

54.3 Definition – Standard Work Day and Shifts

Standard Work Day is defined as an eight (8) hour work period determined by the Contractor and approved by Metro, and for construction Work commencing no earlier than 7:00 a.m. and ending no later than 7:00 p.m.

## **GC-55 STANDARD WORK WEEK**

Standard Work Week      **Five (5) Standard Work Days** (Monday through Friday).

- 55.1 Any provisions applicable to a Standard Work Week set forth in the Contract Document REGULATORY REQUIREMENTS will apply to this Article, and are hereby incorporated by reference.
- 55.2 Unless explicitly specified otherwise herein, a Standard Work Week will be pursuant to the provisions set forth in Contract Document GENERAL CONDITIONS.
- 55.3 Definition – Standard Work Week  
A Standard Work Week is defined as a five (5) work day period, typically commencing on Monday and ending on Friday.

## **GC-56 RIGHTS IN CONTRACTOR-FURNISHED DOCUMENTS, SHOP DRAWINGS, SAMPLES, TECHNICAL DATA, PATENTS AND COPYRIGHTS\***

### **56.1 Hardcopy Document Submittals**

Hardcopy submittals of any of the documents listed in this Section, which are provided to Metro by the Contractor, Subcontractors or Suppliers of any tier pursuant to the Contract, are the property of Metro, and thus Metro may use and disclose such submittals in any manner and for any purpose that Metro sees fit. The only exceptions to the above provision are those submittals listed which are delivered under the Contract marked as "Confidential", "Trade Secret", or "Proprietary", in accordance with the Article entitled PUBLIC RECORDS ACT herein.

Submittals of documents affected by the above provision include the following:

56.1.1 Shop Drawings;

56.1.2 Construction Documents;

56.1.3 Contractor's Design Documents; and

56.1.4 AFC Design Documents.

## 56.2 Electronic Document Submittals

56.2.1 When Contractor makes any hardcopy submittals of any of the documents listed in the above Section entitled HARDCOPY DOCUMENT SUBMITTALS of this Article, Contractor shall also provide Metro with an electronic copy of the applicable document(s), in the proper file format specified in the Contract or as otherwise agreed upon in writing between the Contractor and Metro.

56.2.2 The same rights reserved by Metro on hardcopy submittals (as described in the above Section entitled HARDCOPY DOCUMENT SUBMITTALS of this Article, shall also extend to the electronic copies of those same documents.

## 56.3 Samples

When specified or requested by Metro, typical samples of Goods, properly tagged with: Name of Work; Contractor; Goods; Supplier; Location of Work, and; Date of submittal, shall be submitted in triplicate by the Contractor for acceptance by Metro. Samples shall be of size indicated in the Contract Documents, or where no size is indicated, shall be of sufficient size to permit evaluation. Samples shall be submitted sufficiently in advance of the time when they are to be used so that any rejection thereof will not delay the accepted construction Schedules. Allow **ten (10) working days** for checking and notification from Metro. Accepted samples will be so labeled and dated, and a transmittal of acceptance will be sent to the Contractor. One accepted sample will be kept at Metro.

## 56.4 Technical Data

56.4.1 **Technical Data**, as used herein, means any form or format of technical writing, pictorial reproductions, drawings or other graphic representations, and documents of a technical nature, including computer software and program listings, which are developed or required to be delivered pursuant to the Contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration. Technical Data includes, but is not limited to:

- A. Manuals or instructional information prepared for installation, operation, maintenance, or training purposes;
- B. Data pertaining to items, components, or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements; and

- C. Computer and microprocessor software documentation including program design language or pseudo-code listings, fully annotated source code and machine level listings.

56.4.2 Except as limited by the Article entitled PUBLIC RECORDS ACT in the Contract Document REGULATORY REQUIREMENTS, Metro will have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so, for the purpose of operating, maintaining, procuring or modifying the Work, or the Transit System of which the Work is a part, or any Equipment or other items supplied by the Contractor.

## **56.5 Patents and Copyrights**

56.5.1 Metro and its Authorized Representatives and employees acting within the scope of their official duties shall have a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit, all technical data covered by copyright, patent or other proprietary rights supplied for the Contract. Contractor shall obtain the written permission of the owner of the patent, copyright or other proprietary right for Metro to use such technical data in the manner herein described.

56.5.2 Contractor warrants that the Goods used on and/or incorporated into the Work shall be delivered free of any rightful claim of third party for infringement of any United States patent, copyright or other proprietary right. If a suit or proceeding based on a claimed infringement of a patent, copyright or other proprietary right is brought against Metro, and/or its Authorized Representatives, Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by Metro, and bear all damages and cost associated therewith.

56.5.3 Contractor shall bear all costs arising from the use of patented Goods and/or processes used on and/or incorporated into the Work. When use of these Goods and/or processes are judged to be an infringement and their use is banned, Contractor, at its own expense, shall with the concurrence of Metro, do one of the following:

- A. Secure for Metro the right to continue using said Goods and/or processes by suspension of the injunction or by procuring a license(s);
- B. Replace said Goods and/or process with non infringing Goods and/or processes;
- C. Modify said Goods and/or processes so that they become Non-infringing; or

D. Remove said Goods and/or processes and refund the sum paid therefore without prejudice to any other rights of Metro.

56.5.4 Contractor shall promptly submit to Metro a reasonably detailed written report on each claim of patent or copyright infringement, based on its knowledge of the performance of the Contract. In the event of any claim against Metro on account of any alleged patent or copyright infringement arising out of the performance of the Contract, or out of the use of any Goods furnished or Work performed hereunder, Contractor shall submit to Metro all evidence and information pertaining to such claim that is in its possession. Such evidence and information shall be supplied at the Contractor's expense.

## **56.6 Metro Design**

The preceding Section shall not apply to any Goods manufactured to the detailed design of Metro contained in the Contract Documents.

## **GC-57 SOFTWARE LICENSING AGREEMENT AND PROVISIONS FOR USE**

57.1 The terms used in this article are defined as follows:

57.1.1 Software: The computer programs and products required to be developed and delivered by the Contractor to Metro under the Contract, in object code (but excludes commercial software developed at private expense and not in the public domain).

57.1.2 Source Code Materials: A human-readable copy of the Software and related materials and documentation generated in preparing the Software, including programmer notes, flow charts, logic diagrams, and listings.

57.1.3 Documentation: Systems and user manuals sufficient to enable a person skilled in the applicable art to compile, produce, operate, maintain, and support the Software for its intended purposes.

57.2 The Contractor shall deliver to Metro the Software, Source Code Materials, and Documentation, in such tape, disk, or hardcopy format as Metro may designate.

57.2.1 The Contractor (or its Subcontractor if applicable) shall retain ownership of the Software, Source Code Materials, and Documentation with the right to exploit the same, subject to Metro's rights as herein provided. Metro shall place such copyright notices affirming the Contractor's ownership rights as the Contractor may reasonably require on all materials licensed hereunder which are reproduced by Metro.

57.2.2 The Contractor hereby grants to Metro (or if the Software is owned by a Subcontractor, shall require its Subcontractor to grant to Metro) a royalty-free, paid-up, non-exclusive license, in perpetuity, to use, duplicate, and disclose the Software, Source Code Materials, and Documentation, and to make modifications of and enhancements to the Software, and permit others (who sign standard nondisclosure agreements) to do the same, but only for governmental purposes and not for any commercial purposes.

57.2.3 Metro shall hold the Software, Source Code Materials, and Documentation in confidence, shall use and disclose them only as expressly authorized herein or as required by law and only to its employees, agents or sublicensees to whom disclosure is necessary or appropriate for the performance and exercise of its rights hereunder, and shall take reasonable steps to ensure that unauthorized persons will have no access to them.

57.2.4 The Contractor warrants that the Software will perform according to the specifications set forth in the Contract, that it is owner of the Software, Source Code Materials, and Documentation that it has the right to convey and grant the license herein granted to Metro, and that Metro's use thereof as herein contemplated will not infringe any third party's proprietary rights in the United States; provided that if the Software is owned by a Subcontractor, the Contractor shall obtain the above described warranties from the Subcontractor and shall assign and deliver all such warranties to Metro, and all such warranties shall run directly to and be enforceable by the Contractor and Metro. The foregoing warranties shall not apply to the extent the Software is modified by Metro.

57.2.5 Upon Metro's request the Contractor shall generate modifications of and enhancements to the Software not required by the Contract (or if the Software is owned by a Subcontractor, shall require its Subcontractor to take such actions), at the Contractor's (or Subcontractor's, if applicable) rates charged for comparable Work to its most favored customers.

## **GC-58 WAIVER OF CONDITIONS\***

Failure of Metro to enforce at any time, or from time to time, any provision of the Contract shall not be construed as a waiver thereof.

No waiver by Metro of any breach or default of any provision of the Contract shall constitute a waiver of any other breach or of such provision.

Failure or delay by Metro to insist upon strict performance of any term or condition of the Contract, or to exercise any right or remedy provided herein or by Law, shall not be deemed a waiver of any right of Metro to insist upon strict

performance of Contractor's obligations set forth in the Contract, or any of its rights or remedies as to any prior or subsequent default hereunder.

## **GC-59 CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC\***

### **59.1 Approval of Copy**

Prior to publication, the Contractor shall submit to Metro for its review and approval all Metro related copy it proposes to use for advertising or public relations purposes. Contractor shall not allow Metro related copy to be published in its advertisements and public relations programs prior to receiving such approval. Contractor shall ensure that all published information is factual and that it does not in any way imply that Metro endorses the Contractor's firm, services or products.

### **59.2 Contact With News Media**

Contractor shall refer all inquiries from the news media relating to the Contract or the Work to Metro, and shall comply with the direction of Metro's Authorized Representative for Media Relations regarding statements to the media.

### **59.3 Coordinating With the Public**

Contractor shall designate a staff person acceptable to Metro to keep Metro informed of all impacts on the community resulting from the Work.

### **59.4 Complaints**

If Contractor receives a complaint from a member of the community, Contractor shall inform Metro promptly and comply with the direction of Metro.

### **59.5 Tours**

Metro will notify Contractor at least **five (5) working days** in advance of a media related site visit to the construction area.

### **59.6 Notices to the Public**

Contractor shall provide written notice to the community that it will be impacted by any event (e.g., for utility shutoffs, road closures, etc.) at least **five (5) Days** prior to the anticipated event. Contractor shall submit six (6) copies of the proposed notice to Metro's Public Affairs staff at least **ten (10) Days** prior to the anticipated event.

## **GC-60 CONFIDENTIALITY\***

### **60.1 Duty of Confidentiality**

Contractor agrees that for and during the entire term of the Contract, any information, data, figures, records, findings and the like received or

generated by the Contractor in the performance of the Contract, shall be considered and kept as the private and privileged records of Metro and will not be divulged to any person, firm, corporation, or other entity except on the direct authorization of Metro. Further, upon termination of the Contract for any cause, Contractor agrees that it will continue to treat as private and privileged any information, data, figures, records and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Metro.

## **60.2 No Publication**

The Contractor shall not publish information or technical data acquired or generated by the Contractor in performing the Contract until such time as such information or technical data is released in published reports by Metro.

## **60.3 Effects of Violation**

**Failure to follow the terms of this agreement shall constitute a breach of the underlying contract and will subject the Contractor, regardless of whether the person responsible for the breach is a Contractor officer, a Contractor employee or a Contractor agent, to damages in accordance with the terms of the Contract and any other remedies available to Metro at law or equity. Violation of this agreement shall require the Contractor to fully indemnify, defend and hold harmless Metro in the event litigation must be filed to recover and protect any improperly disclosed Documents.**

## **GC-61 CONFLICT OF INTEREST\***

### **61.1 Prohibition on Conflicts**

Contractor warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for Contractor, to solicit or secure the Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach of this warranty, or violation of any other prohibition in this Article, Metro shall have the right to terminate the Contract for failure of Contractor to fulfill its Contract obligations.

### **61.2 Organizational Conflicts**

61.2.1 If the Project is funded with assistance from the Federal Transit Administration, this Contract is subject to the restrictions regarding organizational conflicts of interest promulgated by the Federal Transit Administration in FTA Circular 4220.1F dated November 1, 2008 or successor circulars.

61.2.2 If the Project is funded with assistance from the Federal Highway Administration, this Contract is subject to the restrictions regarding organizational conflicts of interest promulgated by the Federal Highway Administration in 23 CFR Part 636.

61.2.3 If the Project is carried out under the Design-Build Demonstration Program established under Public Contract Code Sections 6800-6813, this Contract shall be subject to the Organizational Conflicts of Interest Policy of the California Transportation Commission.

61.2.4 The Contractor shall not provide assistance to Metro under this Contract, or engage in any other activity, that would constitute or create an organizational conflict of interest as described in the above cited Federal or State requirements.

## **GC-62 ENGLISH REQUIREMENTS\***

At all times, all Contractor personnel on site must have sufficient knowledge of the English language to comprehend safety related directions and requirements. At all times the Contractor shall have a lead representative on site who has sufficient comprehension of the English language to read, write, speak and understand all job related directions and discussions.

## **GC-63 AGENT TO ACCEPT SERVICE**

Contractor shall maintain within Los Angeles County a duly authorized Agent to accept service of legal process ("**Authorized Agent**") on its behalf, and shall keep Metro advised of such Authorized Agent's name and address during the entire Contract Time and for **three (3) years** thereafter, or as long as the Contractor has warranty obligations under the Contract, whichever period terminates later. The Authorized Agent on the Effective Date of the Contract is identified in the Article entitled NOTICE AND SERVICE THEREOF in Contract Document SPECIAL PROVISIONS. If at any time Contractor does not meet the above requirement to maintain and identify to Metro its Authorized Agent, Contractor agrees that the Secretary of State of the State of California shall be Contractor's Authorized Agent for service of legal process.

## **GC-64 GOVERNING LAW\***

The Contract shall be governed by and interpreted in accordance with the laws of the State of California, and to the extent applicable, by the laws of the United States. By entering into the Contract, the Contractor consents and submits to the jurisdiction of the Courts of the State of California over any action at Law, suit in equity, or other proceeding that may arise out of the Contract.

## **GC-65 SEVERABILITY\***

If any Article, Section, Paragraph, Subparagraph, sentence, clause, phrase or any other provision ("Provision") contained in the Contract is determined,

declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable ("Determined Unenforceable"), this shall not affect the other Provisions of the Contract, which shall remain in full force and effect as if the Provision Determined Unenforceable was not originally contained in the Contract.

**END OF GENERAL CONDITIONS**

**GENERAL CONDITIONS**

**EXHIBIT SA-1 - CONDITIONAL WAIVER AND RELEASE UPON PROGRESS  
PAYMENT**

Upon receipt by the undersigned of a check from \_\_\_\_\_  
(Maker of Check)

in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_  
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of \_\_\_\_\_ located at  
(Owner)

\_\_\_\_\_ (Job Description)

to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to \_\_\_\_\_

(Your Customer)  
through \_\_\_\_\_, only and does not cover any retentions retained before or after the  
(Date)

release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Original Contract Price	\$ _____
Executed Changes to date	\$ _____
Total Contract Price to date	\$ _____
Total Earned to date	\$ _____
Total Payments Received to date	\$ _____
Retention withheld to date	\$ _____
Any other withholdings to date	\$ _____

Dated: \_\_\_\_\_ Company Name: \_\_\_\_\_

Signed by: \_\_\_\_\_ (Print Name) \_\_\_\_\_ (Print Title)

**GENERAL CONDITIONS**

**EXHIBIT SA-2 - UNCONDITIONAL WAIVER AND RELEASE UPON  
PROGRESS PAYMENT OR FINAL PAYMENT**

The undersigned has been paid and has received a progress payment, or final payment, in the sum of \$ \_\_\_\_\_ for labor, services, equipment, or material furnished to \_\_\_\_\_ on the job of \_\_\_\_\_

located at \_\_\_\_\_ and does hereby release any  
(Your Customer) (Owner)  
(Job Description)

mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to \_\_\_\_\_ through \_\_\_\_\_ only and does not cover any retentions retained before or after the (Date)

release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress or final payment.

Original Contract Price	\$ _____
Executed Changes	\$ _____
Total Contract Price	\$ _____
Total Payments Received to Date	\$ _____
Total Retention Amount	\$ _____
Other withholdings, Total	\$ _____

Dated: \_\_\_\_\_ Company Name: \_\_\_\_\_

Signed by: \_\_\_\_\_ (Print Name) \_\_\_\_\_ (Print Title)

**NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.**

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## REGULATORY REQUIREMENTS

### RR-01 ADMINISTRATIVE CODE \*

#### A. Applicability

This Article applies to all contracts.

#### B. Metro Administrative Code

Contractor warrants and represents that it has read and understands Title 4, Procurement, and Title 5, Ethics, of the [Metro Administrative Code](#) (hereinafter "Administrative Code" - available at [www.metro.net/images/MTA Administrative Code Enactment.pdf](http://www.metro.net/images/MTA_Administrative_Code_Enactment.pdf)), and will comply with each and every one of those requirements in accordance with their terms to the extent that they are applicable to contractors doing business with Metro. All definitions used in the Administrative Code are hereby incorporated herein as though fully set forth.

Without reducing or affecting its obligation to comply with any and all provision of the Administrative Code, as applicable, Contractor specifically warrants, represents and covenants that it will:

1. Comply with:
  - a. Chapter 5-20, Contractor Code of Conduct;
  - b. Chapter 5-25, Lobbying the Metro; and
  - c. Chapter 5-35, Metro Conflict of Interest Code, and
2. Not induce, attempt to induce, or solicit:
  - a. Board members to violate Chapter 5-10;
  - b. Metro employees to violate Chapter 5-15;
  - c. Metro Financial employees to violate Chapter 5-30: or
  - d. Either Board members, Metro employees or Metro Financial employees to violate any other provision of the Administrative Code.

#### C. Compliance with §§1090 et. seq. and §§87100 et. seq. of the California Government Code

Contractor shall comply with all applicable provisions of §§1090 et. seq. and §§87100 et. seq. of the California Government Code. Without reducing or

affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

1. Contractor shall not cause or permit any member, officer, or employee of Metro to have any financial interest in the Contract;
2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with Metro;
3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of Metro has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to Metro.

#### **D. Campaign Contributions**

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of Metro's Board of Directors in violation of the California Government Code §§84300 et seq or of the Administrative Code. Contractor shall submit a Certification of Campaign Contributions with all COs of two hundred thousand dollars (\$200,000) or more.

#### **E. Environmental Management System (EMS) Policy**

Contractor represents that during the performance of the Contract it will assist Metro in achieving the principles of Metro's EMS Policy, available at [Environmental Management System \(EMS\) Policy](#) and Contractor further commits that it shall adhere to the applicable EMS Policy principles in its choice of means and methods in the performance of the Work.

#### **F. Alcohol and Drug-Free Workplace**

This Contract is subject to Metro's Alcohol and Drug-Free Workplace Requirements set forth in the Metro ALCOHOL AND DRUG-FREE WORKPLACE MANUAL.

### **RR-02 DISCRIMINATION \***

#### **A. Applicability**

This Article applies to all contracts.

- B.** In connection with the performance of Work provided for under this Contract, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation, or age, discriminate or permit discrimination

against any person or group of persons in any manner prohibited by Federal, State or local laws.

**RR-03 WHISTLEBLOWER REQUIREMENTS \***

**A. Applicability**

This Article applies to all contracts.

- B.** Contractor shall not adopt any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or Federal regulation; nor shall Contractor retaliate against an employee for taking such actions as set forth in the California Labor Code §1101 et. seq.

**RR-04 PUBLIC RECORDS ACT \***

**A. Applicability**

This Article applies to all contracts.

- B.** Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Metro's business, including all information and documents submitted by Contractor ("**Records**"), shall become the exclusive property of Metro and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Metro's use and disclosure of its records are governed by this Act. Metro will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to Metro. Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C.** In the event of litigation concerning the disclosure of any Records, Metro's sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Metro harmless from all costs and expenses including attorney's fees in connection with any such action.

**RR-05 AUDIT AND ACCESS TO RECORDS**

**A. Applicability**

This Article applies to all federally funded contracts.

- B.** Contractor agrees to provide Metro, the Secretary of Transportation, the FHWA/FTA, the Comptroller General of the United States, or any of their

authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- C. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Metro, the Secretary of Transportation, the FHWA/FTA, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. Contractor shall permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Metro, the FTA/FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

**RR-06 FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES\* (NOT USED)**

**RR-07 ENERGY CONSERVATION REQUIREMENTS**

**A. Applicability**

This Article applies to all federally funded contracts.

- B. Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 USC §6321 et seq.

**RR-08 CIVIL RIGHTS REQUIREMENTS \***

**A. Applicability**

This Article applies to all federally funded contracts.

**B. Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA/FHWA may issue.

**C. Equal Employment Opportunity**

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. , (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA/FHWA may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor shall refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor shall comply with any implementing requirements FTA/FHWA may issue.

(c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor shall comply with any implementing requirements FTA may issue.

**RR-09 NO GOVERNMENT OBLIGATION TO THIRD PARTIES \***

**A. Applicability**

This Article applies to all federally funded contracts.

- B.** Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to Metro, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract.

Contractor shall include this Article in each Subcontract and shall not modify the Article, except to identify the Subcontractor who will be subject to its provisions.

**RR-10 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS \***

**A. Applicability**

This Article applies to all federally funded contracts.

- B.** The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, shall apply to actions pertaining to this Contract. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining this Contract or the FTA/FHWA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- C.** Contractor also acknowledges that this Contract is connected with a project that is financed in whole or in part with Federal assistance, and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 on Contractor, to the extent the Federal Government deems appropriate.
- D.** Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA/FHWA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

**RR-11           SUSPENSION AND DEBARMENT\***

**A. Applicability**

This article applies to federally funded contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

- B.** This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor shall verify that none of the Contractor, its principals, as defined at 49 CFR 29.105, or affiliates, as defined at 49 CFR 29.105, are excluded or disqualified as described in 49 CFR 29, Parts B, C, or D.

Contractor shall comply with 49 CFR 29, Subparts A - D and shall include the requirement to comply with 49 CFR 29, Subparts A - D in any lower tier covered transaction it enters into.

- C.** By entering into this Contract, Contractor certifies that it shall comply with the requirements of 49 CFR 29, Subparts A - DC throughout the period of this Contract.

This certification is a material representation of fact relied upon by Metro. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to Metro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

**RR-12           RECYCLED PRODUCTS**

**A. Applicability**

This Article applies to federally funded operations/management, construction, or materials and supplies contracts for items designated by the Environmental Protection Agency, when procuring \$10,000 or more per year.

- B.** To the extent practicable and economically feasible, a competitive preference shall be given for products and services that conserve natural resources and protect the environment and are energy efficient.

**RR-13           CLEAN WATER AND CLEAN AIR REQUIREMENTS\***

**A. Applicability**

This Article applies to all federally funded contracts over \$100,000.

**B. CLEAN WATER REQUIREMENTS**

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and all applicable clean water standards of the State of

California and any state or local agency having jurisdiction. Contractor shall report each violation to Metro. Metro will, in turn, report each violation as required to FTA/FHWA and the appropriate EPA Regional Office, and all other agencies having jurisdiction.

**C. CLEAN AIR**

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and all applicable Clean Air Standards of the State of California or any state or local agency having jurisdiction. Contractor shall report each violation to Metro. Metro will, in turn, report each violation as required to FTA/FHWA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

**RR-14 COMPLIANCE WITH FEDERAL LOBBYING POLICY \***

**A. Applicability**

This Article applies to federally funded contracts over \$100,000.

- B.** The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Metro.

**RR-15 BUY AMERICA \***

**A. Applicability**

This Article applies to federally funded rolling stock purchase and construction contracts over \$100,000 and to contracts over \$100,000 for materials & supplies for steel, iron, or manufactured products.

- B.** Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, and/or 23 U.S.C 313 and 23 CFR 635.410., which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA/FHWA-funded projects are produced in the United States, unless a waiver has been granted by FTA/FHWA or the product is subject to a general waiver.

Metro may investigate Contractor's, any Subcontractor's, and any Supplier's compliance with this Article. If an investigation is initiated, Contractor, Subcontractor, or Supplier shall document its compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation. Contractor shall incorporate the Buy America conditions set forth in this Article in every subcontract or purchase order and shall enforce such conditions.

## **RR-16 CARGO PREFERENCE\***

### **A. Applicability**

This Article applies to federally funded contracts involving equipment, materials, or commodities which may be transported by ocean vessels

### **B. USE OF UNITED STATES FLAG VESSELS**

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels

Contractor shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Metro (through Contractor in the case of a subcontractor's bill-of-lading.)

Contractor shall include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **RR-17 FLY AMERICA**

### **A. Applicability**

This Article applies to federally funded contracts if the contract or subcontracts may involve the international transportation of goods, equipment, or personnel by air.

**B.** Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless

travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## RR-18      **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT \***

### **A. Applicability**

This Article applies to federally funded construction contracts over \$100,000 (including ferry vessels), rolling stock purchases over \$100,000 and to operations/management contracts over \$100,000 (except transportation services)

**B.** Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c), Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:

- 1. Overtime requirements** – Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- 2. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the Article set forth in paragraph 1 of this Section Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the Article set forth in paragraph 1 of this Section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the Article set forth in paragraph 1 of this Section.
- 3. Withholding for unpaid wages and liquidated damages** – Metro shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by Contractor or Subcontractor under the Contract or any other Federal

contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the Article set forth in paragraph 2 of this Section.

4. **Subcontracts** – Contractor or Subcontractor shall insert in any Subcontracts the Articles set forth in this Section and also a Article requiring the Subcontractors to include these Articles in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the Articles set forth in this Section.
5. **Payrolls and basic records** – The records to be maintained hereinabove shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by Metro and U.S. Dept. of Labor. Contractor and Subcontractor shall maintain payrolls and basic records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

## **RR-19 SEISMIC SAFETY**

### **A. Applicability**

This Article applies to federally funded Architect & Engineer contracts for the design of new buildings or additions to existing buildings and to contracts for the construction of new buildings or additions to existing buildings.

- B. Any new building or addition to an existing building shall be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor shall certify to compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **RR-20 ADA ACCESS**

### **A. Applicability**

This Article applies to federally funded Architect & Engineer, Operations/Management, Rolling Stock Purchase, and Construction contracts

## B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
  - (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
  - (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
  - (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
  - (d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
  - (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
  - (f) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

- (g) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609 (FTA funded projects only);
- (k) Any implementing requirements FTA/FHWA may issue.

**RR-21 ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM \* (NOT USED)**

**RR-22 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS \* (NOT USED)**

**RR-23 CHARTER SERVICE OPERATIONS (NOTUSED)**

**RR-24 SCHOOL BUS REQUIREMENTS (NOT USED)**

**RR-25 FEDERAL PATENT AND DATA RIGHTS\***

**A. Applicability**

This Article applies to each contract involving experimental, developmental or research work and for which the purpose of the FTA/FHWA grant is to finance the development of a product or information.

**B. Subject Data**

The term "Subject Data" used in this Article means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "Subject Data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

**C. Restrictions on Subject Data**

The following restrictions apply to all Subject Data first produced in the performance of the Contract:

1. Except for its own internal use, Metro or Contractor may not publish or reproduce Subject Data in whole or in part, or in any manner or form, nor may Metro or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
2. In accordance with 49 C.F.R. § 18.34, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any Subject Data or copyright described in subparagraphs C.2(a) and C.2(b) of this Paragraph C.2. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - (a) Any Subject Data developed under the Contract, whether or not a copyright has been obtained; and
  - (b) Any rights of copyright purchased by metro or Contractor using Federal assistance in whole or in part provided by FTA/FHWA.
3. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, Metro and Contractor performing experimental, developmental, or research work required by the Contract shall permit FTA to make available to the public, either FTA's license in the copyright to any Subject Data developed in the course of the Contract, or a copy of the Subject Data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become Subject Data and shall be delivered as the Federal Government may direct. This Paragraph C.3 shall not apply to adaptations of automatic data processing equipment or programs for Metro's or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
4. Unless prohibited by state law, upon request by the Federal Government, Metro and Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Metro or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Neither Metro nor Contractor shall

be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Federal Government

5. Nothing contained in this Article shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
6. Data developed by Metro or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements of Paragraphs 2, 3, and 4 of this Article, provided that Metro or Contractor identifies that data in writing at the time of delivery of the Contract Work.

#### **D. Patent Rights**

If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Metro and Contractor shall take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA/FHWA is ultimately notified.

#### **E. Provision of Rights in Invention to Federal Government**

Unless the Federal Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Metro and Contractor shall take the necessary actions to provide, through FTA/FHWA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

### **RR-26 FHWA CONTRACT PROVISIONS\***

Additional provisions that are required for Contracts funded by the Federal Highway Administration (FHWA) are available at <http://www.fhwa.dot.gov/programadmin/contracts/1273.pdf> as if fully set forth in these Regulatory Requirements. Contractor warrants and represents that it has read and understands, and will comply with, each and every one of those requirements.

### **END OF REGULATORY REQUIREMENTS**

# REGULATORY REQUIREMENTS - ATTACHMENT

BIDDER/PROPOSER: Atkinson Contractors, LP

## CERTIFICATION OF COMPLIANCE WITH FEDERAL LOBBYING REQUIREMENTS (49 CFR PART 20)

To be submitted with each Bid/Proposal or offer of Bidder/Proposer exceeding \$100,000

The Atkinson Contractors, LP (Bidder/Proposer) certifies to the best of its knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency; a member of Congress, an officer or employee of Congress, an employee of a member of Congress; or any Board member or employee of Metro in connection with the awarding of any federal contract; any federally funded contract; or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any federal contract, federally funded contract grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts, or influencing or attempting to influence; an officer or employee of any agency; a member of Congress; an officer or employee of Congress; an employee of a member or Congress or a Board member or employee of Metro in connection with this federally funded contract, grant, loan, or cooperative agreement, the undersigned shall register and comply with all federal disclosure requirements.
3. The undersigned shall require that the language of this certification be included in the solicitation and award documents for all subawards at all tiers including but not limited to subcontracts, subgrants and contracts under grants, loans and cooperative agreements and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any offeror who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed on August 31, 20 10, at Foothill Ranch, California  
(Date) (City) (State)

John Harrington  
Typewritten or Printed Name

  
Signature of Authorized  
Official

Vice President, Atkinson Contractors, Inc.  
(General Partner of Atkinson Contractors, LP)  
Title

# SPECIAL PROVISIONS (DESIGN, BUILD, OPERATE & MAINTAIN)

## PART A—ADMINISTRATIVE PROVISIONS

### SP-01 GLOSSARY OF TERMS

#### A. Definitions

The following definitions are used in this Contract:

1. Completion Deadlines. The Substantial Completion Deadline, the Punch List Completion Deadline, and the Final Acceptance Deadline.
2. Equipment and Systems. All of the toll collection equipment, hardware, software, and systems that the Contractor is required to design, supply, operate, and maintain in the performance of the Work, as more specifically described in the Statement of Work.
3. Key Personnel. The Contractor's Project Manager, Design Manager, Construction Manager, Manager of Systems Integration, Safety Manager, Quality Manager, and Operations and Maintenance General Manager.
4. OM Term. The period of performance of the Operations and Maintenance (OM) Work, consisting of the Demonstration Period, and the Option Periods (if exercised).
5. Operations and Maintenance Work and OM Work. All the obligations, services, and responsibilities of the Contractor relating to the operation and maintenance of the Toll Collection Equipment and Systems, including all supporting accounting services, training, reporting, and other obligations of the Contractor as set forth in these SPECIAL PROVISIONS and the Statement of Work.

#### B. Symbols

The following symbols are used in this document:

\* Marks Required Subcontract Provisions that must flow down to all subcontracts as defined in the Article entitled SUBCONTRACTORS AND SUPPLIERS in Contract Document GENERAL CONDITIONS.

#### C. Applicability of General Conditions

Unless explicitly identified as otherwise herein, capitalized terms, abbreviations, and symbols used herein shall have the meanings as set forth in the Article entitled GLOSSARY OF TERMS in Contract Document GENERAL CONDITIONS.

### SP-02 PROSECUTION AND COMPLETION OF WORK

Time is of the essence in this Contract. The Contractor shall commence performance of the Work on the date specified in the Notice to Proceed (NTP) issued to the Contractor. The Contractor shall furnish sufficient labor (including extra crews) and facilities and shall work such hours (including extra shifts and overtime operations) and shall take all reasonable steps necessary to ensure completion of the Work in accordance with the WORK COMPLETION SCHEDULE, attached hereto as

Appendix A, and the Completion Deadlines. If any circumstances arise that cause the Contractor to believe that the specified deadlines may or will not be met, the Contractor shall notify the Metro in writing within twenty-four (24) hours after the Contractor first learns of such circumstances.

## **SP-03 COMPLETION DEADLINES**

### **A. Completion Deadlines**

Substantial Completion Deadline. -- The Contractor shall achieve Substantial Completion of the I-110 Work within five hundred ninety (590) Days, and the I-10 Work within six hundred eighty five (685) Days after the Commencement Date set forth in the NTP.

Punch List Completion Deadlines. -- The Contractor shall achieve Punch List Completion within sixty (60) Days after the date of Substantial Completion of each freeway corridor.

Final Acceptance Deadline. -- The Contractor shall achieve Final Acceptance within sixty (60) Days after the date of Punch List Completion of each freeway corridor.

### **B. No Time Extensions**

Except as otherwise specifically provided in this Contract, Metro shall have no obligation to extend a Completion Deadline and the Contractor shall not for any reason be relieved of its obligation to comply with the Project Schedule and to achieve Substantial Completion, Punch List Completion, and Final Acceptance by the applicable Completion Deadlines.

## **SP-04 KEY PERSONNEL**

### **A. Identification**

The Project Manager and other Key Personnel assigned to perform the work under the Contract are identified in Appendix B attached hereto. Unless otherwise authorized by Metro, the Key Personnel shall be the same individuals identified in the Contractor's proposal submitted to obtain this Contract.

### **B. Changes in Key Personnel**

Any change in Key Personnel shall be in accordance with the Article entitled CONTRACTOR'S REPRESENTATIVE, ORGANIZATION, AND PERSONNEL in the Contract Document GENERAL CONDITIONS.

## **SP-05 REQUIRED CONTRACTOR LICENSES**

- A. The Contractor shall ensure that all firms on the Contractor's team must possess the proper licensure at the time of Contract award. The Contractor, or member of the Contractor's Joint Venture, shall have a California State Contractor's License Classification A. The lead Architects and Engineers with the firm on the

Contractor's team serving as the lead Architect and Engineer must be licensed in the State of California; and all other firms on the Contractor's team must possess the appropriate California license for each specialty services provided.

- B. If an Element of the Work requires the Contractor to handle Hazardous Substances, Contractor and/or Subcontractor must possess and maintain, throughout the duration of the Work, any and all licenses, registrations and certifications required by existing law to perform the Work within the scope of the Contract, including, without limitation, a Class A license in accordance with §7028.15 A-E of the California Business and Professions Code, and certification for performance of Hazardous Substance Removal with the exception of "Asbestos-Related work" in accordance with §7058.7 of the California Business and Professions Code.

#### **SP-06 PERCENTAGE OF WORK PERFORMED BY THE CONTRACTOR**

The Contractor shall perform with its own organization Work amounting to not less than thirty percent (30%) of the Total Contract Price.

#### **SP-07 DBE PARTICIPATION**

Metro has established a Contract Goal for the participation of Underutilized Disadvantaged Business Enterprise (UDBE) firms of sixteen point two percent (16.2%) of the Total Contract Price. The Contractor shall ensure that all Disadvantaged Business Enterprise (DBE) requirements specified in the Contract Documents shall be met, and acknowledges by signing the Contract that the Underutilized Disadvantaged Business Enterprise (UDBE) participation committed to by the Contractor is as follows:

Design Commitment of ninety eight hundredths of one Percent (0.98 %) of the Total Contract Price for the design of civil works and toll systems and equipment.

Construction Commitment of eight and nine tenths Percent (8.90 %) of the Total Contract Price for all Construction Work.

Operations and Maintenance Commitment of six and thirty two hundredths Percent (6.32 %) of the Total Contract Price for operation (inclusive of Customer Service Centers and associated support) and maintenance of all Tolling Equipment and Systems.

A total commitment of sixteen and two tenths Percent (16.2 %) of the Total Contract Price.

The Caltrans DBE program term "Underutilized Disadvantaged Business Enterprise" or "UDBE" is a firm meeting the definition of a DBE as specified in 49 CFR Part 26 and is one of the following groups: Black American, Asian-Pacific American, Native American and Women. Achievement of the DBE commitment will be measured by the total amount paid for the Work completed by the UDBE firms. The Contractor shall adhere to the DBE requirements as provided in the Contract Compliance Manual (Federal) throughout the performance of this contract.

## SP-08 ESCROW OF BID DOCUMENTS

All references to Bid, Bidder, or Invitation for Bid (IFB) herein shall also be deemed, where applicable, to refer to Proposal, Proposer, and Request for Proposal (RFP), respectively.

### A. Submittal of Proprietary Documents

1. Introduction. - All pre-Bid and Pre-award requirements of this Article shall have been fully performed as a condition of award of the Contract, and are included as requirements of the Contract as they are related to their use and enforcement. If it is discovered after award of the Contract that the Contractor did not comply with any of the following requirements, the non-compliance will be an event of default and subject to all Contractual remedies related to default, and to all other remedies contained herein.
2. Mandatory Requirements. - Bidder shall submit its Proprietary Bid Documents (defined below) in accordance with Paragraph (3) below. Submittal of Proprietary Bid Documents is a mandatory condition of Contract award. If the Bidder fails to make the submittal within the allowed time, specified below:
  - (a) The Bid shall be non-responsive;
  - (b) The Bidder will not be eligible for award or to enter into the Contract and the Bid will be rejected; and
  - (c) The Bidder shall forfeit the amount of the Bid bond, letter of credit or other security accompanying the Bid.
3. Submittals.
  - (a) Bidder shall submit to Metro's Contract Administrator, within seventy-two (72) hours after the time designated by Metro for receipt of Bids, excluding Saturdays, Sundays, State and Federal holidays, copies (as provided below) of all documentary information received or generated in preparation of its Bid prices for this Contract (as further defined in the Section below entitled Format of Proprietary Bid Documents and Content of Proprietary Bid Documents), and include the same information from all Subcontractors named in its Bid. This material is hereinafter referred to as "Proprietary Bid Documents".
  - (b) The Proprietary Bid Documents shall be in sealed containers, clearly marked on the outside with:
    - (i) Label "Proprietary Bid Documents";
    - (ii) Bidder's name;
    - (iii) Date of submittal;
    - (iv) Metro's project name; and
    - (v) Metro's Contract number and title.
  - (c) Bidder shall submit one copy of all Proprietary Bid Documents in all formats in which the documents exist as of the time of bid.

The existing formats shall include, but not limited to, hard copy, computer printouts, computer disk, diskette or tape, or any other electronic format in which the data exists at the time of bid. The bidder shall also provide a copy of all non-electronic Proprietary Bid Documents and CD ROM.

- (d) Metro shall pay the cost of storage of the Proprietary Bid Documents for the duration of the Contract until the disposition of the Proprietary Documents as set forth in the Contract.
  - (e) Preparation and submittal of the Proprietary Bid Documents shall be at the sole expense of the Bidder.
  - (f) Upon the receipt of the Proprietary Bid Documents, Metro shall review those submitted by the apparent low Bidder to determine whether all the requested Proprietary Bid Documents have been produced. The Proprietary Bid Documents will be examined jointly by Authorized Representatives of Metro and the apparent low Bidder. The joint examination shall be a condition of responsiveness and shall ensure that the Proprietary Bid Documents are legible and complete. Examination and acceptance of the Proprietary Bid Documents by Metro shall not constitute a waiver of any claim by Metro that the Proprietary Bid Documents are incomplete.
  - (g) If Metro determines that the Proprietary Bid Documents are not complete, it shall notify the apparent low Bidder in writing, certified mail return receipt requested, which documents are missing from the Proprietary Bid Documents and request their submission to Metro within forty-eight (48) hours from the date of receipt of such notice. Metro will deem the Bid non-responsive if, within forty-eight (48) hours, the Bidder does not submit the requested documents or does not submit a certification that the additional request documents do not exist. Metro may grant extension of time to submit the requested documents for good cause stated by the Bidder, but time being of the essence, any such extension shall be in Metro's sole and absolute discretion.
4. Bidder's Warranties and Representations. - By executing its Bid, Bidder represents, warrants and agrees, as a condition of the award of the Contract, that:
- (a) The Proprietary Bid Documents constitute all written information used in the preparation of its Bid.
  - (b) No other written preparation information shall be considered in resolving Modifications to the Contract, Claims, or Disputes.
  - (c) Nothing the Proprietary Bid Documents shall change or modify the terms or conditions of the Contract Documents.
5. Format of Proprietary Bid Documents.
- (a) Bidder may submit Proprietary Bid Documents in the usual cost estimating format; a standard format is not required.
  - (b) Pre-Bid Documents shall be in English language.

- (c) All dimensions and measurements shall be in the English (lb./foot/sec/) system, unless Metric is explicitly requested in a Metro Technical Document, or use of Metric is the industry or the Metro standard.
  - (d) All costs and prices shall be identified in U.S. dollars.
  - (e) The information shall clearly itemize the estimated cost for performing the work of each bid item contained in the in the bid Schedule of Quantities and Prices.
  - (f) Bid item(s), including lump sum item(s), shall be separated into sub items to resent a detailed cost estimate as necessary to allow a thorough examination.
6. Content of Proprietary Bid Documents. -- The Proprietary Bid Documents shall be placed in clearly identified categories, which categories shall be labeled with the headings of "a" through "jj" below. A separate Table of Contents shall also accompany the Proprietary Bid Documents, listing each named category and its location in the Proprietary Bid Documents. If there are no documents of a category listed below in existence at the time of the bid, the category shall be listed on the Table of Contents with the statement made thereon that "No Such Documents Exist". Content of Proprietary Bid Documents shall include, without limitation:
- (a) All of the starting estimates on bid day by contract division and/or specification section;
  - (b) Cut/add sheets and total cut/add sheets reflecting final bid price;
  - (c) All "plug" numbers and work ups for those numbers;
  - (d) All telephonic confirmation and/or clarification memorandum;
  - (e) Take-offs; production rates and/or productivity calculations;
  - (f) Schedule assumptions;
  - (g) Scheduling data;
  - (h) Overtime plans;
  - (i) Overhead calculations;
  - (j) Indirect cost calculations;
  - (k) Quantity take-offs;
  - (l) Labor and equipment rates;
  - (m) Labor wage rates;
  - (n) Equipment cost or rental rates;
  - (o) Site inspection notes;
  - (p) Construction duration assumptions;
  - (q) Anticipated production and productivity levels (including historical support for such levels);
  - (r) Adjustments made to estimated costs in preparation of the formal bid submittal;
  - (s) Owned equipment cost assumptions;
  - (t) Crew/equipment configurations;
  - (u) Feasibility and/or final bid check;
  - (v) Make/buy analysis;
  - (w) Self-perform/subcontract analysis;
  - (x) Rent/owned equipment analysis;
  - (y) All spread sheets, take-offs and pricing;
  - (z) Reports and/or analyses that reflect comparisons of estimated,

bid, budgeted and actual levels of man-hours, wage rates, quantities, equipment usage rates, unit production and/or productivity rates;

- (aa) Material costs or other elements of project costs;
- (bb) Plant and support equipment;
- (cc) Environmental compliance;
- (dd) Mobilization/demobilization;
- (ee) Allocation of indirect costs such as contingencies, overhead, markup;
- (ff) Permits/licensing costs;
- (gg) Administrative costs and other elements of cost included in the bid;
- (hh) Subcontracting quotations;
- (ii) Scope letters from subcontractors, materials and suppliers;
- (jj) Any and all information, which reflect any assumptions made in developing the bid.

7. Costs. -- The Proprietary Documents shall identify all costs. For Bid Items amounting to less than fifty thousand (\$50,000) dollars, estimated unit cost are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect cost, contingencies, and mark-up, as applicable, are allocated.

8. Certification. -- An authorized Officer or Director of the Bidder shall execute and submit along with the Proprietary Bid Documents a Certification of the Proprietary Bid Documents, which shall state the following:

"I certify under penalty of perjury and pursuant to the laws of the State of California that the Proprietary Bid Documents submitted in accordance with the instructions contained in the IFB constitute all the information used in the preparation of the Bid and I further certify I have personally examined the contents of the Proprietary Bid Documents and found that the documents herewith submitted are complete and that no other Bid preparation documents exist."

9. Not a Part of Contract. -- The Proprietary Bid Documents are not part of the Contract Documents, and nothing in the Proprietary Bid Documents shall change or modify any term or condition of the Contract.

10. Unsuccessful Bidders; Return of Documents. -- Proprietary Bid Documents of unsuccessful bidder(s) will be returned after award of the Contract. If the Contract is not awarded to the apparent successful Bidder, the Proprietary Bid Documents of the next lowest Bidder shall be processed as described herein and any Proprietary Bid Documents submitted by the first apparent low bidder will be returned to that bidder.

## **B. Failure to Provide Required Escrowed Bid Documents**

If the Contractor did not submit the Proprietary Bid Documents that relate to any request for changes, modifications, claims, or disputes that it was

required to submit pursuant to this Article as part of the Bid for this Contract, in addition to all other remedies provided under the Contract and by Law, Metro will have the right to reject the Contractor's related Requests for Change or Modifications, its Notices of Intent to Claim, its Claims and all other related submittals, including all related claims for payment.

**C. Ownership of Proprietary Bid Documents**

The Proprietary Bid Documents are not public records but are, and shall always remain, the property of the Contractor, subject to review as set forth in this Article.

**D. Use of Proprietary Bid Documents**

- (1) Use by Metro and Contractor. -- Proprietary Bid Documents may be examined and used by the Authorized Representatives of Metro and the Contractor, as provided herein, at any time deemed necessary, to assist in the:
  - (a) Negotiation of Change Orders, Extensions of Time, and other Modifications; and
  - (b) Resolution of Claims, Disputes, and other Contractual matters. No information used in the preparation of the Bid, other than the information contained in the Proprietary Bid Documents may be used for the above purposes.
- (2) Use by Government Entities. -- Any Government Entity, including any law enforcement or regulatory agency, shall have access to view the Proprietary Bid Documents in connection with the investigation of any matter within their jurisdiction. The Proprietary Bid Documents shall remain proprietary and will not be copied by any Government Entity, except as provided by Law, or unless the Government Entity either obtains the consent of the parties or an order of a court having subject matter jurisdiction.
- (3) No Use of Any Other Documents. -- No Bid preparation documents of any kind, other than the Proprietary Bid Documents provided by the Contractor shall be utilized by the Contractor in negotiation of Change Orders, Extensions of Time or other Modifications, or in the resolution of Claims and Disputes.
- (4) Preserving Proprietary Nature of Documents. -- If used in any proceedings, whether contractual or legal, steps shall be taken to preserve the proprietary nature of the Proprietary Bid Documents, including a protective order where appropriate.

**E. Substitution or Addition of Subcontractors**

If, during the Period of Performance, the Contractor wishes to Subcontract any portion of the Work, the Contractor shall submit Proprietary Bid Documents for the Subcontractor before the Subcontract is approved.

**F. Storage, Examination and Final Disposition of Proprietary Bid Documents**

- (1) Escrow. -- The Proprietary Bid Documents shall be placed in escrow in an independent commercial storage facility, or such other storage facility, designated by Metro and, once there, segregated from other documents to assure the maintenance of their confidential and proprietary nature.
- (2) Right of Access. -- Each Party shall have the individual right of access and examination of the Proprietary Bid Documents. Such access and examination is subject to the following conditions:
  - (a) Prior to examination of Proprietary Bid documents, Metro and the Contractor shall provide notice in writing as provided in this Contract to the other's Authorized Representative of its intention to examine the Documents a minimum of three (3) working days prior to examination, stating the proposed date of examination and designating its Authorized Representatives who will examine the Proprietary Bid Documents.
  - (b) If either party fails or refuses to respond to the notice, or to be present at the designated time, the examining party may proceed to examine the Proprietary Bid Documents without further notice.

**G. Return of Proprietary Bid Documents**

The Contractor's Proprietary Bid Documents shall be returned to the Contractor after all the following have occurred:

1. Metro determines that the Contract Work has been completed and has issued a Certificate of Final Acceptance in accordance with the Article entitled FINAL INSPECTION AND ACCEPTANCE OF THE WORK in Contract Document GENERAL CONDITIONS;
2. Notice of Completion has been recorded (if required); and
3. All Claims, Disputes, regulatory and law enforcement matters (if any) have been fully resolved, including the expiration of the time for appeal of their final determination or adjudication.

**H. Incorporation of IFB Provisions**

The provisions relating to escrow of bid documents in the Instructions to Bidders or other procurement document which solicited the Bids for this Contract are incorporated in this Article as though fully set forth herein.

**SP-09 LOCAL HIRING REQUIREMENT (N/A FOR FHWA FUNDED PROJECTS)**

**SP-10 TECHNICAL PROPOSAL SUBMITTALS**

Upon Contract award, the following information included with the Contractor's technical proposal in response to the Request For Proposal for this Contract shall be considered the initial Contractor submittals for these items, subject to Metro's

review and comment. The Contractor's complete submittal, shall be due within ten (10) Days after the Notice to Proceed, and shall not substantially differ from the information provided in these documents submitted by the Contractor in its technical proposal.

Technical Proposal Documents	Contract Submittal Documents
Key Personnel	GC-5 CONTRACTOR'S REPRESENTATIVE, ORGANIZATION AND PERSONNEL, 5.1.3 Names, titles, and functions of all the Contractor's key personnel
UDBE Participation	GC-7 SUBCONTRACT ADMINISTRATION, 7.11.3 DBE Performance Plan

**SP-11 NOTICE AND SERVICE THEREOF**

**A. General**

Any notice (e.g., Stop Notice, Preliminary Notice, etc.) legally or otherwise required to be given by one Party to another under the Contract shall be in writing and dated, and in accordance with the Contract requirements applicable for the Notice in question. The Notice shall be signed by the Party giving such notice, or by a duly authorized representative of such Party.

**B. Notice Transmittals from Contractor**

All notices shall not be effective for any purpose whatsoever unless enclosed in a sealed envelope and transmitted by registered mail addressed to Metro's offices as follows:

Los Angeles County Metropolitan Transportation Authority  
 One Gateway Plaza  
 Los Angeles, California 90012-2952  
Attention: Mr. Bruce Warrensford  
 Director of Contract Administration

**C. Notice Transmittals to Contractor**

All notices to Contractor will be enclosed in a sealed envelope and transmitted to Contractor's Representative by personal delivery at the Worksite, or by registered mail (or any certifiable delivery service) addressed to Contractor as follows:

Atkinson Contractors, LP  
 27422 Portola Parkway, Suite #250  
 Foothill Ranch, CA 92694  
 or such alternate address as Contractor may designate by Written Notice.

Attention: Mr. Jan Bohn, Vice President  
 Mr. Felipe Oliver, Project Manager  
 Contract Title: Metro ExpressLanes Project  
 Contract No.: PS0922102333

**D. Notice Transmittals to Surety and Others**

All notices to the Surety, and/or any other entity and/or person, shall be enclosed in a sealed envelope and transmitted by personal delivery or by registered mail addressed as follows:

Travelers Casualty and Surety Company of America  
One Tower Square  
Hartford, CT 06183  
Attention: Diana L. Parker  
Attorney-in-Fact  
Contract No.: PS0922102333

Federal Insurance Company  
15 Mountain View Road  
Warren, NJ 07059

Attention: Diana L. Parker  
Attorney-in-Fact  
Contract No.: PS0922102333

Fidelity and Deposit Company of Maryland  
1400 American Lane  
Schaumburg, IL 60196-1056

Attention: Diana L. Parker  
Attorney-in-Fact  
Contract No.: PS0922102333

**D. Change of Address Notices**

Any notice of changes of address shall be given according to the provisions of this Article.

**SP-12 DOCUMENTS FURNISHED BY METRO**

Metro will provide the following documents to the Contractor, in a PDF format, at no expense. Contractor shall be responsible for supplying all Subcontractors and/or itself with additional copies of these documents at Contractor's own expense.

<b>DOCUMENT</b>	<b>QUANTITY</b>
Conformed Statement of Work (SOW), Project Definition Documents, Technical Documents, General Requirements Division 1, Specifications, and Preliminary Engineering Drawings	1
DEOD Contract Compliance Manual (Federal - FHWA)	1
Alcohol and Drug Free Workplace Manual	
Labor Compliance Manual Revision 1	1

**SP-13 SUBCONTRACTORS AND SUPPLIERS\***

The following table lists the Subcontractors and Suppliers as listed in the Contractors proposal. Subcontractor and Suppliers added as a result of a Subcontractor Substitution approved by Metro’s Contracting Officer, and those added as a result of implementing this Contract, will be added to this list by Contract Modification(s).

<b>Sub-Contractor</b>	<b>Type of Work</b>	<b>License Type and No.</b>	<b>UDBE / DBE / MBE / WBE</b>
ACS State & Local Services, Inc. 12410 Milestone Center Drive Germantown, MD 20876 301-820-4200	Tolling Installation and O&M	Not Required	N/A
AECOM Technical Services, Inc. 300 S. Grand Ave., 2 <sup>nd</sup> Floor Los Angeles, CA 90071 213-330-7200  (Also is a lower tier subcontractor)	Design	Not Required	N/A
G&C Equipment Corporation 1875 W. Redondo Beach Blvd #102 Gardena, CA 90247 310-515-6715  (Also is a lower tier subcontractor)	Material and Equipment Procurement	Not Required	UDBE
Steiny & Company, Inc. 221 N. Ardmore Ave. Los Angeles, CA 90004 213-341-2149	Electrical Installation	A, B, C7, C10 # 161273	N/A
Seville Construction Services, Inc. 35 Hugus Valley, Ste. 210 Pasadena. CA 91103 626-204-0800	QA/QC	N/A	DBE

FineGrade Equipment, Inc. 41729 Cielo Vista Dr. Palmdale, CA 93551 661-949-8788	Grading & Paving	C12 # 584908	UDBE
PSOMAS 3 Hutton Center Drive Santa Ana, CA 92707 714-751-7373	Survey	N/A	N/A
PAYCO Specialists, Inc. 120 N. 2 <sup>nd</sup> Street Chula Vista, CA 91910 619-422-9204	Striping	B, C-32 # 298637	UDBE

Ace Fence Company 727 N. Glendora Ave. La Puente, CA 91744 626-333-0727	Fencing/Gates	C-13 # 801674	UDBE
Antich Consulting 7623 Alverston Ave. Los Angeles, CA 90045 310-480-8046	Third Party Coordination	N/A	UDBE

#### LOWER TIER SUBCONTRACTORS

<b>Sub-Contractor</b>	<b>Type of Work</b>	<b>License Type and No.</b>	<b>UDBE / DBE / MBE / WBE</b>
Crosstown Electrical & Data, Inc. 5463 Diaz Street Irwindale, CA 91706 626-813-6693	Electrical – Fiber Optic System and CCTV System installation	C-10 # 756309	N/A
LIN Consulting, Inc. 21660 E. Copley Drive Diamond Bar, CA 91765 909-396-6850	Traffic Engineering	N/A	UDBE
MARRS Services, Inc. 205 S. Broadway, Suite 618 Los Angeles, CA 90012 213-253-4771	Utility Coordination	B # 746618	UDBE
Diaz Yourman & Associates 1616 E. 17 <sup>th</sup> Street Santa Ana, CA 92705 714-245-2920	Geotechnical Engineering	N/A	DBE
Intueor Consulting, Inc. 7700 Irvine Center Drive, Suite 270 Irvine, CA 92618 949-753-9010	Engineering	N/A	DBE
Solem & Associates One Daniel Burnham Court Suite 100C San Francisco, CA 94109 415-788-7788	Marketing, Media Relations, and Community Outreach	N/A	N/A

#### **SP-14 SURETIES – PERFORMANCE BOND AND PAYMENT BOND**

The Contractor shall provide the Payment and Performance Bonds required under the Article entitled SURETY-PERFORMANCE BONDS, PAYMENT BONDS in the Contract Document GENERAL CONDITIONS. Bonds shall be in the form set forth in SPECIAL PROVISIONS Appendices E and F attached hereto

**SP-15 LIQUIDATED DAMAGES**

**A. Agreement on Damages.**

The Contractor understands and agrees that if it fails to timely complete the Work in accordance with the Contract Documents, Metro will suffer damages, and that it is and will be impracticable or extremely difficult to ascertain the actual damages that Metro will sustain in the event of and by the reason of such Delays. Therefore, the Contractor and Metro have agreed to stipulate the amount payable by the Contractor in the event of its failure to meet a Completion Deadline or other designated dates set forth in the WORK COMPLETION SCHEDULE, attached hereto as Appendix A, or in the event of other failures of the Contractor as specific herein. The Parties intend for the Liquidated Damages set forth in this Section to constitute liquidated damages as such term is used in Government Code Section 53069.85 to the extent such statute may apply and to constitute stipulated damages to the extent that such statute is not applicable.

**B. Examples of Damages**

Damages arising out of Delays and failures to meet Completion Deadlines or Milestones in the WORK COMPLETION SCHEDULE, or other failures to meet Contract requirements, may include:

1. Cost increases in the completion and subsequent operation and maintenance of the Project;
2. Failure to implement and monitor environmental mitigation requirements;
3. Unreasonable inconvenience to the public and impacts to private property resulting in claims against Metro;
4. Loss of revenue;
5. Increased costs for additional or extended Contract administration;
6. Failure to meet Contract Milestones; and
7. Delays and increased costs to other Contractors, resulting in claims against Metro.

**C. Liquidated Damages -- Design Build.**

The following Milestones have been established as calendar milestones under this Contract and in the event Contractor fails to achieve these Milestones Contractor agrees to pay Metro the associated Liquidated Damages as shown:

1. Milestone #10: Contractor to complete all the civil and structural design work for I-110 Corridor related to sign posts, their foundations, and their attachments to existing structures, to 100%, including final specifications and drawings, and submit for required Metro Approvals not later than one hundred twenty (120) Days after the Commencement Date set forth in the NTP.  
..... LD of \$1,000 per day.

2. Milestone #9: Contractor to complete all the civil and structural design work for I-10 Corridor related to sign posts, their foundations, and their attachments to existing structures, to 100%, including final specifications and drawings, and submit for required Metro Approvals not later than one hundred eighty (180) Days after the Commencement Date set forth in the NTP.  
 ..... LD of \$1,000 per day.
3. Milestone #8: Contractor to complete all design work for the I-110 Corridor to 100% including final specifications and drawings, and submit for required Metro Approvals. not later than one hundred ninety fire(195) Days after the Commencement Date set forth in the NTP.  
 ..... LD of \$1,000 per day.
4. Milestone #7: Contractor to complete all design work for the Adams Blvd. Bridge widening, Pedestrian Over-Crossing (POC), HOV Off-Ramp Widening, and related street improvements to 100%, including final specifications and drawings, and submit for required Metro Approvals not later than two hundred forty (240) Days after the Commencement Date set forth in the NTP.  
 ..... LD of \$2,000 per day.
5. Milestone #6: Contractor to complete all design work for the I-10 Corridor to 100%, including final specifications and drawings, and submit for required Metro Approvals not later than two hundred forty (240) Days after the Commencement Date set forth in the NTP.  
 ..... LD of \$1,000 per day.
6. Milestone #5: Contractor to complete fully tested and functional Toll Operation Service Center and start System Acceptance Testing of I-110 Corridor not later than five hundred thirty (530) Days after the Commencement Date set forth in the NTP.  
 ..... LD of \$8,000 per day.
7. Milestone #4: Contractor to complete construction of the Adams Blvd. Bridge widening, Pedestrian Over-Crossing (POC), and associated street improvements not later than five hundred thirty (530) Days after the Commencement Date set forth in the NTP.  
 ..... LD of \$2,000 per day.
8. Milestone #3: Contractor to complete construction of Adams Boulevard, HOV Off-Ramp Widening and associated street improvements not later than five hundred thirty (530) Days after the Commencement Date set forth in the NTP.  
 ..... LD of \$2,000 per day.
9. Milestone #2: Contractor to complete I-110 Corridor Toll Operations Scope of Work, including Systems Acceptance Testing. Additionally, this includes Option #1 and Option #2 should Metro exercise the

Options. Contractor achieves Substantial Completion as defined in the Contract Documents not later than five hundred ninety (590) Days after the Commencement Date set forth in the NTP.  
 ..... LD of \$8,000 per day.

- 10. Milestone #1: Contractor to complete I-10 Corridor Toll Operations Scope of Work, including Systems Acceptance Testing. Additionally this includes Option #2 should Metro exercise the Option. Contractor achieves Substantial Completion as defined in the Contract Documents, not later than six hundred eighty five (685) Days after the Commencement Date set forth in the NTP.  
 ..... LD \$12,000 per day.

The maximum Liquidated Damages assessed for delays in completion of any or all of the above milestones will not exceed \$38,000 per Day.

**D. Liquidated Damages – Traffic Management**

**See the Traffic Management Plan.**

**E. Liquidated Damages - Operations and Maintenance**

- 1. In order to ensure the continual successful performance of the Contractor, the Contractor shall be required to report monthly on their compliance with various performance measures detailed under the Scope of Work. The Contractor's compliance reporting will be subject to audit by Metro. Metro will link Contractor's performance to payment by reducing the Contractor's payment if performance requirements are not met. The Contractor shall be required to meet all of the functional and operational performance requirements detailed in the Scope of Work.
- 2. For the range of activities to be provided by the Contractor on this Project, the Contractor shall report against the performance measures found on the following Table. Reporting shall be monthly for all measures. The Contractor shall report any deviation from performance standards to Metro. Payment deductions will be made from the payment due if the Contractor fails to meet the key performance indicators defined below. Such deductions are not recoverable in future months. Metro will make such deductions even if the inability to achieve the standard was due to a Subcontractor, or a service provider.

Performance Measures and Liquidated Damages

Functional Area	Performance Measure	Liquidated Damages
Central System Availability	99.5% system and communications infrastructure availability, excluding previously scheduled maintenance activities by DBOM Contractor, on a 24 hour – seven days a week basis.	\$1,000 per every 0.1% below requirement per day

Functional Area	Performance Measure	Liquidated Damages
Roadside System Availability	99.5% roadside system and communications infrastructure availability in each lane, excluding scheduled maintenance, on a 24 hour – seven days a week basis.	\$1,000 per every 0.1% below requirement per day
Violation Image Capture	Equal to or greater than 95% - defined as the VES capture of legible license plate images of all vehicles that pass through the tolling point in the ExpressLane.	\$1,000 per every 0.1% below requirement per day.
Toll Transactions	99.95 % of all transponder reads correctly assembled into a toll transaction with the application of the correct toll rate.	\$1,000 per every 0.1% below requirement per day
Significant Unplanned Events	Restore all Priority 1 functions to operational levels within twenty-four (24) hours.	\$2,500 per hour

3. For purposes of calculating Availability the following chargeable and non-chargeable failures are defined as follows:

**Chargeable Failures**

Chargeable failures include any failures that are not specifically identified as non-chargeable. Chargeable failures include but are not limited to:

- a) A malfunction which prevents the toll collection system component (hardware or software) from performing its function.
- b) A malfunction that is a potential safety risk to the system, customers, or staff.
- c) Any occurrence where data is not transmitted between lanes and TCS.
- d) Failure of equipment or software that allows revenue loss.
- e) Software anomalies or bugs that affect the performance and operation of the system.
- f) System shut down or unavailability.
- g) Failure to properly register a transaction.
- h) Failure to properly reconcile the system.
- i) Failure or delay of sending or receiving electronic transaction and payment information.
- j) Failure or delay of sending or receiving CTOC information.
- k) Failure to properly generate any reports.

Non-chargeable failures shall include:

- a) Force majeure
- b) Vandalism
- c) Failures of a component caused by external stress or environmental conditions outside the scope of this contract
- d) Failures that are customer induced

**F. Administration of Operations and Maintenance LDs**

1. Operations and Maintenance LDs may be assessed by Metro on the basis of information in the Contractor's invoices, reports, and other documentation of performance, as well as on the basis of information obtained by Metro through inspections, audits, testing, customer comments, and other means in Metro's discretion.
2. The Contractor shall respond to Metro in writing within five (5) Days of the receipt of a notice assessing Liquidated Damages. The Contractor shall have an opportunity to demonstrate to Metro that the performance failure giving rise to the LD assessment was a non-chargeable failure, as described in Subsection E above. Metro reserves the right to reduce or waive the Liquidated Damages assessed based on Metro's review of the Contractor's response. In the absence of a sufficient explanation and response from the Contractor, Metro may deduct the liquidated damages assessed from the next payment due to the Contractor.

**G. Reasonableness of Liquidated Damages.**

The Parties have agreed to such Liquidated Damages in order to fix the Contractors' costs and to avoid later disputes over which items are properly chargeable to the Contractor. It is understood and agreed by the Contractor that any Liquidated Damages payable in accordance with this Article are in the nature of liquidated damages and not a penalty and that such sums are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. The Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

**H. Cap on Liquidated Damages.**

In no event shall the Liquidated Damages assessed under this Article be more than five percent (5%) of the Contract Price.

**I. Payment and Deductions.**

Liquidated Damages shall be payable by the Contractor to Metro within fifteen (15) Days after the Contractor's receipt of an invoice therefore from Metro. In addition, Metro shall have the right to deduct any amount owed by the Contractor to Metro hereunder from any amounts owed by Metro to the Contractor, including any Retainage which may be payable by Metro to the Contractor. If such Progress Payments and the Retention are insufficient, Contractor or its Surety shall pay to Metro any deficiency.

**J. Effect of Liquidated Damages.**

The Contractor acknowledges and agrees that the Liquidated Damages are intended to compensate Metro solely for the Contractor's failure to meet the

Completion Deadline(s), or for other failures specified in this Article, and shall not excuse the Contractor from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements of the Contract Documents. Permitting or requiring the Contractor to continue and finish the Work or any part thereof after a Completion Deadline shall not act as a waiver of Metro's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to Metro.

**K. Remedies Not Exclusive**

The fact that Metro has agreed to accept Liquidated Damages as compensation for its damages associated with a Delay in Contractor's meeting a Milestone or failure to meet a Completion Deadline, shall not preclude Metro from exercising its other rights and remedies respecting the Delay set forth elsewhere in the Contract, including its termination rights under the GENERAL CONDITIONS, provided that if Metro collects Liquidated Damages for a specific Delay or failure, Metro agrees that it will not seek or collect other damages due to that same Delay or failure, and Metro further agrees that it will not exercise other rights and remedies respecting the Delay so long as Contractor is diligently performing the Work in accordance with a Metro approved Recovery Schedule.

**SP-16 ASSESSMENTS FOR SPECIAL CIRCUMSTANCES**

**A. General**

There are certain requirements that Metro has identified as significant concerns, and for which Metro will suffer damages that cannot be calculated. Therefore, Contractor shall pay Liquidated Damages (LDs) as defined in the Article entitled LIQUIDATED DAMAGES herein, and in accordance with that Article, Metro will assess LDs for Contractor's failure to meet these requirements, as described in the Sections below.

**B. LD Schedule – Quality Assurance**

1. Contractor's failure to comply with the requirements described in the Paragraphs entitled QUALITY ASSURANCE below will result in Contractor's payment of LDs in accordance with the following schedule:
  - (a) For the first violation: \$1,000
  - (b) For the second violation: \$5,000
  - (c) For each additional violation: \$10,000
2. Quality Assurance
  - (a) Contractor is required to provide personnel, whether a direct employee of the Contractor or personnel employed by a Subcontractor, for performing and controlling in-process Work, and to certify that these personnel are properly trained, qualified and certified to perform the specified tasks.

The personnel covered by this requirement are those cited in the Contract Documents by the following terms:

1. Registered Surveyor
2. Registered Geotech
3. Safety Representatives (all positions)
4. Acoustical Engineer
5. Traffic Control Personnel
6. Certified NACE Corrosion Engineer

Any occasion when Contractor supplies inadequately trained, improperly certified, uncertified or unqualified personnel, in the judgment of Metro, shall constitute a violation of this provision.

- (b) Nonconforming conditions that in the judgment of Metro indicate a breakdown or potential breakdown in the Contractor's Quality Program shall constitute a violation of this provision. The following guidelines are used to determine a breakdown or potential breakdown in the Contractor's Quality Program:

1. Nonconformance's which require extensive investigation, analysis or corrective action.
2. Failure to comply with the requirements specified in Metro approved Project Quality Program Manual.
3. Repetitive non-conformances.
4. Failure to take corrective action required by Metro.

- (c) Contractor is required to complete the Work in conformance with Metro approved instructions, procedures and drawings based on the Project Definition Documents – Technical and Quality Manual Requirements. At such time Metro in its judgment determines that a breakdown or potential breakdown in the Contractor's Quality Program exists, Metro shall document the condition on a Corrective Action Request (CAR) addressed to the Contractor's management. Contractor shall provide a response to the nonconformance within the time designated, which shall include the following:

1. A description of the investigative actions taken to resolve the nonconformance;
2. A description of the cause of the nonconformance;
3. The actions taken or planned to correct the nonconformance; and;
4. The actions taken to prevent recurrence of the nonconformance.

**C. LD Schedule – Safety, Environmental, Construction Noise & Vibration Control, and Air Pollution Control**

1. Failure to Comply

Contractor's failure to comply with the requirements described in the Paragraphs entitled SAFETY, ENVIRONMENTAL, CONSTRUCTION NOISE & VIBRATION CONTROL, and AIR POLLUTION CONTROL below, will result in Contractor's payment of LDs in accordance with the following schedule:

- (a) For the first violation: \$5,000
- (b) For the second violation: \$10,000
- (c) For each additional violation: \$15,000

2. Safety

- (a) Contractor is required to comply with all requirements of a written or verbal Stop Work Notice immediately upon presentation by Metro.

Failure to comply with the requirements of a Stop Work Notice is a violation of this provision.

- (b) RESERVED

- (c) Contractor shall remove from service and prevent the use of equipment tagged by Metro in compliance with the Red Tag Policy.

Failure to remove "red tagged" equipment from service and prevent its use is a violation of this provision.

- (d) Contractor shall comply with all requirements regarding Fall Protection as described in the approved Fall Protection Program submitted in accordance with General Requirement 01545.

Failure to comply with these requirements is a violation of this provision.

- (e) Contractor shall disclose and provide copies of any citation, enforcement or appeal correspondence from or to Cal/OSHA or any other regulatory agent to Metro, within twenty-four (24) hours of receipt or mailing by the Subcontractor.

Failure to disclose and provide copies within these requirements is a violation of this provision.

3. Environmental

Contractor is required to complete the Work in an environmentally prudent manner, in full compliance with the requirements of the Contract Documents, and Contractor acknowledges that adherence to environmental regulations is required to protect the public's health and safety.

- (a) Contractor is prohibited from discharging wastes, either water or otherwise, that are not in compliance with any Contractor-obtained permit(s) for the sanitary sewer system or the storm drain system, as specified in the General Requirements Section 01566-DB.

Any noncompliant discharge shall constitute a violation of this provision.

- (b) If Contractor elects to obtain a Discharge Permit from the City of Los Angeles Bureau of Sanitation for wastewater discharges, Contractor is required to sample and test wastewater for those parameters and at those frequencies stated on the permit, as specified in General Requirements Section 01566-DB.3.2.C.12.

Failure to sample, record and maintain the required documentation shall constitute a violation of this provision.

- (c) Contractor is required to utilize the personal protective equipment as described in General Requirements Sections 01568-DB.2.1 and 3.2.B.

Contractor or Subcontractor (at any tier) employees working without use of the required protective equipment shall constitute a violation of this provision.

#### 4. Construction Noise & Vibration Control

- (a) Contractor is required to keep work activity noise levels beneath allowable levels as described in General Requirements Sections 01565-DB.3.1.

Each occurrence of exceeding the allowable level shall constitute a violation of this provision.

- (b) While performing Work at the surface, Contractor is prohibited from utilizing Construction Equipment which does not meet the appropriate daytime noise emission limits, as described in General Requirements Sections 01565-DB.3.1 and Table 1.

Each occurrence of exceeding the allowable level shall constitute a violation of this provision.

- (c) While performing Work at the surface, Contractor is prohibited from utilizing Construction Equipment which does not meet the appropriate nighttime noise emission limits, as described in General Requirements Sections 01565-DB.3.1.A and Table 1.

Each occurrence of exceeding the allowable level shall constitute a violation of this provision.

- (d) Contractor is required to keep work activity vibration levels beneath allowable levels as described in General Requirements Sections 01565-DB.3.5.A through D.

Each occurrence of vibration that is not below the allowable level shall constitute a violation of this provision.

- (e) Contractor is required to measure noise and vibration levels as described in General Requirements Sections 01565-DB.1.3.C.2 and 01565-DB.3.5.D.

Failure to test, record and maintain the required documentation shall constitute a violation of this provision.

- (f) Contractor is required to provide and certify that workers are adequately trained for work involving implementation of measurement activities, as described in General Requirements Sections 01565-DB.3.2.A.2.

Each instance of supplying inadequately trained and uncertified personnel is a violation of this provision.

5. Air Pollution Control

Contractor is required to comply with Rule 403, Limitation on Fugitive Dust Emissions, of the South Coast Air Quality Management District (SCAQMD) to minimize the generation of fugitive dust by using Best Available Control Measures, prevent it from remaining visible in the atmosphere beyond the property line of the emission source, and prevent or immediately remove the track out of bulk material onto public paved roadways, as a result of its operations.

For the purpose of enforcement the detailed language of SCAQMD Rule 403 prevails over the summarized requirements below:

- (a) Contractor is prohibited from causing or allowing emissions of fugitive dust from any transport, handling, construction, or storage activity to remain visible in atmosphere beyond the property line of the emission source.

Each occurrence of causing or allowing emissions of fugitive dust to remain visible in the atmosphere beyond the property line shall constitute a violation of this provision.

- (b) Contractor is required to use at least one Best Available Control Measures (BACM) for each source of fugitive dust to minimize the emissions, from construction operations, of fugitive dust.

Failure to use at least one BACM for each source of fugitive dust shall constitute a violation of this provision.

- (c) Contractor is required to prevent or remove within one (1) hour the track-out bulk material onto public paved roadways that result from its operations.

Each occurrence of tracked-out bulk material that remains on the public paved roadways for more than one (1) hour shall constitute a violation of this provision unless Contractor has taken at least one of the actions listed in Table 3 of SCAQMD Rule 403, and removed such material anytime track-out extends for fifty (50) feet, and removed all visible roadway dust tracked-out as a result of active operations at the end of each Standard Work Day when active operations cease.

- (d) If Contractor has taken at least one of the actions listed in Table 3 of SCAQMD Rule 403, it must remove tracked-out bulk material anytime it extends for a cumulative distance of more than fifty (50) feet onto any paved public road during active operations; and remove all visible roadway dust tracked-out upon public paved roadways as a result of active operations at the conclusion of each Standard Work Day when active operations cease.

Each occurrence of tracked-out bulk material that extends onto public paved roadways for a cumulative distance of more than fifty (50) feet shall constitute a violation of this provision. Each failure to remove all visible roadway dust tracked-out onto public paved roadways at the conclusion of each Standard Work Day, when active operations cease, shall constitute a violation of this provision.

**D. LD Schedule – CONTRACTOR CODE OF CONDUCT, Article SANCTIONS**

Contractor's failure to comply with the requirements of Metro's CONTRACTOR CODE OF CONDUCT will result in assessments of the Contractor's payment in accordance with the following schedule:

- 1. For the first violation: \$1,000
- 2. For the second violation: \$5,000
- 3. For each additional violation: One percent (1%) of the Contract Value

**SP-17 WEATHER DELAYS CAUSED BY RAIN**

This Article sets forth and defines the conditions of entitlement for a time extension resulting from severe weather as referred to in the Article entitled EXTENSION OF TIME, in Contract Document GENERAL CONDITIONS. The Contractor will not be

entitled to a time extension due to rain days less than or equal to the number of rain days indicated in the chart below.

Month	Number of Work Days
January	6
February	6
March	6
April	2
May	1
June	0
July	0
August	0
September	1
October	1
November	2
December	4

The number of rain days expected to occur each month during the performance of the Contract is quantified in the chart. Severe weather means the unforeseeable occurrence of more rain days during a month than the number of rain days expected to occur for that month as indicated in the chart. The number of rain days indicated in the chart, are based on a five (5) day **Standard Work Week**

The Contractor shall account for the above rain days in its baseline schedule. In the event the Contractor works a regularly scheduled workweek other than five (5) days per week, the above numbers shall be multiplied by the ratio of the actual average number of work days per week divided by five (5) work days

Rain is defined as precipitation greater than 0.10” inch over a 24 hour period as measured at the Pierce College rain gauge and occurring during a scheduled work day. Rain occurring during a day not scheduled as a work day on the Contractor’s baseline schedule will not constitute an actual rain day for purposes of determining entitlement to a time extension for severe weather.

For purposes of determining whether the Contractor is entitled to a time extension for severe weather, the aggregate number of rain days as indicated in the chart above for the entire period of performance of the Contractor shall be compared to the aggregate number of actual rain days occurring during the entire period of performance of the Contract. A request for time extension will not be granted unless the aggregate

number of actual rain days occurring during the entire period of performance of the Contract exceeds the aggregate number of rain days as indicated in the chart above for that same period of performance.

If the aggregate number of actual rain days occurring during the entire period of performance of the Contract exceeds the aggregate number of rain days for the entire period of performance as indicated in the chart above, the Contractor will be entitled to a time extension equal to the excess number of days. If the aggregate number of actual rain days occurring during the entire period of performance of the Contract is equal to or less than the number of rain days for the entire period of performance as indicated in the chart above, the Contractor will not be entitled to a time extension.

Except for a time extension due to severe weather allowed pursuant to this Article and the Article entitled EXTENSION OF TIME, in Contract Document GENERAL CONDITIONS, the Contractor shall not be entitled to a time extension for any subsequent delay impacts resulting from rain. Subsequent delay impacts resulting from rain include, but are not limited to, effects such as ponding and flooding. It is the responsibility of the Contractor to provide reasonable rain impact mitigation subsequent delay impacts resulting from rain. Reasonable rain impact mitigation measures include, but are not limited to, temporary grading, sandbagging, and pumping of flooded areas.

## **SP-18 INCENTIVES (NOT USED)**

## **SP-19 SAFETY'S FIRST INCENTIVE PROGRAM**

### **A. Safety 1<sup>st</sup> Award Program – General.**

1. Purpose. -- This Section will provide guidelines for the Contractor to develop a Safety's 1<sup>st</sup> Award Program (Program) to recognize and provide incentive to its personnel at all levels of employment, as well as the of its Subcontractors, for superior safety performance. METRO will reimburse the Contractor the actual cost of the awards, as set forth below, associated with this Program.
2. Announcement/Presentation. -- The Program status will be reviewed at Metro's Monthly Safety Meeting. Actual presentation of awards will be made in a convenient area on or near the Worksite.
3. Approval & Audit. -- To ensure that awards are distributed fairly and consistently, Contractor's Safety 1st Award Program shall be subject to review and Approval, as well as audit, by Metro.

### **B. Metro Funding Cap, Reimbursement & Audit.**

1. Funding Cap. -- This Program will be funded under the item listed in the Schedule of Quantities and Prices, which is a Provisional Sum. The Total Program Amount (Provisional Sum) available to the Contractor is \$20,000. This is divided into Annual Caps according to the following table:

First Contract Year (Calendar months 1-12): \$13,800 (66% of Provisional Sum)

Second Contract Year (Calendar months 13-18): \$6,900 (34% of Provisional Sum)

2. Reimbursement. -- All requests for reimbursement must be accompanied by a copy of the approved submittal for the Award Item in question, a copy of the invoice clearly indicating the specific award item, quantity & pricing and a copy of the Contractor's payment of the invoice. Reimbursements requests shall be Approved by the Director, Construction Safety or written designee.
3. Audit. -- All costs for which the Contractor seeks reimbursement shall be subject to financial audit in accordance with the Article entitled AUDIT AND ACCESS TO RECORDS in Contract Document REGULATORY REQUIREMENTS.

**C. Safety's 1<sup>st</sup> Award Program Plan – Submittal.**

Within thirty (30) Days of the Notice to Proceed (NTP), Contractor shall develop a detailed Safety Award Program Plan for submittal to (and Approval by) METRO. Requests for reimbursements under this article will be rejected prior to the Approval of the Contractors Safety 1<sup>st</sup> Award Program Plan.

**D. Safety's 1st Award Program Plan – Criteria. –**

The CONTRACTOR'S Safety 1<sup>st</sup> Award Program Plan shall address the following:

1. Program Administrator. -- Identification of the individual(s) who will administer the Award Program for the Contractor;
2. Employee Eligibility. -- Contractor's employees, as well as the employees of its Subcontractors (of any tier), who are working at the Site during the eligibility period for the award (hereinafter "Eligible Employees").
3. Award Eligible Employee Listing. -- A program enabling accurate accounting (and reporting) of all Eligible Employees in the Award Program.
  - (a) Contractor and its Subcontractors (of any tier) shall develop and maintain a tabular list of its Eligible Employees, which tracks, at a minimum, the following information regarding each employee:
    - (i) Start and end date at the Worksite;
    - (ii) Number of hours worked and logged at the Site;
    - (iii) A number count of the times he/she has won an award under the Award Program in question, including date of last award;
    - (iv) A number count, logging relevant safety metrics directly attributable to the individual:
      - a. The number of incidents resulting in a recordable injury/illness.

- b. The number of vehicle collisions or incidents.
- c. The number of incidents resulting in equipment damage (Construction Equipment or otherwise) exceeding five-hundred US Dollars (\$500).
- d. The number of incidents meeting the criteria for “Special Circumstances”, as defined in the Article entitled ASSESSMENTS FOR SPECIAL CIRCUMSTANCES.

- (b) Upon Metro’s request, Contractor shall provide Metro with an electronic file-copy and/or hardcopy of the latest “Award Eligible Employee Listing”, for itself as well as its Subcontractors (of any tier).

The electronic file-copy of the Listing given to Metro shall either be in a spreadsheet or a database format, or as otherwise agreed upon between Contractor and Metro.

- 4. Award Criteria. -- The basis for Award shall be any Eligible Employee (as defined above in this Section) who has:

- (a) No recordable injuries/illnesses;
- (b) No claims of public liability;
- (c) No vehicle accidents or equipment damages exceeding five hundred US Dollars (\$500);
- (d) No incidents meeting the criteria for “Special Circumstances”.

- 5. Award/Incentive Structure. -- The Award/Incentive structure shall include the following:

- (a) Period of performance required for the specific Award Tier.
- (b) Approximate dollar values of incentives to be awarded, as well as types of awards in each category.
- (c) Awards should include (but is not limited to) logo bearing items such as caps, cups, coolers, jackets, T-shirts, belt buckles, and watches.
- (d) The methodology by which Design-Builder will document and provide certification for awards distributed.

**E. Metro Approval of Safety Award Nominations.**

- 1. Award Distribution List. -- Prior to issuance of any awards by Contractor, Contractor shall submit to Metro, for its Approval, an Award Distribution List containing the following:

- (a) A listing of the names of Eligible Employees (as defined above in the previous Section) who are considered by Contractor for award, for the period to be presented (hereinafter “Award Recipients”);
- (b) The type(s) of award to be awarded to each Award Recipient, for the period to be presented; and

- (c) The specific Award Criteria used for selection of the Award Recipients.
2. Approval of Distribution List. -- Metro's duly Authorized Representative, at its sole discretion, will review and Approve Contractor's Award Distribution List, as well as the corresponding distributions of money to the Contractor to fund the awards.

**F. Metro Approval of Safety Award Format.**

1. Award documents must be approved by Metro for style, wording and logo use prior to presentation.
2. These Items to be used as awards must be submitted to and approved by Metro as meeting Metro's criteria for design and use of logos prior to being ordered by the Contractor.
3. Failure of the Contractor to obtain required approvals may result in the rejection of payment requests made under this Article.

**SP-20 LIMITATION ON USE OF HEAVY EQUIPMENT**

If the Contractor anticipates using any vehicles or equipment over twenty thousand (20,000) pounds (loaded) during the performance of the Work in creeks or riverbeds, flood control channels or other such areas, dimensions and weights of such equipment shall be submitted to the Construction Manager for approval prior to use.

**SP-21 METRO-FURNISHED PERMITS**

Notwithstanding the provisions of the Article entitled GOVERNMENTAL APPROVALS of the GENERAL CONDITIONS Metro will furnish the permits listed below without cost to the Contractor. The Contractor shall obtain all other permits required for the performance of the Work.

- A. A copy of the Caltrans Encroachment Permit granted to Metro will be furnished to the Contractor. The Contractor shall be responsible to apply and obtain its own Caltrans Encroachment Permit.
- B. Metro is currently working with the City of Los Angeles to amend an existing Master Cooperative Agreement to include this project. Such amendment will include the following permits for which permit fees shall not be required:
  1. A-Permits
  2. B-Permits
  3. Street Closures as per the Worksite Traffic Control Plan Drawing
  4. Holiday Season Restrictions
  5. Excavation Permits

6. Lateral Support Bonds
7. Street Tree Permit
8. Street Use Permit

## **SP-22 UTILITIES**

### **A. Utilities Information**

Metro has prepared and provided to the Contractor a list of all known existing utilities likely to be impacted by the Project, which is set forth in the Utility Coordination Matrix and other Utilities information in the Contract Documents and Reference Documents.

### **B. Inspections and Investigations**

Within ninety (90) Days after the Notice to Proceed and prior to the commencement of Construction Work, the Contractor shall be responsible for analyzing the Utility information set forth in the Contract Documents and Reference Documents, contacting and making inquiries of Utility Owners, and performing surface inspections of the Site and such additional investigations as it deems appropriate to verify and supplement the Utility Information. If such inspections indicate the existence or likelihood of existence of any Utility likely to be impacted by the construction of the Project that was not previously identified in the Utility Information provided by Metro, the Contractor shall update the Utility Coordination Matrix to include such Utility and shall provide Metro with a copy of the updated Matrix.

### **C. Utility Relocation Schedule**

The Contractor shall be responsible, based on information in the Utility Coordination Matrix and the results of its inspections and investigations under subsection B above, for developing a Utility Relocation Schedule that is designed to assure that Relocations will occur in a timely manner in order to permit the commencement and implementation of construction activities in accordance with the Critical Path Schedule. The Schedule shall be submitted to Metro within twenty (20) Days after the Contractor completes its inspections and investigations.

### **D. Utility Relocation and Related Work.**

The Contractor shall be responsible for (1) the Relocation or Protection in Place of the Utilities identified in the Utility Coordination Matrix or in the other Utility information; (2) the Relocation or Protection in Place of any Utilities that are not identified in the Utility Information but are subsequently discovered and are likely to be impacted by the construction of the Project; (3) any Incidental Utility Work necessary to complete Utility Relocation or Protection in Place, and (4) updating the Utility Coordination Matrix and all

other administrative and reporting requirements and tasks relating to the Utility Work. For each Utility identified as likely to be impacted by the Project, the Contractor's responsibility may include design work only, design and construction, or construction.

#### **E. Compensation and Responsibility for Costs**

1. Compensation from Provisional Sums. Except as provided in paragraph 2 and 3 below, compensation to the Contractor for Utility Relocation and Protection in Place, including the Relocation or Protection in Place of any Utility discovered after the commencement of construction that was not identified in the Utility information and the Incidental Utility Work described in subsection D above, shall come from the Provisional Sums.
2. Administrative Costs. The costs of updating the Utility Coordination Matrix, developing a Utility Relocation Schedule, coordinating with utility owners or assisting the Metro in its coordination with such owners, and the cost of other administrative and reporting requirements and tasks relating to the Utility work) is included in the Total Contract Price and will not be not paid from Provisional Sums.
3. Certain Undiscovered Utilities. The Contractor shall not be paid from the Provisional Sums, and shall be solely liable for the cost of Relocation or Protection in Place of a Utility if a surface inspection of the area in which such Utility is located would have shown (a) the existence of such Utility with reasonable accuracy; or (b) the likelihood of the existence of a Utility with reasonable accuracy by reason of the existence of above-ground facilities or features, such as buildings, manholes, junction boxes, or identifying signs or markers. As used in this subsection, the term "reasonable accuracy" shall be determined with reference to location, size, or type, as appropriate

#### **F. New Utilities**

In addition to the responsibilities in this Article regarding existing Utilities, the Contractor shall be responsible for the design, supply, and installation of all new Utilities required for the performance of the Work, as more specifically described in the Statement of Work and the General Requirements. Compensation for all such Work is included in the Total Contract Price and will not be paid from Provisional Sums.

#### **G. Betterments**

1. Increase in Scope. -- If any changes to the Utility Work made constitute Betterments that were not indicated in the Contract Documents, or which increase the scope of Betterments that were so indicated, then the Contractor shall be entitled to a Change, in accordance with the Article entitled CHANGES in Contract Document GENERAL CONDITIONS, with respect to any increase in Contractor's

costs of performing the Work that is directly attributable to such change(s).

2. Decrease in Scope. -- If any changes to the Utility Work are made that eliminate or reduce the cost of any Betterments that were indicated in the Contract Documents, thereby reducing the cost of the Work, then Metro shall be entitled to a Change, in accordance with the Article entitled CHANGES in Contract Document GENERAL CONDITIONS, reducing the total Contract Price to reflect the value of any reduction in the Work that is directly attributable to the reduction or elimination of such Betterment.
3. Requested Betterments. -- A Utility Owner may request Metro to permit the Contractor to perform work relating to Betterments that were not indicated in the Contract Documents, at the Utility Owner's expense. Metro will approve the addition of a Betterment to the Work only if: (a) the Utility Owner has requested and agreed to such Betterment; (b) such Betterment is compatible with the Project; (c) the Utility Owner has agreed to reimburse Metro for all costs thereof; (d) the Utility Owner and the Contractor have agreed to the price for such Betterment or the price is otherwise established pursuant to paragraph 4 below; and (e) it is feasible to separate the cost/pricing of the Betterment from that for any other Utility Work being performed by the Contractor. Any Betterment work pursuant to this paragraph shall not be considered an Metro-directed change. If Metro approves the request, and the Contractor agrees to such request, the Contractor will have the obligation to perform such work, with the right to receive additional compensation and/or an extension of any affected Completion Deadline to the extent that any delay in the Critical Path is directly attributable to the Betterment.
4. Betterment Pricing. -- The Contractor shall use its best efforts to negotiate in good faith with the Utility Owner for a lump sum price or unit prices for any Betterment work. If the Contractor and the Utility Owner are unable to agree on a lump sum price or unit prices, then Metro will direct the Contractor to perform such Betterment work with the compensation determined on a time and materials basis.
5. Incidental Utility Work by Utility Owner. -- If a Utility Owner performs any Incidental Utility Work that was originally included in the Contractor's Scope of Work, thereby reducing the Work to be performed by the Contractor, then Metro shall be entitled to a Change, in accordance with the Article entitled CHANGES in Contract Document GENERAL CONDITIONS, reducing the total Contract Price to reflect the value of any reduction in the Work that is directly attributable to the performance of such Work by the Utility Owner.

## **SP-23 TEMPORARY EASEMENTS AND RELATED ACCESS**

### **A. Temporary Easements**

The following table shows the temporary parcels and easement availability during construction: **NONE**

PARCEL NUMBER	AVAILABLE DATE
N/A	N/A

**B. Contractor's Storage and Staging Area**

The following table shows the parcels and/or easements available for Contractor's storage, mobilization area, or staging area: **NONE**

PARCEL NUMBER	AVAILABLE DATE
N/A	N/A

**C. ACCESS TO CALTRANS PROPERTY**

The following table shows when the Caltrans property described therein will be made available to begin the Work.

**EASTBOUND: I-10**

Station		Street	Access Available after NTP
From	to		
102+38	242+00	Alameda - I-710	Available at NTP
242+00	533+00	I-710 - Rosemead	240 Days to 360 Days after NTP
533+00	591+00	Rosemead - Baldwin	270 Days to 390 Days after NTP
591+00	759+01	Baldwin - I-605	30 Days to 150 Days after NTP

**WESTBOUND: I-10**

Station		Street	Access Available after NTP
From	to		
102+38	246+01	Alameda - I-710	Available at NTP
246+01	445+00	I-710 - Del Mar	220 Days to 340 Days after NTP
445+00	455+00	Del Mar Ramp	240 Days to 360 Days After NTP
591+00	628+00	Baldwin - I-605	Available at NTP

**D. Work on Private Property**

Metro may make agreements with private property owners for the Construction easement areas if any are indicated on the Contract Drawings. Any additional easement areas requested by the Contractor shall be obtained

by separate agreement between the Contractor and the property owner and shall be solely at the Contractor's own risk and expense. Metro will not be a party to nor assume any liability for or arising under those separate agreements. Agreements shall be written in accordance with the Article entitled LIABILITY AND INDEMNIFICATION of the GENERAL CONDITIONS. The Contractor shall produce evidence that agreements are in place before the Contractor occupies those areas covered by the agreements. The Contractor shall be responsible for coordinating its Work with any affected property owners.

## **SP-24 NIGHT-TIME AND SUNDAY CONSTRUCTION**

Metro applied for a blanket variance to §41.40 of the Los Angeles Municipal Code from the Board of Police Commissioners for night-time and Sunday construction for the Project and the request has been denied. The Contractor will be required to submit any requests directly to the Noise Commission in order to obtain any relief from the existing restriction. The Contractor is responsible to meet any and all requirements imposed by the Police Commission in order to obtain Noise Variances that allow Night-time and Sunday Construction.

## **SP-25 THIRD-PARTY AGREEMENTS AND REQUIREMENTS (NOT USED)**

## **SP-26 SPECIAL EVENTS**

### **A. Definition**

As the very nature of construction contracting involves activities and events containing both risk and danger, Special Events should be considered at those construction activities and events that constitute exposing the general public to a high degree of danger, inconvenience, or risk.

### **B. Preliminary Schedule**

1. The Contractor shall submit a preliminary Special Events Listing covering the first ninety (90) Days. This listing shall be submitted at the Preconstruction Meeting. Within fourteen (14) Days, the Construction Manager will respond with acceptance or direction to change and resubmit within ten (10) Days.
2. The preliminary Special Events Listing shall be in a format that includes
  - a) Special Event title, listed in date order.
  - b) Duration of the Special Event, in days

### **C. Master Special Events Listing**

1. The Contractor shall submit the Special Events Listing within forty-five (45) Days after Notice to Proceed. Within fourteen (14) Days, Construction Manager will respond with acceptance or direction to change and resubmit within ten (10) Days. Failure of the Contractor to have a Special Events Listing accepted by the Construction Manager will be considered cause for withholding progress payment or termination for default.

The Master Special Events Listing shall be in a format that includes:

- a) Special Event title, listed in date order.
- b) Duration of the Special Event, in days.
- c) Detailed description of the construction methodology to be used to carry out the Special Event, including protection techniques, materials and machinery applicable, and planned action to mitigate risks.
- d) Nature of the impact on the general public.
- e) Experience of supervisory personnel relating to Special Event.

#### **D. Pre-Event Planning**

1. The Contractor shall schedule a meeting with the Construction Manager one (1) week prior to the Special Event. The Contractor shall confirm to the Construction Manager all aspects of plans to carry out the Special Event.
2. The Contractor shall schedule a meeting with all the Contractor's supervisory employees involved with the Special Event. The purpose of this meeting is to finalize Special Event planning and familiarize supervisory employees with all aspects of the Special Event.
3. The Contractor shall obtain a signed authorization by the Construction Manager certifying that the pre-event planning has been satisfactory completed and qualified staff will be present at the Worksite before and during Special Events.
4. Metro is aware of numerous Special Events that will occur during the period of this Contract. The Contractor shall account for the days indicated below that will prohibit work at the jobsite.

### **SP-27 COORDINATION BETWEEN CONTRACTOR AND CALTRANS REHABILITATION CONTRACTOR ON I-10 CORRIDOR**

It is anticipated that work by another contractor may be in progress adjacent to or within the limits of this project during progress of the work on this contract. The following table lists contracts anticipated to be in progress during this Contract.

Contract No.	Co-Rte-PM	Location	Type of Work
07-166814	LA-10-18.3/31.3	Los Angeles, Alhambra, Monterey Park, San Gabriel, Rosemead, El Monte, Baldwin Park	Rehabilitate roadway and ramps
07-117074	LA-10-31.2/33.4	Baldwin Park	Construct HOV Lanes, retaining walls and soundwalls

Contractor shall comply with Section 7-1.14, "Cooperation" of the Caltrans Standard Specifications, as provided below.

Section 7-1.14 COOPERATION

Should construction be under way by other forces or by other contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to those limits, the Contractor shall cooperate with all the other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

Each contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by their operations, and for loss caused the other due to unnecessary delays or failure to finish the work within the time specified for completion.

**SP-28 COOPERATION WITH METRO AND SCRRRA (ROW ACCESS; PASSENGER & FREIGHT TRAIN OPERATIONS [I-10])**

**A. Contractor Interface with Operational Rail Segments**

1. It is expected that Metro and Southern California Regional Rail Authority (hereinafter referred to as "Metro and SCRRRA" respective to each Agency's responsibility) will cooperate with Contractor to the extent that the Work may be handled in an efficient manner, but Contractor shall have no claim for damage or extra compensation in the event its Work is delayed by any Metro and SCRRRA Operations.
2. Contractor shall perform its Work in such manner and at such times as to not endanger or interfere with the safe operation of the tracks and property of the specified agencies and the traffic moving on such tracks and streets, as well as wires, signals and other property of each Metro and SCRRRA, their tenants or licensees, at or in the vicinity of the Work.

3. Any proposed plan by Contractor that may cause infringement on the above clearances due to Contractor's operations shall be submitted to Metro and SCRRA Operations in writing and such Work shall not begin until approved by Metro and SCRRA. No damage or extra compensation will be allowed in the event the Contractor's Work is delayed pending Metro Approval.
4. Metro and SCRRA shall have the right to order Contractor to temporarily cease operations in the event of an emergency. Contractor shall comply with the rules and regulations of each Metro and SCRRA in relation to the proper manner of protecting the tracks, property and personnel of each Metro and SCRRA and the traffic moving on such track and street, as well as, wires, signals and other property of Metro and SCRRA. Should any violations occur, Metro and SCRRA shall have the right to order Contractor to cease construction activities until Metro and SCRRA are satisfied that Contractor demonstrates corrections and measures have been implemented to prevent additional violations.
5. If Contractor desires to move its equipment or materials across Metro and SCRRA tracks at locations other than public crossings, it shall obtain prior permission from Metro and SCRRA through Metro. Contractor shall obtain flagmen from SCRRA. Only railroad qualified flagmen may provide flagging or other railroad protective services. Contractor personnel may not provide flagging for railroad operations.
6. Contractor shall, upon completion of the Work to be performed by the Contractor upon the premises or over the tracks of Metro and SCRRA, promptly remove from Metro and SCRRA Right-of-Way, all of Contractor's tools, implements, materials and equipment (Construction Equipment and otherwise), whether brought upon the Right-of-Way or other property by the Contractor or any Subcontractor, employee or agent of the Contractor or any Subcontractor, and leave the Right-of-Way or other property in a clean and presentable condition.

**B. Contacts and Information for Rail Operations on the I-10 Corridor**

1. Metro Right of Way (along SCRRA tracks); contact Metro Real Estate Administration.
2. SCRRA and Freight Train Operations: Contact Number (Phone: 213-452-0219); **Emergency and Dispatcher contact numbers available from SCRRA.**
3. Contractor shall give written notice to Metro and SCRRA before commencing any Work in connection with construction upon or over the Right-of-Way. SCRRA requires ten to fifteen (10 – 15) working days notification to arrange for a flagman; every attempt will be made to support the request, however availability cannot be guaranteed within this timeframe.

4. The majority of the work to be done is requested in the evenings so that train service during the day is not disrupted. Because of SCRRA Fiber Optic ducts that are in the ground, no work in the "Right of Way" for the placement of the gantry or signage foundations can occur before SCRRA Signal Department has located its conduits/cables.
5. Contractor Work Window availability based upon current operation schedule:
 

Monday-Friday	10:00 p.m. – 4:30 a.m.
Saturday	12:00 midnight – 6:30 a.m.
Sunday	8:30 p.m. – 4:30 a.m.
6. Full compliance with SCRAA documents, SCRRA Form No. 6, Right-of-Entry Agreement and Form 37 Rules, Rules and Requirements for construction on Railway property, as applies to all Work performed on/or near the tracks and right-of-way, is required and the documents shall be duly executed by Contractor a minimum of thirty (30) Days prior to any access, or Work of any nature. Attention is directed to SCRRA Form 37, Rules and Requirements for construction on Railway Property, Section 2.2, Safety and Protective Services. Contractor must comply fully with all SCRRA requirements during the entire Project.

SCRRA documents Form 6, Right-of Entry Agreement; Form 37, Rules and Requirements for Construction on SCRRA Property are provided in the Technical Documents.

**C. Payment of SCRRA Services**

Metro will compensate SCRRA for all direct support costs associated with the project, including flaggers provided by SCRRA. Metro will not compensate SCRRA, or increase the Contract Price for the following:

1. The Contractor shall be responsible, as part of the Contract Price, to compensate SCRRA directly for all costs associated with any training required from SCRRA for Contractor's forces;
2. Contractor shall be responsible, as part of the Contract Price, for all of Contractor's own administrative costs for dealing with SCRRA, to include all costs associated for attending any required meetings; track allocation or otherwise;
3. Contractor shall be directly responsible for any damage that may occur resulting from any Work performed by either the Contractor's own forces or any subcontractor supporting the Contract.

**SP-29 COOPERATION WITH EXPO RAIL, METRO RAIL, METRO BUS AND LADOT TRAFFIC OPERATIONS (I-110, ADAMS BLVD PROXIMITY)**

**A. Contractor Interface with Operational Rail Segments; Bus and Street Traffic**

1. It is expected that Metro, LADOT and Expo (hereinafter referred to as "Metro/Agency" respective to each Agency's responsibility) will cooperate with Contractor to the extent that the Work may be handled in an efficient manner, but Contractor shall have no claim for damage or extra compensation in the event its Work is delayed by any Metro/ Agency Operations.
2. Contractor shall perform its Work in such manner and at such times as to not endanger or interfere with the safe operation of the tracks and property of the specified agencies and the traffic moving on such tracks and streets, as well as wires, signals and other property of each Metro/ Agency, their tenants or licensees, at or in the vicinity of the Work.
3. Any proposed plan by Contractor that may cause infringement on the above clearances due to Contractor's operations shall be submitted to Metro/Agency in writing and such Work shall not begin until such a plan has been approved by Metro/Agency. No damage or extra compensation will be allowed in the event the Contractor's Work is delayed pending Agency Approval.
4. Contractor shall give forty-eight (48) hours written notice to Metro/Agency before commencing any Work in connection with construction upon or over the Right-of-Way or street access. Should the Expo rail line be entering pre-revenue or revenue operations, written notification shall be twenty-eight (28) Days prior to commencing any Work.
5. Metro/Agency shall have the right to order Contractor to temporarily cease operations in the event of an emergency. Contractor shall comply with the rules and regulations of each Metro/Agency in relation to the proper manner of protecting the tracks, property and personnel of each Metro/Agency and the traffic moving on such track/ street, as well as, wires, signals and other property of said Agency. Should any violations occur, Metro /Agency shall have the right to order Contractor to cease construction activities until Metro/Agency is satisfied that Contractor demonstrates corrections and measures have been implemented to prevent additional violations.
6. If Contractor desires to move its equipment or materials across Metro/Agency tracks at locations other than public crossings, it shall obtain prior permission from Metro/Agency, Contractor shall furnish flagmen and/or watchmen to control equipment within the Worksite at the discretion of Metro/Agency.
7. Contractor shall, upon completion of the Work to be performed by the Contractor upon the premises or over the tracks of Metro, promptly remove from Metro/Agency Right-of-Way, all of Contractor's tools, implements, materials and equipment (Construction Equipment and

otherwise), whether brought upon the Right-of-Way or other property by the Contractor or any Subcontractor, employee or agent of the Contractor or any Subcontractor, and leave the Right-of-Way or other property in a clean and presentable condition.

## **B. Specific Agency Requirements**

I-110 Corridor – Adams Boulevard Off-Ramp widening and associated activities

1. Expo Construction Authority – For the Overhead Cantenary System (OCS) Pole location, and other construction related activities, on or near the EXPO rail line during rail construction, contact Expo Authority 213/243-5512
2. Metro Rail Operations –Contact Rail Operations, 213/922-6951, or Rail Operations Control, 323/563-5022. Contractor must attend weekly Track Allocation Coordination Meetings held at the Rail Operations Control Center, 2000 East Imperial Highway, Willowbrook CA, 90059, at 8:00am. Contact Track Allocation Coordinator, 323/563-5049.
3. Metro Bus Operations – Any freeway/street closures that would potentially impact bus schedule/operations must be coordinated with Bus Operations Control, contact 213/922-6574 or 213/922-4419.
4. LADOT Traffic Operations - Contact Major Construction Coordination Division at 213/ 972-8871 for Worksite Traffic Control Plans, Traffic Circulation Plans and Temporary Traffic Signal Plans. Contact Central Enforcement Area Office at 323/ 224-6565 for traffic control officers. Contact Field Operations Coordination at 213/ 928-9624 for all signals, signs, striping and pavement marking work.

## **SP-30 TRACK ALLOCATION MEETINGS**

### **A. Meetings**

Metro has weekly Track Allocation meetings every Wednesday to coordinate use of track for construction and testing purposes so that these activities can be accomplished safely and efficiently. Contractors performing Work requiring track usage are required to attend these track allocation meetings. “Red Tag Areas” will be defined at the Track Allocation meetings. Contractors wanting to work or perform tests in the “Red Tag Areas” must submit tracking occupancy and access requirements as specified in the “Rules and Procedures for Conducting Test Operations” Manual. Contractors shall make every effort to schedule Work requirements around occasions when track is not available because of testing or Work requirements of other contractors.

## **B. Requirements**

All Work performed in “Red Tag Areas” must comply with the requirements specified in the “Rules and Procedures for Conducting Test Operations” Manual. Contractor’s employees performing Work under the Contract must complete training on these “Rules and Procedures for Conducting Test Operations”. Depending on the employee’s assignment, training will require one to five hours.

# **SP-31 HAZARDOUS SUBSTANCES MANAGEMENT AND OBLIGATIONS**

## **A. Hazardous Substances Management Plan**

The Contractor shall prepare and submit to Metro for its review and concurrence, no later than thirty (30) Days after the NTP, a Hazardous Substances Management Plan. The Hazardous Substances Management Plan shall be consistent with relevant Master Cooperative Agreements (MCAs) and shall describe the most cost-effective approach to Hazardous Substances management that complies with applicable Laws, Governmental Approvals, and MCAs. The Hazardous Substances Management Plan shall address any contamination encountered, impacted, caused by or occurring in connection with the Work, as well as investigation and remediation of such contamination, both within and outside the Worksite, including outside areas affected by Relocations. The Contractor shall comply with the procedures and requirements set forth in the approved Hazardous Substances Management Plan and as required by the GENERAL REQUIREMENTS and the Construction Safety and Security Plan. All Hazardous Substances shall be managed in accordance with applicable Laws, Governmental Approvals, the approved Hazardous Substances Management Plan, and the approved Injury and Illness Prevention Program.

## **B. Discovery of Hazardous Substances**

1. Required Actions -- If during the course of the Work, the Contractor encounters material quantities suspected to be Hazardous Substances, the Contractor shall (a) immediately notify Metro telephonically or in person, to be followed within twenty-four (24) hours by notification to Metro in writing, and shall advise Metro of any obligation to notify State or Federal agencies under applicable Government Rules; (b) conduct such further investigation as may be necessary or appropriate to determine the nature and extent of the Hazardous Substances; and (c) take all reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Substances. For purposes of this Section, the term “material quantities” means quantities that trigger any reporting, investigation, or remediation requirements under any Environmental Law. Where excavation or dewatering is not reasonably avoidable, the Contractor shall select the most cost-effective approach to Hazardous Substances Management, unless otherwise directed by Metro. Wherever feasible and consistent with applicable Laws, contaminated soil and groundwater shall not be disposed off-site.

2. Opportunity to Inspect -- The Contractor shall afford Metro the opportunity to inspect sites containing Hazardous Substances before any action is taken which would inhibit Metro's ability to ascertain the nature and extent of the contamination.
3. Rights of Authority. -- Metro reserves the right to use other labor forces to investigate and to perform Work to determine the nature and extent of any Hazardous Substances, and to handle and/or remove Hazardous Substances (including contaminated groundwater) from the Worksite.

### **C. Disposal of Hazardous Substances**

1. General Obligation – The Contractor shall be responsible for the removal, disposal, and/or remediation of Hazardous materials, both within and outside the Worksite, in accordance with the Hazardous Substances Management Plan and the Contract Documents.
2. Contaminated Groundwater -- The Contractor shall be responsible for pre-treatment and disposal of all contaminated groundwater and surface water contaminated with Hazardous Substances in accordance with the Hazardous Substances Management Plan, regardless of quantity.
3. Lead and Lead-Containing Substances -- The Contractor shall be responsible for removal, disposal and/or remediation of lead and lead-containing materials in structures and/or other improvements that must be demolished, removed, relocated or altered in connection with the Work, whether located within or outside the Worksite.

### **D. Hazardous Substances Brought to Site by Contractor**

The Contractor shall be solely responsible for (1) compliance with all Laws applicable to Hazardous Substances brought onto the Worksite by the Contractor or any of its Subcontractors; (2) the use, containment, storage, management, transport and disposal of all such Hazardous Substances in accordance with this Contract and all applicable Laws and Environmental Approvals; and (3) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays, and liability associated with, arising out of, or related to such Hazardous Substances.

### **E. Avoidable Hazardous Substances**

The Contractor shall be responsible for any Hazardous Substances, known at the time of NTP or subsequently discovered, that could have been avoided by reasonable design modifications or construction techniques.

### **F. Removal of Stored Hazardous Substances Upon Completion or Termination**

Within thirty (30) Days after Substantial Completion, or upon the earlier termination of this Contract for any reason, the Contractor shall remove from the

applicable portions of the Site and other locations all Hazardous Substances stored thereon in connection with or as a result of any Work or other activities by or for the Contractor or any Subcontractor. The Contractor shall demonstrate such removal and any remediation necessary for protection of human health and the environment to the reasonable satisfaction of Metro, and shall provide Metro with copies of all records relating to such remediation and disposal.

#### **G. Hazardous Waste Generator**

1. No Status as Generator -- Except as provided in paragraph 2 below: (a) the Contractor shall not be considered to be the generator of Hazardous Substances located within or outside the Site; (b) the Contractor shall not be required to execute any hazardous waste manifests as a "generator"; and (c) any Hazardous Substances encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA Identification Number or other appropriate legal device obtained by, and carried in the name of, Metro or another Person designated by Metro.
2. Status as Generator -- The Contractor (and not Metro) shall be considered the generator with respect to any Releases(s) of Hazardous Substances attributable to the negligent acts or omissions or the willful misconduct of the Contractor or any Subcontractor, or to any breach of applicable Laws or the terms of this Contract or the other Contract Documents by the Contractor or any Subcontractor.

#### **H. Hazardous Substance Data**

1. Contractor Submittal -- Contractor shall submit a MATERIAL SAFETY DATA SHEET (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all Hazardous Substances, five (5) Days before delivery of the Hazardous Substance, whether or not listed in Appendix A of the Standard. This obligation applies to all substances delivered under the Contract that involves possible exposure to Hazardous Substances, or items containing these Substances.
2. Metro's Rights in Hazardous Substance Data -- Metro shall have the right to use, duplicate, and disclose data furnished under the Contract to:
  - (a) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of any Hazardous Substance;
  - (b) Obtain medical treatment for those affected by the substance; and
  - (c) Have others use, duplicate, and disclose the data on behalf of Metro for these same purposes.
3. Metro's Rights to Use -- Metro may use, duplicate, and disclose data furnished under this Article, in accordance with this Section, in precedence over any other Article of the Contract providing for rights in data. Metro shall not be precluded from using similar or identical data acquired from other sources. The data shall not be duplicated, disclosed, or released outside Metro, in whole or in part for any acquisition or manufacturing purpose.

**I. Governmental Approvals and Permits**

The Contractor shall be responsible for obtaining all Governmental Approvals relating to Hazardous Substances management, including Federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Substances, as applicable. The Contractor shall be responsible for compliance with the terms and conditions of all such Governmental Rules and will all applicable Laws.

**J. Compensation from Provisional Sums**

1. Disposal of Hazardous Substances -- The Contractor shall be compensated from the Provisional Sums for the cost of the discovery and investigation of Hazardous Substances under subsection B, removal, disposal, and/or remediation of Hazardous Substances under subsection C, and removal of stored Hazardous Substances under subsection F.
2. Administrative Actions -- The Contractor shall be solely liable, and shall not be compensated from the Provisional Sums, for the cost of the development of the Hazardous Substances Management Plan under subsection A, data submittal under subsection H, the obtaining of permits and approvals under subsection I, and all other administrative actions and administrative personnel costs incurred in meeting the requirements of this Article.
3. Materials Brought to Site -- The Contractor shall be solely liable, and shall not be compensated from the Provisional Sums, for all costs relating to Hazardous Substances brought to the Worksite by the Contractor or any of its Subcontractors.

**K. Flowdown**

The Contractor shall insert this entire Article, with appropriate changes in the designation of the Parties, in Subcontracts at all tiers (including purchase designations or purchase orders).

**SP-32 PROVISIONAL SUMS**

**A. General.**

Provisional Sums identified in this Contract (or any portion thereof) can only be expended by the Contractor after first receiving written authorization from Metro's Contracting Officer, and work to be compensated by Provisional Sums can only be commenced after receiving such written authorization. Provisional Sums are subject to increase or decrease as determined by Metro, based on the actual needs of the Project and are not a guaranteed part of the Contract Price. Provisional sums have been established for work that will be part of the Contract but quantification was impossible to determine prior to award due to various circumstances. The Work contemplated by the Provisional Sums shall be performed within the Completion Deadlines.

**B. Authorization and Notifications**

Metro will include in any written authorization to expend Provisional Sums (or any portion thereof) the basis of compensation i.e. a lump sum price, unit prices, or time and material (T&M). In the event the written authorization identifies a Not-to-Exceed (NTE) amount, the Contractor shall notify Metro in writing, and provide a revised estimate of the total amount to complete the work whenever it has reason to believe that (1) the costs the Contractor expects to incur when added to all costs previously incurred, will exceed seventy-five percent (75%) of the NTE amount specified in the written authorization; and (2) the total cost for the performance of the Work, will be greater or less than the NTE amount authorized.

1. Metro is not obligated to reimburse the Contractor for costs incurred in excess of the current authorized NTE amount, and the Contractor is not obligated to continue performance (including actions under the Termination clause of this Contract) or otherwise incur costs in excess of the authorized NTE amount, until Metro increases the NTE amount in writing
2. When written authorization is issued for an agreed upon lump sum price, Contractor shall not be due any additional compensation based on Contractor's actual incurred costs, unless the scope of the work changes and is agreed upon by Metro in writing.
3. Under no circumstances shall Metro be obligated to compensate Contractor for any work performed by Contractor prior to receiving from Metro's Contracting Officer written authorization to expend Provisional Sums (or any portion thereof).
4. When seeking authorization to expend Provisional Sums (or any portion thereof) Contractor shall provide Metro a minimum of ten (10) Days written notice prior to the need to perform the work, including a detailed scope of the work to be performed and detailed cost proposal prepared in accord with the Article entitled CHANGES in the Contract Document GENERAL CONDITIONS, and in accordance with paragraph C below. Contractor shall be responsible for the timely submittal of any request to expend Provisional Sums (or any portion thereof) so the Parties can agree upon the costs and schedule prior to the Contracting Officer issuing a written authorization, to avoid any impact to the approved Critical Path Schedule.
5. Metro reserves the right to issue a unilateral authorization to expend Provisional Sums (or any portion thereof) in the event the Parties are not able to agree on the costs for the Work.
6. The execution of a bilateral Provisional Sums authorization by the Contracting Officer and the Contractor's authorized representative shall constitute a full accord and satisfaction of all amounts payable, and all time and all other Claims arising out of the Work that is the subject of the written authorization. There will be no reservation of rights by either Party on a bilateral authorization.

- 7 Contractor agrees to, and shall not take advantage of, any apparent non-conformity in the Contract Documents to request or maximize the use of Provisional Sums under the Contract.

**C. Basis for Establishing Costs Associated with a Provisional Sum Authorization**

Compensation for a Provisional Sum authorization shall be the sum of all eligible costs that the Metro determines are allowable, allocable and reasonable to perform the Work, and a mark-up for overhead and reasonable profit, as set forth in the Article entitled BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE in Contract Document GENERAL CONDITIONS..

1. Contractor shall not be entitled to nor seek compensation from Provisional Sums for the cost of any Work already included in the Contract Price exclusive of the Provisional Sums identified in the Contract.
2. The Parties agree and recognize that all Work performed on a cost basis of Time and Material must be documented on acceptable T&M records, such as Time sheets which identify the individual workers with hours traceable directly to the cost code assigned to the work. All T&M time sheets must be signed off by a Metro representative and submitted/transmitted to Metro within 24 hours. The work sheets must contain a clear narrative as to the work performed.
3. The mailing costs for items such as Welcome Packets, additional Metro materials, and other related mailings during the O & M Work shall pass through to Metro at the actual cost.

**SP-33 PUBLIC PARTICIPATION AND PUBLIC INFORMATION SUPPORT**

All community outreach and public participation activities will be developed and implemented by Metro Regional Communications Department whose staff will be managing a community outreach consultant contract that is separate and apart from this Contract. However, Contractor may be required to provide assistance to Metro in the implementation of community participation and public information programs during the design/build process, as more specifically described in the SOW. As requested by Metro, Contractor may also be required to attend public meetings and other stakeholder meetings held in connection with the public participation program.

**SP-34 METRO MARKETING GUIDELINES**

Metro has strict design and nomenclature guidelines that are applicable to all communications materials for Metro projects and services. Any communications materials prepared for distribution to the public (including but not limited to community notices, fact sheets, brochures, ads, informational materials, marketing materials, brochures, website information and postings, press releases, events, etc.) as well as any customer interface areas such as signage, transponder product design and

packaging, website development, user interface, etc. shall be reviewed and approved by Metro's Chief Communications Officer or designee prior to distribution.

## **SP-35 PARTNERING**

### **A. INTENT OF PARTNERING PROCESS**

Metro encourages partnering among Metro, Caltrans, the Contractor, its Subcontractors, and other stakeholders. The partnering process is intended to draw on the strengths of each organization to help identify and achieve reciprocal goals, including achieving completion of the Work on time, within budget and in accordance with its intended purpose. A primary consideration of partnering is the prompt and equitable resolution of issues affecting the conduct of the Work under the Contract Documents and the rights and responsibilities of the respective parties.

### **B. PARTICIPATION AND RESPONSIBILITIES**

1. Nature of Process. - The partnering process will be bilateral, and participation will be voluntary, but it is strongly encouraged by Metro.
2. Level of Effort. – Should the Contractor agree to partnering, a full-time partnering effort is essential to the success of this Contract, involving Executive Management, Project Management and staff. The parties shall attempt to resolve issues through partnering between appropriate representatives of Metro and the Contractor.
3. Partnering Costs. -- Metro and the Contractor shall share equally the costs and expenses of the partnering process carried out under this Article. The Contractor shall pay the invoices of the partnering facilitator and any other direct costs, after approval by both Parties. After receipt of the Contractor's paid invoices, Metro shall reimburse the Contractor fifty percent (50%) of such paid invoices within thirty (30) Days. The other fifty percent (50%) of such paid invoices shall be borne by the Contractor and shall not be reimbursed or compensated under this Contract. To the extent that either Metro or the Contractor desires extra or additional partnering activities beyond those described in this Article, both Parties must agree before a commitment is made to undertake those activities.
4. Partnering Agreement. -- In the event the Contractor agrees to participate in the partnering process the parties will enter into a Partnering Agreement addressing such particulars that include, but is not limited to the following:
  - (a) Participants
  - (b) Project Task Force Teams
  - (c) Project Management Team
  - (d) Executive Management Team
  - (e) Regular Team Meetings and Process for Issue Resolution
  - (f) Project Goals

- (g) Selection of Facilitator
- (h) Partnering Workshop Schedule and Agendas

### C. WORKSHOPS

1. Initial Workshop. -- Within thirty (30) Days after the Notice to Proceed, the Contractor and Metro will mutually select a third party facilitator to conduct the team building workshop(s) for Contractor and Metro personnel. The initial workshop should be held within sixty (60) Days after Notice to Proceed. The workshop is expected to last approximately one (1) Day and will be held in close proximity to the IPO offices. The Contractor's and the Major Subcontractor's key staff as well as Metro's key staff responsible for the management and administration of the Contract shall attend the workshop. Caltrans, City of LA, and other major Third Party Stakeholders' key personnel will be invited and strongly encouraged to attend. During the initial workshop a program for the continuation and maintenance of the partnering initiative will be developed for use through the duration of the Project.
2. Follow-up. -- Follow-up workshops may be held periodically throughout the duration of the Project as agreed by the Contractor and Metro. The partnering sessions will focus on how to work together to smoothly process reviews, payment requests, change orders, requests for information, delay requests, substitutions and other typical interactions and interfaces between the Contractor, Metro, Caltrans, other major Third Party Stakeholders, and consultants. The sessions are meant to establish channels of communication to maximize productivity of everyone working on the Project and minimize conflict.

### D. RIGHTS OF PARTIES

Either Party may withdraw from partnering upon written notice to the other. However, no claim or dispute settled or change approved through partnering shall be revived. The establishment of a partnering agreement will not change the legal relationship of the parties to the Contract nor relieve either party from any of the terms of the Contract Documents.

## PART B—TOLL COLLECTION EQUIPMENT AND SYSTEMS

### SP-36 GENERAL OBLIGATIONS FOR EQUIPMENT AND SYSTEMS

The Contractor shall design and provide a Toll Collections System and all equipment, components, systems, facilities, other deliverables required for the toll operations system as set forth more specifically in the Contract Document STATEMENT OF WORK (SOW) and as necessary to fulfill fully all obligations under the Contract. As described in the SOW, the Contractor shall design and provide a toll operations system that, at a minimum, is capable of: (1) accommodating up to two (2) million transponders; (2) accommodating up to one (1) million customer accounts; (3) processing up to 500,000 transactions per day; (4) processing up to

75,000 video images used for violation processing per day; (5) providing connections of up to five (5) separate toll facilities; and (6) allowing thirty (30) Metro or other agency staff to concurrently use an Internet browser based interface for purposes of running reports, queries, and other limited functionality as needed for system oversight.

## **SP-37 INITIAL PLANS AND SCHEDULE**

### **A. Work Plan**

The Work Plan required to be submitted by Contractor to Metro for review and approval, under the Contract Document GENERAL CONDITIONS Article entitled PROJECT SCHEDULE AND CONSTRUCTION STAGING, shall also describe the Contractor's plans to manage the Project including staffing, scheduling, communication procedures for controlling all correspondence, submittals, and other communications between the Contractor and Metro. Unless Metro approves changes in writing, the staffing levels of the Contractor's Work Plan shall be consistent with the personnel levels and organizational structure provided with the Contractor's Proposal. The Work Plan shall include but not be limited to:

1. A description of the planning, communications, and reporting methods to be utilized, both for internal communications within the Contractor's team and externally to Metro. The description shall address the communications protocol with Metro, for day-to-day operations, and for reporting general issues and problems. The description shall also address the process by which issues can be escalated within the Contractor's organization.
2. A methodology for Project Schedule and performance reporting and tracking.
3. A risk assessment and mitigation plan that identifies potential Project risks and their impact on Project delivery, including financial and schedule impacts, and that identifies a mitigation strategy for each risk. The risk assessment and mitigation plan portion of the Work Plan shall be updated as the Project progresses.

### **B. Systems Configuration Management Plan**

The Contractor shall develop a Systems Configuration Management Plan for review and approval by Metro which shall demonstrate how the Contractor will provide strict control over configuration management. This plan shall include provisions for tracking changes, not only to the source code, but also to all other toll collection system hardware and software components. Systems Configuration management processes addressed in the Plan shall detail system defect tracking, change control, software and hardware changes and testing including regression testing, release notes, approval, and deployment of software and hardware changes in production and verification.

## **SP-38 DESIGN AND DEVELOPMENT**

The Contractor shall be responsible for Design and Development of the Toll Collection System, including business processes development, Business Rule finalization, and systems and services requirements trace documentation, as required by the following provisions and as more specifically described in the SOW.

### **A. Business Processes**

The Contractor shall conduct a series of design meetings with Metro and its representatives to finalize the business processes that the system shall be required to support. The Contractor shall prepare and distribute minutes from these meetings, including process flow diagrams and flow charts as appropriate, to ensure that the input from the workshops has been accurately reflected. Upon approval by Metro, the Contractor shall integrate these materials into the final design documentation for the Toll Collection System.

### **B. Business Rules**

The Contractor shall conduct a series of requirements verification meetings with Metro to confirm the requirements and finalize the Business Rules, based on the draft Business Rules provided in RFP No. PS0922102333. During these meetings, the Contractor shall seek clarification and finite definition of the program requirements to achieve a mutual understanding between the System Integrator and Metro. The Contractor shall demonstrate how its existing toll collection solution meets the program requirements and what areas of its toll collection solution will require configuration, enhancement, and/or development. The Contractor shall comply with the Business Rules as finalized.

### **C. Systems and Services Requirements Trace**

After the Notice to Proceed and after the completion of the requirements verification meetings, the Contractor shall submit an updated Requirements Trace Document to Metro for review and approval. The Contractor shall ensure that the Trace Document captures all of the requirements for the toll system and related services. The Contractor shall also trace all functional requirements to specific aspects of the system and services provided by the Contractor to demonstrate that all requirements have been satisfied. The Contractor shall identify the source of each requirement in the Requirements Trace Document.

### **D. Design Review Process**

The Contractor shall provide Design documents and participate in Design Reviews relating to Equipment and Systems with Metro, Caltrans, and other parties, in accordance with the Article entitled CONTRACTOR FURNISHED DOCUMENTS AND METRO REVIEWS in the GENERAL CONDITIONS and the Contract Document SOW.

**E. Accounts Services**

The Contractor shall develop systems and methods for the establishment of customer accounts, the management of account records, alternative account opening methods, payment methods and statements, and all other requirements relating to accounts and financial services as more specifically described in the SOW. All accounts and financial services shall be available and ready to use prior to the commencement of the Demonstration Period.

**SP-39 SYSTEM REQUIREMENTS**

**A. Field/Lane Equipment**

The Contractor shall provide all of the equipment, components, and systems required by the Contract and SOW for operation of the toll lanes, including the following:

1. Lane Controller - The Contractor shall design and provide a Lane Controller that is capable of capturing and processing data and volumes as required by the SOW, and that meets all of the functional requirements set forth in the SOW.
2. Transponders - The Contractor shall be responsible for procuring and supplying transponders in the quantity stated in the SOW, and for assuring that an adequate supply of transponders will be available throughout the performance of the Work and the OM Term to meet system and customer demands
3. Transponder Reader and Antenna - The Contractor shall design and provide transponder readers and antennas for each toll lane that are capable of transmitting, receiving and capturing data as required by the SOW, and that meet all of the functional requirements set forth in the SOW.
4. Vehicle Separator - The Contractor shall design and provide a Vehicle Separator for each toll lane that is capable of correlating data as required by the SOW and that meets all of the functional requirements set forth in the SOW.
5. Violation Enforcement System -- The Contractor shall design and provide a Violation Enforcement System that meets all of the functional requirements set forth in the SOW.
6. Roadside Enforcement Indicator -- The Contractor shall design and provide a Roadside Enforcement Indicator for each toll lane that is capable of communicating violations to enforcement personnel as required by the SOW and that meets all of the functional requirements set forth in the SOW.

7. Dynamic Message Signs for Toll Rate Display - The Contractor shall design and provide Dynamic Message Signs in advance of all tolling points to notify drivers of the current toll rates as required by the SOW. The Contractor shall mount the Dynamic Message Signs on new or existing structures, as described in the SOW, and shall be responsible for the installation of any necessary new structures.
8. Additional Equipment - In addition to the Equipment and Systems identified above in this Section, the Contractor shall design and provide all other Equipment and Systems identified in the SOW, including the communications and network hardware, the overhead structures, the equipment cabinets, the uninterruptible power sources, and CCTV cameras, and detection equipment.

**B. Toll Collection Equipment**

1. General -- The Contractor shall design and provide all subsystems and equipment necessary to provide complete functionality for the Toll Collection System as specified in the SOW, including but not limited to the following: tolling point functionality, integrated central application software; commercial-off-the-shelf software; database(s); computer systems; storage; networks; communications; phone system; and all supporting equipment, such as printers, workstations and other peripheral devices, necessary to operate the system. The Contractor shall also ensure that the Toll Collection System is scaled to support the anticipated number of accounts and transactions, with consideration towards potential future facility expansion and the performance requirements of the SOW.
2. System-to-System Interfaces -- The Contractor shall design and provide all electronic data interfaces required to support the SOW, including but not limited to interfaces between the Toll Collection System and the following systems:
  - (a) Metro Regional Integration of Intelligent Transportation Systems (RIITS) Traffic and Traveler Information;
  - (b) California Toll Operations Center (CTOC) Interoperability; and
  - (c) Registered Vehicle Owner Name and Address Acquisition.
3. Communications Network Design and Roadside Infrastructure -- The Contractor shall design and provide a communications network to support all new toll field equipment, including connection to the central system over a high-speed Ethernet network as required by the SOW. The Contractor shall provide and install a roadside fiber optics network to connect all toll points, the Dynamic Message Signs, and the supplemental CCTV cameras. The Contractor shall also design and provide any communications re-connection to existing Caltrans

surveillance and detection devices, as required, due to replacement of existing fiber.

**C. Interface with Financial Institutions**

The Contractor shall develop, test, and provide automated electronic interfaces with appropriate financial institutions to support the following payment activities: Cash and Check Deposits, and Credit Cards and Branded Debit Cards.

**D. Functional Requirements**

The Contractor shall supply and demonstrate a fully functional toll system which meets or exceeds the requirements of these SPECIAL PROVISIONS and the SOW, as well as provides the functionality, performance levels, and reporting necessary to support the on-going operations of the ExpressLanes systems in accordance with the Contract Documents.

**E. Facilities**

The Contractor shall establish and furnish physical facilities required by this SOW, including walk-in customer service storefronts, a toll operations call center, and a data center. The Contractor shall procure leases for the required facilities, as necessary. All leases shall be assignable to Metro or to a future operations and maintenance contractor designated by Metro.

**SP-40 TRAINING REQUIREMENTS PRIOR TO START-UP**

**A. General**

The Contractor shall be responsible for providing training for its staff in all aspects of the Toll Collection System, including the efficient operation of the Toll Operation and Service Center, and shall be responsible for providing training to Metro staff. The Contractor shall schedule and implement its training program to ensure that all required training is completed at least sixty (60) Days prior to the Substantial Completion Deadline.

**B. Training Plan**

Not later than sixty (60) Days prior to the start of any training classes, the Contractor shall submit a Training Plan to Metro for its review and approval. The Training Plan shall detail the information set out in the SOW.

**C. Training Schedule**

The Contractor shall provide sufficient notice to Metro as to the type of training it will provide and the timing for each training session. The Contractor shall notify Metro of the dates or range of dates proposed for training sessions, and shall hold training and shall coordinate with Metro staff to

arrange for the proper classroom setting and computer hardware and software setups.

**D. Training Courses**

The Contractor shall provide the training courses to Metro personnel as specified in the SOW, and shall also provide training manuals, guides, training aides and student and instructor work books to support those courses

**E. Manuals and Materials**

1. Materials - The Contractor shall be solely responsible for supplying all of the items necessary to complete the delivery of the training program. The Contractor shall develop a program that includes formal and informal instruction, models, manuals diagrams and component manuals and catalogs as required. The Contractor shall submit draft copies of all training materials to Metro or its designated representative for review, comment and approval.
2. Manuals - The Contractor shall produce and provide all training manuals, in approved Microsoft software product or approved equivalent, in compliance with the requirements of the SOW.

**F. Operations and Maintenance Training**

The Contractor's training obligations during the operations and maintenance phase of the Work are set forth in the Article entitled TRAINING REQUIREMENTS DURING OPERATIONS AND MAINTENANCE herein.

**SP-41 SYSTEM IMPLEMENTATION AND INTEGRATION**

**A. Obligation for Toll System Implementation and Integration**

The Contractor shall be responsible for Toll Collection System implementation and integration in accordance with these SPECIAL PROVISIONS and the SOW. The Contractor shall provide all the services required to develop, install, integrate and commission the individual components of the toll collection system. For purposes of the Contract, the integration of the Toll Collection System shall include all field infrastructure, central system hardware, application software, phone systems, internet services, peripherals, network components, and other data processing units required to meet the requirements of the SOW.

**B. Toll Collection Application Software**

The Contractor shall develop and configure the central toll collection application software to meet the requirements of the SOW, the Business Rules, and the system design developed during the Project. The Contractor shall design the application software system to link to and be compatible with Metro's Central Computer system.

**C. Software License**

The Contractor shall grant to Metro an irrevocable, royalty free, paid-up license to all Software, Source Code Materials, Documentation and object codes for Software that are developed by Contractor, to support the toll system and its operation and maintenance Work under the Contract, in accordance with the Article entitled SOFTWARE LICENSING AGREEMENT AND PROVISIONS FOR USE in the Contract Document GENERAL CONDITIONS. Such license shall survive any transition in operations and maintenance services under the Article entitled TRANSITION OBLIGATIONS herein.

**D. FASTTRAK Sublicense**

1. Grant of Sublicense – Metro grants to the Contractor a non-exclusive revocable sublicense of Metro’s license to use the identifying trademarks and service marks (collectively the Mark) granted to Metro under the FASTRAK License Agreement between Metro and the Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Corridor Agency (License Agreement). This sublicense shall be solely for the Contractor’s use for the Work under this Contract and the list of approved uses in Exhibit B to the License Agreement. The Contractor shall have no right to license or sublicense the Mark.
2. Conditions on Use – In exercising the sublicense granted under this subsection, the Contractor shall at all times perform in a manner consistent with the provisions of the License Agreement, and shall take no action that would conflict with the License Agreement or that would cause Metro to be in breach of, or otherwise not be in full compliance with, that Agreement.
3. Liquidated Damages -- If the Contractor’s acts or omissions result in Metro being assessed liquidated damages under the License Agreement, the Contractor agrees to reimburse Metro the liquidated damages amount of \$2,000 per Day (or such lesser amount as may be assessed against Metro). This obligation to reimburse shall not be subject to any limitations stated elsewhere in this Contract.
4. Indemnification – If the Contractor’s acts or omissions result in Metro being required to provide indemnification under the License Agreement, the Contractor agrees that it will be responsible for all costs associated with such indemnification, pursuant to the Article entitled LIABILITY AND INDEMNIFICATION in Contract Document GENERAL CONDITIONS.

**SP-42 TESTING REQUIREMENTS**

**A. General**

The Contractor shall develop and complete tests to demonstrate that all Equipment, Systems, and materials furnished and installed function in the

manner intended and are in full compliance with the Contract Documents, relevant industry standards, statutory requirements, and relevant codes of practice. The Contractor shall supply and demonstrate a fully functional Toll Collection System which meets or exceeds the requirements of these SPECIAL PROVISIONS and the SOW, as well as provides the functionality, performance levels, and reporting necessary to support the on-going operations of the Express Lanes systems

**B. Test Plan**

The Contractor shall prepare a Comprehensive Test Plan for testing to verify that the installed system meets all of Metro's functional requirements. The Comprehensive Test Plan shall include Factory Acceptance Testing, System to System Interface Testing, Installation Testing, Commissioning Testing, System Acceptance Testing, and Annual System Performance Testing, and shall clearly state the objectives, test scenarios, requirement trace matrix, and success criteria of each stage of testing. The Test Plan shall be submitted for approval by Metro two (2) weeks prior to Critical Design Review.

**C. Procedures and Reports**

1. Procedures -- For each stage of testing, the Contractor shall provide appropriate test procedures that fully test system functionality, performance, and operations services for that stage of testing. The Contractor's test procedures shall be based on the Comprehensive Test Plan.
2. Reports -- For each stage of testing, the Contractor shall provide a test report to Metro within fifteen (15) Days after conducting the test.

**D. Required Test Protocols**

The Contractor shall perform the following tests in accordance with the requirements set forth below, as more specifically described in the SOW:

1. Factory Acceptance Test -- The Contractor shall conduct a Factory Acceptance test to demonstrate the functionality of the entire toll collection system and interfaces before field installation and integration begins.
2. Systems-to-Systems Interface Tests -- The Contractor shall perform System-to-System Interface testing to demonstrate the automated system-to-system interfacing for the electronic exchange of data between the toll collection system and the systems provided by others.
3. Installation Test -- The Contractor shall perform Installation Testing for all equipment installed in the field or in the back-office. Successful completion of installation testing will serve to demonstrate readiness to undertake Commissioning Testing.

4. Commissioning Test -- The Contractor shall perform field checkout testing following installation, to demonstrate that the installed field devices have been installed correctly and perform as required, and that the system is ready for Commissioning Testing. System commissioning shall demonstrate that the fully installed system performs as required on-site, in a controlled test environment.

#### **E. Acceptance Testing**

The Contractor may commence System Acceptance Testing (SAT) upon successful completion of the Commissioning Tests. The Contractor may request acceptance of the system and services from Metro once the following requirements have been met and documented (as agreed to by the Contractor and Metro):

1. Submittal of business continuity plans and transition plans.
2. Submittal and Approval of SAT Report and reports for each prior stage of testing.
3. Submittal of a final deficiency log.
4. Demonstrated resolution of all Priority 1 and 2 deficiencies/issues (as identified in the SOW).
5. Completion of the sixty (60) plus day SAT test clock.
6. Demonstrated toll operations and services which are meeting performance requirements during the SAT test clock and the period leading up to the request for acceptance.
7. Delivery of all As-Built Systems documentation.
8. Updates of manuals, training plans, and SOPs as required.
9. Delivery of all licenses and warranties

Any outstanding Priority 3 deficiencies (as defined in the SOW) shall be identified on the Punch List, and shall be resolved by the Contractor to the satisfaction of Metro prior to Final Acceptance, in accordance with a schedule agreed upon by the Contractor and Metro.

Acceptance Testing shall include a determination as to whether all accounts services and financial systems are available and ready to use. The Acceptance Testing under this Article shall be carried out as an element of the Final Acceptance process conducted under the Articles entitled ACCEPTANCE OF ELEMENTS OF THE WORK and FINAL INSPECTION AND ACCEPTANCE OF THE WORK in the Contract Document GENERAL CONDITIONS.

#### **F. Annual System Performance Testing**

The Contractor shall perform Annual System Performance Testing to monitor its full operations and ensure that the performance requirements are met and to measure the system reliability and availability.

## **SP-43 AS-BUILT DOCUMENTATION FOR EQUIPMENT AND SYSTEMS**

### **A. General Requirement**

The Contractor shall provide to Metro the As-Built documentation to fully document the final Toll System design and implementation prior to Final Acceptance by Metro under the Contract Document GENERAL CONDITIONS.

### **B. As-Built System Detailed Design Document**

After completion of the System Acceptance Test, and prior to Metro's Final Acceptance of the Project, the Contractor shall submit the As-Built System Detailed Design Document that includes all software and hardware changes made during the system development and testing phase. Prior to Final Acceptance, the Contractor shall submit change pages (complete packages) to any section of the As-Built System Detailed Design Document that changed since the operational test stage.

### **C. As-Built Systems Drawings**

The Contractor shall provide Metro with a complete set of As-Built Systems drawings, and shall ensure that the drawings comply with all of the requirements set out in the SOW.

## **PART C -- OPERATIONS AND MAINTENANCE**

## **SP-44 NOTICE TO PROCEED; CONTRACT TERM**

### **A. Notice to Proceed**

The Contractor shall commence performance of the OM Work on the date specified in the Operations and Maintenance Notice to Proceed (NTP). The Contractor is not authorized to perform OM Work prior to receiving the NTP. This NTP may be issued at any time following Substantial Completion of the Construction and Equipment and Systems Work.

### **B. Contract Terms and Options**

1. The first period of performance of the OM Work shall be a one-year Demonstration Period, as more specifically described in the Article entitled DEMONSTRATION PERIOD.
2. Following the Demonstration Period, the OM Work may be extended by Metro for one or more Option Periods, as described in the Contract Document FORM OF CONTRACT Article entitled CONTRACT OPTIONS, each of which may be exercised at the sole discretion of Metro. To exercise an option, Metro shall provide written notice to the Contractor at least ninety (90) Days prior to the scheduled termination of the Demonstration Period or the Option Period, as the case may be,

notifying the Contractor that the Contract shall be extended for the Option Period.

3. The Contractor acknowledges that the exercise of options is dependent on the enactment of California state law authorizing Metro to continue tolling operations.
4. Metro reserves the right, based on the Work Completion Schedule in Appendix A, to extend the OM Demonstration Period on one of either of the freeway corridors beyond twelve (12) months, on a month to month basis for a period not to exceed six (6) months, until the completion of the Demonstration Period for the freeway corridor having the latest completion calendar date. Accordingly the one year Option Periods described in sub-section 2 above would apply to both freeway corridors. Metro shall provide written notice of such extension to the Contractor at least sixty (60) Days prior to the scheduled termination of the Demonstration Period. Monthly payments to the Contractor during any such extension shall be in accordance with the monthly price shown in the Schedule of Quantities and Prices and the Contract Document COMPENSATION AND PAYMENT.
5. Except as otherwise specifically agreed by the parties at the time of option exercise, all terms and conditions of this Contract and other applicable Contract Documents shall apply to the operations and maintenance services to be provided during any extension under paragraph (4) above and during any Option Period.

## **SP-45 COMPENSATION AND RATES**

The Contractor will be compensated for the OM Work, during the Demonstration Period and any Option Period, in accordance with the Form of Contract and the Contract Document COMPENSATION AND PAYMENT. The monthly payments to the Contractor for the OM Work shall cover the cost of all of the Contractor's operations and maintenance services, including all utility costs incurred in connection with the performance of such services (electricity, communications, etc.).

## **SP-46 OVERALL OBLIGATIONS AND STANDARD OF PERFORMANCE**

### **A. Daily Operations**

The Contractor shall, throughout the OM Term, monitor the daily operations of the toll collection system, communications network, internet, phone system, and toll collection point equipment to ensure that all system components are fully functional according to the requirements of the Contract, the SOW, and the other Contract Documents.

### **B. Customer Accounts**

The Contractor shall be responsible for establishing and maintaining customer accounts, payment processing and financial management of customer

accounts, transponder management, complaint tracking and resolution services, toll storefront services, associated website, phone and mail services, auditing support, reporting safety and security of all data, equipment and facilities, and employment and training of skilled personnel.

**C. Maintenance**

The Contractor shall be responsible, throughout the OM Term, for maintenance of all portions of the toll collection system that have been installed, integrated, tested, and are in active revenue collection service, and all other equipment as provided by the SOW. The Contractor shall also be responsible for maintenance, tracking, and secure storage of any spares or inactive equipment. The Contractor shall provide twenty four (24) hour, seven (7) days a week coverage for all maintenance related activities for the toll collection system.

**D. Standard Operating Procedures**

The Contractor shall develop and maintain Standard Operating Procedures (SOPs) for all services provided. SOPs shall be developed and updated by the Contractor for all roadway functions, customer service functions, and for all financial related activities in accordance with the Contract and the SOW.

**E. Risk of Loss**

The Contractor shall assume and bear the risk of loss of or damage to the Toll Collection Equipment and Systems, whether owned by the Contractor or Metro, used in the performance of the operations and maintenance services under the Contract. The Contractor's responsibility for the Equipment and Systems shall apply to all loss or damage, from whatever cause (including acts or omissions of a third party), and shall apply whether or not the loss or damage was the fault of the Contractor.

**SP-47 PERSONNEL AND STAFFING REQUIREMENTS**

**A. Project Manager and Other Key Personnel**

The requirements for the identification of, changes to, and removal of the Operations and Maintenance Project Manager and other Key Personnel are set forth in the GENERAL CONDITIONS.

**B. Staffing Requirements**

1. All personnel employed or retained by the Contractor shall have sufficient skill and experience to competently perform the work assigned to them.
2. The Contractor shall have a sufficient quantity of trained full time, qualified maintenance personnel to perform the maintenance activities on the toll collection system, including active monitoring of all systems

and equipment to ensure all are fully functional, as required by the Contract Documents. As part of the Maintenance Plan required under the Article entitled MAINTENANCE REQUIREMENTS AND STANDARDS, the Contractor shall identify the job categories and number of personnel that will be available and their location. It is the Contractor's sole responsibility to provide an adequate quantity and quality of staff to ensure that maintenance requirements are properly fulfilled.

3. The Contractor shall have a sufficient quantity of trained, full time qualified operations personnel to operate and provide services on the toll collection system, including customer accounts, billing and accounting, staffing storefronts, and IT support, as required by the Contract, the SOW and other Contract Documents.
4. The Contractor shall have personnel with the skills and experience to competently provide all required marketing and communication support to Metro.

## **SP-48 DEMONSTRATION PERIOD**

### **A. Activities During Demonstration Period**

1. As part of the Congestion Reduction Demonstration Agreement with the U.S. Department of Transportation, Metro and Caltrans have agreed to monitor certain performance measures during the Demonstration Period of the Project. One of the performance metrics is to maintain an average corridor speed of forty-five (45) miles per hour (mph) in the ExpressLanes.
2. The Contractor shall monitor, measure and report on the average corridor travel speed during the Demonstration Period, in accordance with the calculation methodology in the Statement of Work.

### **B. Reporting by Contractor**

1. The Contractor shall provide individual corridor average speed reports, summarized by hour, to Metro on a monthly basis. The report query function shall have the ability to exclude specific time periods (days or hours of days) from the average speed calculation. The report query function shall also have the ability to exclude all data for a given account type.
2. The Contractor shall provide reports which are automatically generated and stored consistent with the Project requirements detailed in the SOW and other Contract Documents. These reports will be made available to authorized users through e-mail and web access on an on-demand basis. The reports shall include ExpressLanes performance, availability, traffic conditions summaries, and transaction summaries.

**C. Review and Evaluation by Metro**

All Demonstration Period reports are subject to review and evaluation by Metro for completeness and content. The Contractor shall on request meet with Metro (and any other individuals or entity as may be requested by Metro) to review such reports and to make corrections, add additional data, and revise as directed by Metro.

**D. Notification to Contractor**

No later than ninety (90) Days prior to the end of the Demonstration Period, Metro shall notify the Contractor whether or not it intends to continue operation of the Toll Collection System after the Demonstration Period. If operations are not going to be continued, or are going to be transferred to Metro or another entity, the Contractor shall implement the Transition Plan described in the Article entitled TRANSITION OBLIGATIONS herein.

**SP-49 OPERATING PERFORMANCE STANDARDS**

**A. Overall Performance Measures**

The performance measures for the OM Work performed by the Contractor are specified in detail in the SOW and other Technical Documents. All such measures and standards shall be met and satisfied by the Contractor in its performance of the OM Work.

**B. System Availability**

The Field Toll Collection System shall be available 99.0% of the month each month during the OM Term. The System is considered available when (1) the Lane Controller can process and transmit vehicle passage; (2) the Transponder Reader can correctly read transponders; (3) the Vehicle Separator can correctly count and separate vehicles; and (4) Violation Enforcement Systems can correctly capture images. If any of these components are unavailable (other than for scheduled maintenance or due to third party damage), the entire system shall be considered unavailable.

**C. Mean Time Between Failures**

The Mean Time Between Failures (MTBF) for each component of the Field Toll Collection System shall be no less than one (1) year (8,760 hours). If any component fails this standard, it will be replaced by the Contractor at no cost to Metro, and the time for MTBF for that component shall start anew.

**D. Reporting on Performance**

The Contractor shall submit monthly reports to Metro regarding its compliance with the standards in this Article and the various performance measures detailed in the SOW and other Technical Documents and shall perform

annual performance tests to verify the system requirements. The Contractor's compliance reporting shall be subject to audit by Metro

## **SP-50 TOLL OPERATIONS AND SERVICES**

### **A. Operations Plan**

The Contractor shall develop a detailed Operations Plan that covers all aspects of the toll operations and associated services to be provided during the OM Term. The Operations Plan shall be submitted to Metro for review and approval ninety (90) Days prior to the scheduled issuance of the Operations and Maintenance NTP.

### **B. Account Services**

1. The Contractor shall establish prepaid customer toll accounts. The Contractor shall support accounts that rely on either transponders or license plates for vehicle identification, and each account shall have at least one (1) vehicle assigned to the account.
2. The Contractor shall provide for the opening of accounts either by internet, walk-in, telephone, mail, email or facsimile, as described in more detail in the SOW.
3. All customer account records shall be maintained electronically by the Contractor shall be stored in the Contractor's database and shall contain the information required the SOW and the Business Rules.
4. The Contractor shall accept alternative methods of payment for opening a customer account, as described in more detail in the SOW and the Business Rules.
5. The Contractor shall establish staff and operate storefronts to provide in-person, walk-up customer support along the ExpressLanes corridors.
6. The Contractor shall provide toll representative phone and automated toll service phone services, as required by the SOW and the Business Rules.
7. The Contractor shall provide mail processing services for all incoming and outgoing mail related to customer service and toll operations, as described in more detail in the SOW. The Contractor shall also establish and manage a mail processing center to handle all mail in accordance with the SOW and all Federal and State statutes and regulations relating to the privacy and security of mail.

### **C. Account Management Services**

1. The Contractor shall provide services to support the management and maintenance of customer accounts and responses to customer inquiries as defined in the Business Rules and the customer terms and conditions.

2. The Contractor shall respond to customer requested services related to accounts and shall monitor accounts and automatically notify customers in the circumstances described in the SOW.
3. The Contractor shall be responsible for suspending and closing customer accounts.
4. The Contractor shall provide services to implement, operate, and monitor automated/system initiated services, such as account notifications and payment reminders, in accordance with the Business Rules. The status of transponder accounts shall be automatically updated and transmitted, and the customer notified in accordance with the SOW.
5. The Contractor shall provide statements of accounts to customers in accordance with the requirements the SOW, and shall comply with procedures relating to account status alerts, negative balances and inactive accounts, as required by the SOW and the Business Rules.
6. The Contractor shall be responsible for implementing, managing, and monitoring the customer website. All website content shall be subject to the review and approval of Metro. The website shall provide customers with an industry standard online service for remote access to general tolling information and account services.
7. The Contractor shall implement discounted toll charges, consistent with current law and Metro policy. The discount programs, including the ExpressLanes Reward Program and the TAP Credit Program, shall comply with the Business Rules and the SOW.
8. The Contractor shall provide services to support access to the program by diverse socioeconomic user groups and communities along the corridor, as described in more detail in the SOW.
9. The Contractor shall provide toll violation processing services, as detailed in the SOW.
10. The Contractor shall track and resolve customer complaints in a timely manner and in accordance with the SOW. The Contractor shall report to Metro on customer complaints, feedback, support and comments and shall monitor calls and conduct surveys to measure customer satisfaction.

**D. Transponder Management Services**

1. The Contractor shall provide transponder management services in support of tolling accounts.
2. The Contractor shall implement proper inventory management controls and maintain an accurate transponder inventory at all times, with an

adequate supply to meet performance requirements and to fill customer orders in a timely manner. The Contractor shall be responsible for the management of inventory and for filling orders for transponders, as described in more detail in the SOW.

3. The Contractor shall be responsible for the exchange of transponder information and toll transaction data among agencies, in accordance with the SOW
4. Transponders shall be provided at account opening in accordance with the requirements of the SOW.

#### **E. Payment Processing Services**

1. The Contractor shall provide services to process all payments received via the storefronts, internet, mail and phone. (The acceptable forms of payment are listed in the SOW). The Contractor shall comply with all requirements established for credit and debit cards, and PIN debit cards established in the SOW.
2. The Contractor shall adhere to appropriate internal controls and fraud protection procedures for all payment processing activities.
3. The Contractor shall ensure the accuracy of all payment deposits and comply with the payment deposit requirements of the SOW.
4. The Contractor shall provide refunds and collection support services, as described in more detail in the SOW.
5. The Contractor shall provide financial accounting services for all customer accounts, toll transactions and promotional programs, and all transactions processed by and activities of the toll collection system and services, according to Generally Accepted Accounting Principles (GAAP), including Governmental Accounting Standards Board (GASB) pronouncements.
  - a) The Contractor shall provide services to support Metro's auditors and shall provide the financial accounting and reconciliation services described in the SOW.
  - b) The Contractor shall implement appropriate internal controls in order to ensure effective operation and full compliance with program requirements. This requirement includes both system controls and facility controls in accordance with the SOW.

#### **F. Reporting Requirements**

The Contractor shall provide robust and configurable tolling operations and system reports to Metro that monitor and document the performance of the customer services, toll system, and interfaces to other systems. At a

minimum, the Contractor shall provide the reports listed in the SOW, in accordance with the requirements set forth therein.

## **SP-51 MAINTENANCE REQUIREMENTS AND STANDARDS**

### **A. Maintenance Plan**

1. The Contractor shall develop a detailed Maintenance Plan that covers all aspects of the maintenance services to be provided during the OM Term and that includes each of the elements required by the SOW. The Maintenance Plan shall be submitted to Metro for review and approval within one hundred eighty (180) Days prior to the Substantial Completion Deadline.
2. The Maintenance Plan shall be updated periodically to reflect any changes in the policies or procedures for maintenance. Any changes are subject to the approval of Metro. No changes to maintenance policies or procedures shall be permitted without the prior written consent of Metro and a corresponding updating of the Maintenance Plan.

### **B. Monitoring Responsibilities and Systems**

The Contractor shall monitor the daily operations of the toll collection system, communications network, internet, phone system, and toll collection point equipment to ensure that all system components are fully functional according to the requirements of the SOW and the other Contract Documents. As an element of its monitoring responsibility, the Contractor shall utilize a Maintenance On-Line Management Subsystem that monitors and records the status of all hardware, software, equipment, and communications links for purposes of generating alerts, necessary maintenance activities, toll rate adjustments, and reports.

### **C. Duty to Maintain and Repair**

1. The Contractor shall be responsible for maintenance and repair of all portions of the Toll Collection Equipment and Systems that have been installed, integrated, tested, and are in active revenue collection service. The Contractor shall also be responsible for maintenance, tracking, and secure storage of any spares or inactive equipment.
2. The Contractor shall provide twenty-four (24) hour, seven (7) days a week coverage for all maintenance related activities for the toll collection system.
3. The Contractor shall be responsible for the maintenance and repair of hardware, equipment, software, and firmware for the toll points, dynamic message signs, communications network hardware, connections from the Caltrans fiber optic network hub to the Contractor's central toll collection system, toll collection system

applications software, system servers, system administration, and related peripheral equipment required for the provision of systems and services under the SOW.

4. The Contractor shall be provided fibers from the Caltrans fiber optic infrastructure for use as part of the Project. The Contractor shall be responsible for monitoring communications network performance and maintenance of switches and other communications equipment. The Contractor shall notify Caltrans and Metro of an apparent Caltrans fiber optic network issue as soon as it is identified, and shall work with Caltrans to ensure proper restoration of toll collection system functionality.
5. The Contractor shall be responsible for repairing and replacing Toll System Collection Equipment and Systems as needed during the OM Term to assure compliance with the requirements of the Contract, including the performance standards in the ARTICLE entitled OPERATING PERFORMANCE STANDARDS.

**D. Maintenance Coverage and Response Times**

1. The Contractor shall provide twenty-four (24) hour, seven (7) day coverage for all maintenance related activities. Response to calls shall be determined by priority as described in the SOW and shall not exceed the prescribed response times.
2. The Contractor shall comply with the notification and logging requirements of the SOW.
3. The Contractor shall conduct maintenance activities that require closure of the Express Lanes at night or during off-peak hours to the maximum extent possible. Closures of the Express Lanes travel lane or shoulders will not be permitted during peak periods as defined by Caltrans, unless there is a hazard to personnel or the driving public.
4. The Contractor will be responsible for providing proper lane closure notification, traffic control, support staff, and equipment consistent with Caltrans requirements and based on agreements between Caltrans and Metro.

**E. Preventive Maintenance**

1. The Contractor shall, throughout the OM Term, periodically inspect all of the equipment and systems that constitute the toll collection system, including roadside, communications and central systems. The Contractor shall make repairs, adjustments, tuning, and replacements of components as may be necessary to maintain the equipment and system in order to meet the performance requirements of the SOW and the other Contract Documents. The Contractor shall conduct its preventive maintenance activities in accordance with the equipment

and systems manufacturer's recommended preventive maintenance schedule.

2. The Contractor shall provide a preventive maintenance schedule as a part of the Maintenance Plan required by this Section. The schedule shall detail the preventive maintenance to be performed on each equipment item and system, both on an in-field and where applicable, workshop basis. The schedule shall provide a description of the Work to be performed, expected duration, and the frequency.
3. The preventive maintenance schedule shall be revised by the Contractor and resubmitted to Metro for approval in the event that any changes are to be made in the required frequency or type of preventive maintenance to be performed.

**F. Vehicles and Materials**

1. The Contractor shall provide all vehicles, facilities, test equipment, test benches, simulators, tools, PDAs, pagers, cell phones, radios, computers, and any other items required for the maintenance staff to perform their maintenance activities.
2. All required test equipment and tools shall be in adequate supply, with all required personnel trained on their use. All test equipment shall be standard units that are capable of achieving the measurement they are intended to make.

**G. Metro/Caltrans Provided Items**

1. In the event Metro or Caltrans provides capital items for use in the performance of services under this Contract, the Contractor shall be responsible for the proper maintenance of all such capital items.
2. The Contractor shall be responsible for all losses and damages to any capital items provided by Metro or Caltrans (whether or not the fault of the Contractor), subject to ordinary wear and tear, and be financially responsible and liable for the replacement of any Metro/Caltrans capital assets or systems damaged during the term of the Contract.

**H. Incident Management and Response**

The Contractor shall develop and submit to Metro, for its review and approval, an Incident Management Plan designed to assist in providing timely, safe, and effective management of and response to vehicle accidents and other significant incidents that occur in the toll lanes or affect the operation of the toll system. All Incident Management activities of the Contractor shall be conducted in accordance with the provisions of any memorandum of understanding between Metro, and Caltrans, and/or CHP.

## SP-52 SAFETY AND SECURITY OF FACILITIES AND DATA

### A. Safety Standards

1. The Contractor shall at all times conduct its operations in such a manner as to avoid risk of bodily harm to persons or damage to property. The Contractor shall promptly take all reasonable precautions to safeguard against such risks and shall make regular safety inspections of its operations. The Contractor shall be solely responsible for the discovery, determination and correction of any unsafe conditions related to Contractor's performance of the services under this Contract.
2. The Contractor shall adhere to all applicable safety standards and guidelines for working on and in proximity to energized equipment in and around a maintenance environment, including but not limited to:
  - a) Metro safety procedures and guidelines;
  - b) Caltrans safety procedures and guidelines;
  - c) Caltrans traffic control procedures and guidelines;
  - d) Occupational Safety and Health Administration requirements; and
  - e) National Electrical Manufacturer's Association (NEMA) standards; and
  - f) Any other local, State or Federal procedures or guidelines that provide for a safe operation and working environment.
3. The Contractor shall provide its personnel with training, safety, guidelines, and a safety manual which incorporates all of the above listed procedures, guidelines, requirements, and standards. The Contractor shall be responsible for providing personal protective equipment to all its personnel staff working in the field.
4. The Contractor shall cooperate and coordinate with Metro and with other Metro contractors on safety matters, and shall promptly comply with any specific safety instructions or directions given to the Contractor by Metro. The Contractor shall inform its personnel of Metro's safety practices and the requirements of Metro's safety program.
5. The obligations in this Article are to be construed in the prudent sense for the protection of persons and property by the Contractor. No act or omission by Metro or any of its personnel or representatives shall release the Contractor of any of its obligations under this Article.

## **B. Overall Security and Security Management Plan**

1. The Contractor shall establish, operate, and maintain services and processes to ensure the security of data (both paper and electronic), Systems, Equipment, facilities, staff, and funds.
2. The Contractor shall submit to Metro a Security Management Plan detailing the activities, processes, and methods the Contractor intends to use to ensure security of facilities, data, the website, systems, and funds, including the resources, tools, and equipment to be utilized. Such plan is subject to the review and approval of Metro.
3. The Contractor shall comply with all applicable requirements for security and emergency preparedness, including the California Department of Motor Vehicle access restrictions and security requirements. The Contractor shall work cooperatively with Metro in implementing and following all security procedures and the terms of the Security Management Plan.
4. All Contractor personnel shall be subject to background checks.
5. The Contractor shall immediately notify Metro of any security concern, attempted breach, or actual security breach of facilities, data, or systems.

## **C. Facility Security**

1. The Contractor shall limit access to Contractor provided facilities and internal spaces based on need, for both Contractor and Metro staff access, as required to perform their designated functions.
2. The Contractor shall install general surveillance and monitoring equipment for customer service storefront and back-office location(s). The security system shall include:
  - (a) a security video system to allow the remote view of customer service operations; and
  - (b) an access control and alarm system to control access to buildings and provide alarms for fire, instruction, and personal safety.
3. A proximity card shall be required to access all the physical customer service facilities. Each employee shall be assigned a card at the time of joining employment at the service center. The service center management and internal audit shall be able to access the history on all card numbers.
4. The Contractor shall install security cameras in money handling areas and computer room areas, and shall conduct monthly audits of the security system to ensure all equipment is in working condition.

5. The Contractor shall provide adequate staff to monitor the facility security systems.

#### **D. Security of Data**

1. The Contractor shall not release customer information to anyone other than authorized Metro staff, and shall refer any requests, inquiries, subpoenas, and other official information requests to Metro.
2. The Contractor shall be responsible for reviewing and implementing all policies, procedures and protection measures relating to the gathering of sensitive customer data, to include but not be limited to, adherence to safeguards and standards mandated under payment card merchant agreements, updating and communicating a privacy policy and tracking of information disclosed to third parties.
3. The Contractor shall be responsible for any fees, fines, or sanctions resulting from security breaches or thefts resulting from the Contractor's failure to comply with the stated standards and applicable Federal and State law. The Contractor shall be responsible for any damages and restitutions to the public resulting from security breaches or thefts from the Contractor including, but not limited, to the impacts of identity thefts.
4. The Contractor shall be responsible for the protection of data and data transmission in accordance with the Security Management Plan and the SOW.

#### **E. Website Security**

1. The website shall be equipped with industry standard security features, and shall provide secure communications and data encryption with browsers.
2. The Contractor shall provide proactive monitoring for external attacks.
3. The Contractor shall not store customer, personnel or financial data on the web server except temporarily during the processing of a transaction.

#### **F. Systems Security**

1. All computers procured, furnished, and installed shall have up to date virus protection and other security software and shall automatically obtain virus protection updates according to a recommended schedule.
2. Access to the system shall be password protected. The Contractor shall implement password control procedures for setting and modifying passwords securely.
3. The Contractor shall incorporate features in the computer systems to support security and integrity for all system data, communications and

functional activity, and shall ensure that the system is secured in accordance with the requirements the SOW.

#### **G. Security of Funds**

1. All toll funds shall be deposited in accordance with Article 5 of the Form of Contract.
2. The Contractor's services shall employ appropriate safeguards against receiving fraudulent or counterfeit funds, and to ensure secure cash handling and protection of customer privacy.
3. The Contractor shall implement procedures to be followed when receiving cash payments to avoid the receipt of fraudulent funds. If fraudulent funds are received, the Contractor shall follow up to investigate the case and collect the funds, including contacting and cooperating with law enforcement.
4. The Contractor shall be responsible for all funds until custody of the funds has been passed to the courier or bank. Collected revenue shall be temporarily stored on site using a high security locking device or safe.

#### **H. Payment Card Industry Data Security Standard (PCI DSS)**

The Contractor shall design, operate, and maintain the Equipment and Systems in accordance with the Payment Card Industry (PCI) Data Security Standards (DSS) as published from time to time. Compliance with the PCI DSS shall be evidenced by issuance of a Report on Compliance (ROC) by a Qualified Security Assessor (QSA) as often as necessary to meet each payment brand's respective reporting requirements in effect from time to time. The Contractor shall be PCI merchant compliant as evidenced by a ROC by a QSA as often as necessary to meet each payment brand's respective reporting requirements in effect from time to time. Processing of payment cards by the toll collection system shall be in compliance with the requirements set forth in the latest PCC DSS. (Version 1.2.1 (released in July 2009) of PCI DSS.)

#### **I California Security Breach Information Act**

If a security breach of a database occurs and personal information is compromised, the Contractor must notify each individual from whom it maintained information, in accordance with California Security Breach Information Act.

### **SP-53 SPARE PARTS AND INVENTORY**

#### **A. Spare Parts and Inventory Requirements**

1. The Contractor shall purchase, have on hand at the commencement of the Demonstration Period, and maintain throughout the OM Term, the spare

parts and consumables inventory required to meet the requirements of the OM Work and the needs of the Project.

2. The Contractor shall be responsible for closely monitoring the inventory quantity and ensuring that the inventory is maintained to the required level to meet the requirements of these SPECIAL PROVISIONS and the other Contract Documents, throughout the OM Term, and to conduct maintenance repairs and other services in a timely and efficient manner. The Contractor shall maintain an adequate supply of spare parts and shall ensure that sufficient parts are in inventory to conduct timely maintenance, repairs and other required services. The Contractor shall hold Metro harmless in the event spare parts or consumables are not available as a consequence of the Contractor's failure to purchase the spare parts or consumables on a timely basis.
3. The Contractor shall maintain clear and accurate spare parts and inventory records. Such records shall be subject to audit by Metro.
4. All spare parts and inventory acquired during the OM Term shall be affixed with tracking.
5. The Contractor shall be responsible, upon the termination of its operations and maintenance services (for whatever reason), for providing Metro spare parts and inventory that are equal in kind, quantity, and value to the spare parts and inventory on hand at the commencement of the Demonstration Period.

#### **B. Storage Facility Requirements**

The Contractor shall establish and maintain a secure storage facility or facilities for spare parts and inventory. The Contractor shall be responsible for the security of the storage facility or facilities and for all property stored within the facilities.

### **SP-54 IT SERVICES AND NETWORK MAINTENANCE**

#### **A. IT Services**

The Contractor shall provide IT services in accordance with the requirements of the SOW and the other Contract Documents. Such services shall include monitoring and taking corrective action to ensure that the toll collection system performs in accordance with the requirements and standards operating of the Project.

#### **B. Network Maintenance**

As part of its IT services, the Contractor shall provide ongoing maintenance of the communications network installed as part of the Project, in accordance with the SOW.

## **SP-55 MAINTENANCE REPORTING REQUIREMENTS**

### **A. Maintenance Log and Immediate Reports**

The Contractor shall maintain a log of all maintenance activities, and shall be responsible for documenting, in immediate maintenance reports, all information and issues related to all fault conditions that occur. The immediate maintenance reports shall contain as much information as possible in order for any person to reasonably determine the fault condition, when it was worked on, the corrective action taken, and any other pertinent information on the individual maintenance event and fault condition.

### **B. Monthly Report**

A monthly maintenance report shall be submitted to Metro by the tenth (10th) day of the following month. The report will summarize maintenance activities during the reporting period. Response and repair times for every maintenance event shall be recorded and reported monthly. Trends shall be reviewed and analyzed for particular devices and specific locations.

## **SP-56 TRAINING REQUIREMENTS DURING OPERATIONS AND MAINTENANCE**

### **A. Training Requirements**

1. The Contractor shall adhere to, and implement throughout the OM Term, the Training Plan developed under the Article entitled TRAINING REQUIREMENTS PRIOR TO START-UP herein. Metro must approve any updates or revisions to such Plan.
2. The Contractor shall provide trained qualified staff to support the maintenance activities described in these SPECIAL PROVISIONS and the SOW. The Contractor shall be responsible for developing the training necessary to successfully perform each of the maintenance functions and operations required to ensure the efficient operation of the Toll Operation and Service Center, and for providing ongoing training to Metro staff.
3. Prior to performing any maintenance activity on production equipment, all field technicians must have completed a minimum of two (2) weeks of documented training specific to the toll collection system and/or communications network.
4. The Contractor shall be responsible for providing training, including training by original equipment manufacturers on the proper operation, maintenance and repair of Equipment and Systems.
5. The Contractor shall develop and conduct on-going training programs for the maintenance staff to keep them current on changes in the system and to discuss status and issues associated with the maintenance of the system and network.

## **B. Training Materials and Course Content**

1. The Contractor is responsible for supplying all the items necessary for carrying out all activities specified in the Training Plan, as specified in the SOW. The Contractor's training program shall include formal and informal instruction, models, manuals, diagrams, component manuals and catalogs, as necessary. All items and materials shall comply with the Training requirements herein.
2. The Contractor shall ensure that the staff provided to conduct training is proficient at both technical and non-technical training. Where practical and useful, training should be "hands on" and should use as-built system software and screens on work stations and actual equipment to be utilized.
3. The Contractor shall, throughout the OM Term, maintain, and update as necessary, all training manuals and materials required herein.

## **SP-57 BUSINESS DISRUPTIONS**

### **A. Business Continuity**

The Contractor acknowledges that ensuring the business continuity of the tolling program and its supporting systems is of paramount importance to Metro. The Contractor further acknowledges that the requirements in this Article and the SOW are designed to establish the baseline for business continuity to ensure that, regardless of the means of service delivery or the systems architecture and software components, the Contractor will be able to continue to operate Metro's tolling program with minimal interruption to daily operations under various business disruption scenarios.

### **B. Recovery Plan**

The Contractor shall develop a Business Disruption Recovery Plan to address all types of disaster events, in accordance with the SOW, and shall submit that Plan to Metro for its review and approval. The Plan shall apply to all aspects of toll collection system and services.

### **C. Recovery Requirements**

The Contractor shall meet the requirements for restoring functions and operations in the event of a business disruption in accordance with this Article and the SOW.

## **SP-58 AUDITS OF OPERATIONS & MAINTENANCE WORK**

### **A. Annual Audits**

1. Metro reserves the right, at any time and in its discretion, to require a financial audit of the Contractor's revenues and expenses for operations and maintenance services provided under the Contract, in accordance with the requirements of the Contract Documents. The audit shall be conducted by a certified accounting firm selected by Metro, and copies of the complete audit shall be provided to Metro. The Contractor shall be responsible for the cost of any such audit.
2. In addition to any audit required by Metro, the Contractor shall provide Metro with a quarterly report throughout the OM Term setting forth its revenues for operations and maintenance for that quarter.
3. The Contractor shall cooperate in the conduct of any Metro audit and shall make all financial, transaction, and inventory information and reports readily available and organized for the auditors.
4. The Contractor shall also conduct its own regular audits as part of Standard Operating Procedures to ensure the accuracy of transactions, invoices, payments, and other items processed by the Contractor and posted to customer accounts

#### **B. Adjustments**

1. Any overpayment or underpayment uncovered in any audit may be charged or credited (as the case may be) against future amounts otherwise due to the Contractor. Appropriate financial adjustments to future payments shall be made by Metro based upon any inconsistency, irregularity, or unsubstantiated billing revealed, or any ineligible costs found, as a result of any audit.
2. Prior to withholding payment or deducting amounts from future invoices, Metro will give notice to the Contractor and provide the Contractor with an opportunity to state its position on the issue presented. Any dispute that cannot be resolved by the Contractor and Metro is subject to resolution under the Article entitled DISPUTES in the Contract Document GENERAL CONDITIONS.

#### **C. Final Audit**

Metro reserves the right, in its discretion, to conduct an audit of the Contractor's records directly or indirectly related to the operations and maintenance services provided under this Contract at the conclusion of the OM Term. Such final audit shall be conducted consistent with the process specified in this Article.

### **SP-59 REQUEST FOR FINAL ACCEPTANCE OF THE WORK\***

#### **A. Request for Final Acceptance of Demonstration Services**

Within ten (10) Days after the Demonstration Period is fully completed, and all required submissions and deliveries to Metro specified in the Contract have been made, the Contractor shall submit to Metro a written Request for Final Acceptance specifying that the Demonstration phase of the Operations and Maintenance Work is completed, the date on which it was completed, and stating:

1. Contractor has completed the Demonstration phase of the Operations and Maintenance Work;
2. Contractor has ensured that all Work has been performed and completed in accordance with the requirements of the Contract Documents;
3. All Deficiencies in the Work have been corrected;
4. The Contractor has submitted all documents and reports required for the Work during the Demonstration Period;
5. If the Contractor will not continue operations and maintenance services, it has conveyed to Metro all applicable Governmental Approvals required for Project use;
6. If the Contractor will not continue operations and maintenance services, Metro has received and accepted the assignment of all Subcontractor's, manufacturer's and Supplier's Warranties and all other deliverables required under the Contract;
7. If the Contractor will not continue operations and maintenance services, all Equipment, Systems, hardware, software, special tools, spare parts or other Goods purchased or otherwise provided by the Contractor have been delivered to and accepted by Metro and are free and clear of Liens;
8. If the Contractor will continue to provide operations and maintenance services for an Option Period, it has ensured that all Toll Collection Equipment and Systems are safe, fully operational, and ready for continued use;
9. Contractor has provided and Metro has approved the Transition Plan required under the Article entitled TRANSITION OBLIGATIONS herein; and
10. Contractor has delivered to Metro a certification representing that there are no outstanding Claims of the Contractor, or Claims, liens, or stop notices of any Subcontractor or laborer with respect to the Work, together with unconditional releases from all Subcontractors that have filed stop notices during the term of the Contract.

## **B. Metro Inspection and Acceptance**

1. Metro will inspect the Work and review the Contractor's Application for Final Acceptance, and within sixty (60) Days thereafter will either:

- (a) Reject the Request for Final Acceptance, specifying the Deficiencies or uncompleted portions of the Work; or
  - (b) Issue an executed Certificate of Final Acceptance.
2. If the Contracting Officer rejects the Request for Final Acceptance, specifying Deficiencies or uncompleted portions of the Work, the Contractor shall, at its own cost and expense, promptly remedy the Deficiencies or uncompleted portions of the Work. Thereafter, the Contractor shall again give the Contracting Officer a written Request for Final Acceptance of the Work, in accordance with the above process.

**C. No Implied Acceptance**

Any failure by Metro to inspect or reject the Work or to reject the Contractor's Request for Final Acceptance as set forth above shall not constitute or imply Acceptance by Metro of the Work for any purpose, nor imply approval of the Contractor's Request for Final Acceptance.

**D. Survival of Obligations**

Without limiting any other provision of the Contract relating to continuing obligations that extend beyond Final Acceptance, the Contractor's responsibility for injury to persons and/or property arising from its duties and obligations under the Contract, including without limitation, the Articles entitled LIABILITY AND INDEMNIFICATION, GOODS, and WARRANTY in Contract Document GENERAL CONDITIONS, shall survive Final Acceptance. In addition, Final Acceptance shall not prevent Metro from recovering from the Contractor or its Sureties any overpayment sustained for failure of the Contractor to fulfill all its obligations under the Contract Documents. If operations and maintenance services by the Contractor will continue for an Option Period, Final Acceptance shall not affect any of the Contractor's obligations to perform that work in accordance with the Contract Documents.

**E. Undisclosed Incomplete Work**

Contractor will not be relieved of its obligations to complete any element of the Work, or any portion or item thereof, the non-completion of which was not disclosed to Metro. Prior to Final Acceptance of the Demonstration Services (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise), the Contractor shall also remain obligated after Final Acceptance under all provisions of the Contract that expressly or by their nature extend beyond and survive Final Acceptance, to correct all such undisclosed items.

**SP-60 TRANSITION OBLIGATIONS**

**A. Transitioning Services**

1. The Contractor acknowledges that it has no guarantee, under this Contract or otherwise, that the operation and maintenance of the Toll Collection Equipment and Systems will extend for any period beyond the one (1) year Demonstration Period, and further acknowledges that the termination of all operations and maintenance services, or the transition of those services to Metro or another service provider, could occur any time after the one (1) year Demonstration Period.
2. In the event of a transition in responsibility for the toll operations services and/or maintenance functions, the Contractor shall be responsible for providing services to support fully the transitioning to another entity, as described herein. The Contractor shall confer and cooperate with the replacement entity to determine the activities required to transition in a safe, orderly and efficient manner without interruption of the operations and maintenance services provided.
3. The Contractor shall provide sufficient and experienced toll collection system and operations personnel in each division of the Work during the entire transition period to ensure that the quality of services and maintenance is sustained at the levels required by these SPECIAL PROVISIONS and the other Contract Documents. The Contractor shall provide support and training to the replacement entity as needed to ensure a smooth transition with no loss of service or data.
4. Upon Final Acceptance by Metro, termination or expiration of the Contract, Contractor shall assign and transfer to Metro all toll operations and services relative to this Contract, and such operations and services shall thereupon become the property of Metro. Metro may then assign and transfer these operations and services to any future contractor selected through a new procurement process without approval of Contractor. Transition of operations and services shall be in accordance with the Transition Plan as approved by Metro.

## **B. Transition Plan**

1. The Contractor shall develop and provide to Metro, at least ninety (90) days prior to the end of the Demonstration Period, a Transition Plan describing the approach for the transition of services. The Transition Plan shall be subject to the review and approval of Metro. The Transition Plan shall describe the steps the Contractor will take to support transition of the Contractor's services. The Plan shall specifically address two specific situations:
  - a) Contractor Assisted Transition of Tolling Operations: This component of the Transition Plan shall describe the approach the Contractor shall take to support the start-up of operations by another entity. The Contractor's plan shall include a timeline for supporting the start-up of such an effort, the lead times required by the Contractor, the Contractor resources required, and any assumptions underlying the resource estimates.

- b) Contractor Assisted Transition to Another Service Provider upon Notification from Metro of its Intent to Terminate the Contract: This component of the Transition Plan shall describe the steps the Contractor will take to transition tolling services to another entity upon receiving a termination notice from Metro. This plan shall include a detailed outline of the phase-out period, the time period during which equipment or systems will be removed or services terminated, due to Contract termination. The period of transition shall not exceed three (3) months and shall include planning, documentation, data migration, training, and completion of the transition.
2. The Transition Plan shall also describe how the Contractor will meet with staff of the replacement entity to facilitate handover of all Metro customer and financial data maintained in the tolling system and any other information and property of Metro. The plan shall demonstrate how the Contractor will ensure there are no disruptions to toll collection, operations, or the system at all times and at all locations during phase-out.
3. Metro may instruct the Contractor to modify the Transition Plan from time to time to ensure the requirement of seamless operations is met. The Contractor will update its Transition Plan as appropriate and resubmit it for review and approval by Metro annually or after material changes in the Contractor's system(s), architecture, location(s), or services.

### **C. Transfer of Equipment and other Assets and Information**

1. In the event of a transition in responsibility, the Contractor shall transfer and/or grant to Metro each of the following: (a) all right, title and interest in all hardware and communications equipment (including toll point equipment, DMS, supplemental CCTV, field communications equipment installed by the Contractor, fiber optic cable installed by the Contractor, and toll operator service center equipment and hardware); (b) all spare parts and inventory; (c) all other equipment provided by the Contractor, as referenced in the SOW; (d) the right to grant sublicenses to other parties, for governmental and not commercial purposes, to use the Software, Source Object Codes, Documentation, and object codes for Software developed to support the toll system and licensed to Metro under the Contract Documents; (e) all records, manuals, technical data, information, updated and current Standard Operating Procedures, and know-how necessary to the daily operation and maintenance of the Toll Collection Equipment; (f) assignment of all subcontractor, manufacturer and supplier warranties; and (g) at the election of Metro, assignment of all outstanding subcontracts, service agreements, and supply agreements.
2. Metro will provide a range of tracking numbers based upon inventory provided by Contractor when all elements of the toll systems design are finalized. When Final Acceptance by Metro is provided for the toll system(s), either incrementally or as a whole, to include the back office equipment required for toll collections/processing, tracking numbers should be affixed, engraved, stamped, etc. onto each item in bar code format using code 3 of 9, or code 39 symbology.

3. A listing of toll system items are required that includes description, model number, serial number, tracking number and physical location description of each. .

**D. Turnover Audit**

1. Metro retains the right to conduct a turnover audit in the transition of services to another provider or upon termination of this Contract.
2. A turnover audit shall consist of the inspection, and examination of all work, materials, payrolls, customer accounts, equipment, inventory and all other data and records. Metro has the right to audit all books, records, data, and accounts of the Contractor relating to the performance of the Contract.
3. If Metro determines during such audit or inspection that any equipment, property, facilities, or other assets are damaged, missing, or otherwise unavailable for use, or in a condition that is in excess of ordinary wear and tear, the Contractor shall be responsible for the cost of repairing or replacing such property, at the option of Metro. Metro may deduct any amount determined to be due pursuant to such audit from any final compensation due to the Contractor.

**E. Release of Security**

Upon transfer of Equipment and other assets and information by the Contractor in accordance with this Article, and upon completion of the turnover audit conducted under this Article and Metro's determination that any issues arising in that audit have been satisfactorily resolved, Metro shall release the Contractor from any obligations under a Warranty Bond or other form of security required by Metro, and shall return to the Contractor any retainage on payments for operations and maintenance service, whichever may be applicable.

**END OF SPECIAL PROVISIONS**

**SPECIAL PROVISIONS**

**APPENDIX A - WORK COMPLETION SCHEDULE**

Contractor shall commence performance of the Work upon the date specified in the formal Notice to Proceed issued to the Contractor hereunder and shall furnish sufficient forces, facilities and construction plant, and shall work such hours, including extra shifts and overtime operations, so as to prosecute the Work to completion in accordance with the following major Contract dates:

<b>Milestone</b>	<b>Description</b>	<b>Schedule</b>
No. 10	Contractor to complete all the civil and structural design work for I-110 Corridor related to sign posts, their foundations, and their attachments to existing structures, to 100%, including final specifications and drawings, and submit for required Metro Approvals.	One hundred twenty (120) calendar days after the Commencement Date set forth in the Notice to Proceed.
No. 9	Contractor to complete all the civil and structural design work for I-10 Corridor related to sign posts, their foundations, and their attachments to existing structures, to 100%, including final specifications and drawings, and submit for required Metro Approvals.	One hundred eighty (180) calendar days after the Commencement Date set forth in the Notice to Proceed.
No. 8	Contractor to complete all design work for the I-110 Corridor to 100%, including final specifications and drawings, and submit for required Metro Approvals.	One hundred ninety five (195) calendar days after the Commencement Date set forth in the Notice to Proceed.
No. 7	Contractor to complete all design work for the Adams Blvd. Bridge Widening, Pedestrian Over-Crossing (POC), HOV Off-Ramp Widening, and related street improvements, to 100%, including final specifications and drawings, and submit for required Metro Approvals.	Two hundred forty (240) calendar days after the Commencement Date set forth in the Notice to Proceed.
No. 6	Contractor to complete all design work for the I-10 Corridor to 100%, including final specifications and drawings, and submit for required Metro Approvals.	Two hundred forty (240) calendar days after the Commencement Date set forth in the Notice to Proceed.
No. 5	Contractor to complete fully tested and functional Toll Operation Service Center and start System Acceptance Testing of I-110 Corridor.	Five hundred thirty (530) calendar days after the Commencement Date set forth in the Notice to Proceed.
No. 4	Contractor to complete construction of the Adams Blvd. Bridge widening, Pedestrian Over-Crossing (POC), and associated street improvements.	Five hundred thirty (530) calendar days after the Commencement Date set forth in the Notice to Proceed.
No. 3	Contractor to complete construction of Adams Boulevard, HOV Off-Ramp Widening, and	Five hundred thirty (530) calendar days after the Commencement Date set forth in

	associated street improvements.	the Notice to Proceed.
No. 2	Contractor to complete I-110 Corridor Toll Operations Scope of Work, including Systems Acceptance Testing. Contractor achieves Substantial Completion as defined in the Contract Documents.	Five hundred ninety (590) calendar days after the Commencement Date set forth in the Notice to Proceed.
No. 1	Contractor to complete I-10 Corridor Toll Operations Scope of Work, including Systems Acceptance Testing. Contractor achieves Substantial Completion as defined in the Contract Documents.	Six hundred eighty five (685) calendar days after the Commencement Date set forth in the Notice to Proceed.
<b>OPTIONS:</b>		If and when exercised:
1	I-105 Enhancements	Shall be completed as part of Milestone No. 2 above.
2	Additional Signage Required by Mutcd	Shall be completed as part of Milestones No. 1 and No. 2, accordingly.
5	Enforcement Technology	Shall be completed as part of Milestones No. 1 and No. 2, accordingly.
6	Additional Language Support	Shall be completed as part of Milestones No. 1 and No. 2, accordingly.

\*

**SPECIAL PROVISIONS**

APPENDIX B – LIST OF KEY PERSONNEL

Project Manager -- Felipe Oliver

Construction Manager -- Robert Hubbard

Design Manager -- Ray Fares

Manager of Systems Integration -- William Ginegaw

Safety Manager – Eric Johnson CHST

Operations and Maintenance General Manager -- Donald Galley

Quality Manager – Rick Ramirez

Project Executive – Jan Bohn

**SPECIAL PROVISIONS**

APPENDIX C – ROW ACQUISITION SCHEDULE

NONE

**SPECIAL PROVISIONS**

APPENDIX D - METRO-FURNISHED GOODS AND EQUIPMENT

NONE

**SPECIAL PROVISIONS**

APPENDIX E - PERFORMANCE BOND

**Contract No. PS0922102333  
Metro HOT ExpressLanes Project**

**Bond No. 105522522/82206857/09032701**

**KNOW ALL MEN BY THESE PRESENTS,**

**THAT WHEREAS**, the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to ATKINSON CONTRACTORS, LP ("Principal"), a design-build contract (Contract) for the design and construction work described as follows:

METRO HOT EXPRESSLANES PROJECT, CONTRACT NO. PS0922102333

**AND WHEREAS**, The Principal is required by section 6806 of the Public Contract Code to furnish a Bond for the faithful performance of its obligations under the Contract thereof;

**NOW, THEREFORE**, We the undersigned Principal and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, (Surety) are held and firmly bound unto Metro, in the sum of SEVENTY TWO MILLION THREE HUNDRED SIXTY THREE THOUSAND SEVEN HUNDRED TWO AND 00/100 Dollars (\$ 72,363,702.00), this amount being not less than the Total Contract Price in lawful money of the United States of America, to be paid to Metro, or its certain attorney, its successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. In case suit is brought upon this Bond, Surety shall pay reasonable attorneys' fees to Metro in an amount to be fixed by the court. \*FEDERAL INSURANCE COMPANY; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; ZURICH AMERICAN INSURANCE COMPANY

**THE CONDITION OF THIS OBLIGATION IS SUCH:**

1. That, if the above bound Principal, or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the foregoing Contract, including any and all amendments, supplements, and alterations thereto made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless Metro, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.
2. This Bond shall cover the cost to complete the said design and construction work, but shall not cover any damages of the type specified to be covered by the Principal's errors and omissions insurance for the design elements of the work required pursuant to the Contract and Section 6806(b) of the Public Contract Code or by any professional liability insurance, whether or not such insurance is provided in an amount sufficient to cover such damages.
3. The said Surety agrees that no change, extension of time, alterations, additions, omissions, or other modifications of the terms of the Contract, or in the Work to be performed with respect to the project, or in the specifications or plans, or any change of any terms of payment or extension of time for any payment pertaining to or relating to the Contract, or

any recession or attempted recession of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions, or other modifications. The Surety agrees that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this 28TH day of DECEMBER 2010.

Correspondence or claims relating to this Bond should be sent to the Surety at the following address:  
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
ONE TOWER SQUARE, HARTFORD, CT 06183

ATKINSON CONTRACTORS, LP  
John Harrington VP  
 (Principal's name, title, and signature)  
 TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA\*  
 By [Signature] Surety  
 Attorney-in-Fact, KAREN C. BOWLING

\*SEE ADDITIONAL SURETY EXECUTIONS

NOTE: Signatures of those executing for the Surety must be properly acknowledged, and a Power of Attorney attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California  
 County of Orange On this 5<sup>th</sup> day of January in the year of 2011 before me, a notary public in and for the county and state aforesaid, personally appeared John Harrington who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity(~~ies~~), and that by his/~~her~~ signature(~~s~~) on the instrument, the person(~~s~~) or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

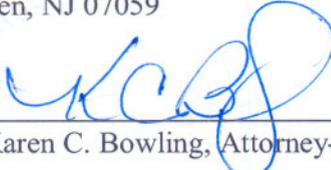
Witness my hand and official seal:



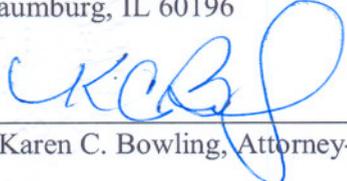
(SEAL) [Signature]  
 Signature of Notary Public

ADDITIONAL SIGNATURES

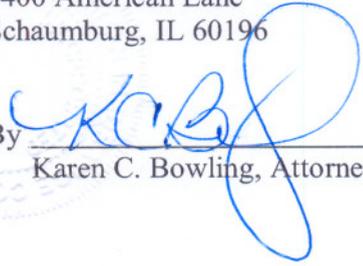
Federal Insurance Company  
15 Mountain View Road  
Warren, NJ 07059

By   
Karen C. Bowling, Attorney-in-Fact

Fidelity and Deposit Company of Maryland  
1400 American Lane  
Schaumburg, IL 60196

By   
Karen C. Bowling, Attorney-in-Fact

Zurich American Insurance Company  
1400 American Lane  
Schaumburg, IL 60196

By   
Karen C. Bowling, Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Maryland

County of Howard

On December 28, 2010 before me, Diana L. Parker,  
personally appeared Karen C. Bowling personally known to me (or proved  
to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
\_\_\_\_\_

My Commission Expires: 8/10/2013



**SPECIAL PROVISIONS**

**APPENDIX F - PAYMENT (MATERIAL AND LABOR) BOND**

**Contract No. PS0922102333**

**Metro HOT ExpressLanes**

**ProjectBond No. 105522522/82206857/09032701**

**KNOW ALL MEN BY THESE PRESENTS,**

THAT WHEREAS the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to ATKINSON CONTRACTORS, LP ("Principal"), and

**AND WHEREAS,** The Principal is required by Section 6806 of the Public Contract Code to furnish a Bond to secure the payment of claims of laborers, mechanics, material men, and other persons as provided by law;

**NOW THEREFORE,** we the undersigned Principal and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA\* ("Surety"), as Surety, are held and firmly bound unto Metro, in the sum of SEVENTY TWO MILLION THREE HUNDRED SIXTY THREE THOUSAND SEVEN HUNDRED TWO AND 00/100 Dollars (\$ 72,363,702.00), this amount being not less than the Total Contract Price in lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. In case suit is brought upon this Bond, Surety will pay reasonable attorneys' fees to Metro and the plaintiff(s) in an amount to be fixed by the court. \*FEDERAL INSURANCE COMPANY; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; ZURICH AMERICAN INSURANCE COMPANY

**THE CONDITION OF THIS OBLIGATION IS SUCH:**

1. That, if said Principal, or its heirs, executors, administrators successors or assigns or subcontractors, shall fail to pay any of the persons named in California Civil Code Section 3181, or anyone required to be paid by law, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or amounts due under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Principal or its Subcontractors pursuant to § 13020 of the Unemployment Insurance Code with respect to Work or labor performed under the Contract, then the Surety herein named shall pay for the same in an amount not exceeding the sum specified in this Bond; otherwise the above obligation shall be void. In case suit is brought upon this Bond, the Surety will pay reasonable attorney's fee to be fixed by the court.
2. This Bond shall inure to the benefit of the persons named in Civil Code 3181 or anyone required to be paid by law under said contract so as to give a right of action to such persons or their assigns in any suit brought upon this Bond.
3. The said Surety agrees that no change, extension of time, alterations, additions, omissions, or other modifications of the terms of the Contract, or in the Work to be performed with respect to the project, or in the specifications or plans, or any change of any terms of payment or extension of time for any payment pertaining to or relating to the Contract, or any recession or attempted recession of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person

other than the claimant seeking to recover form this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additional, omissions or other modifications.

- 4. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction is to be performed, any provision in this bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not a common law bond.
- 5. This Bond shall cover all payment obligations for said Work, including warranty payment obligations unless a separate warranty bond is provided by the Principal, but shall not cover any payment obligations covered by the Principal's error and omissions insurance for the design elements of the work required pursuant to the contract or by Section 6806(b) of the Public Contract Code or by any professional liability insurance whether or not such insurance is provided in amount sufficient to cover such damages.

**IN WITNESS WHEREOF**, We have hereunto set our hands and seals on this 28TH day of DECEMBER, 2010 ..

Correspondence or claims relating to this Bond should be sent to the Surety at the following address:  
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
ONE TOWER SQUARE, HARTFORD, CT 06183

ATKINSON CONTRACTORS, LP  
John Harrington VP  
J. Harrington  
 (Principal's name, title, and signature)  
 TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA\*  
 By KCS Surety  
 Attorney-in-Fact, KAREN C. BOWLING

NOTE: Signatures of those executing for the Surety and Attorney attached.

\*SEE ADDITIONAL SURETY EXECUTIONS

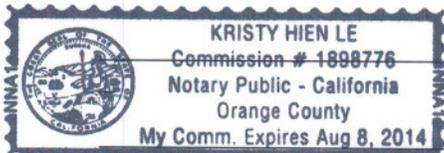
CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

County of Orange On this 5<sup>th</sup> day of January in the year of 2011

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

Witness my hand and official seal:

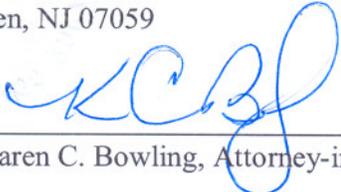


(SEAL)

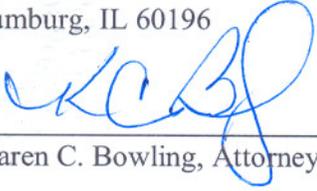
[Signature]  
Signature of Notary Public

ADDITIONAL SIGNATURES

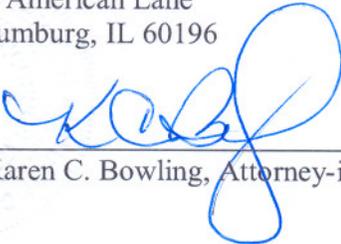
Federal Insurance Company  
15 Mountain View Road  
Warren, NJ 07059

By   
Karen C. Bowling, Attorney-in-Fact

Fidelity and Deposit Company of Maryland  
1400 American Lane  
Schaumburg, IL 60196

By   
Karen C. Bowling, Attorney-in-Fact

Zurich American Insurance Company  
1400 American Lane  
Schaumburg, IL 60196

By   
Karen C. Bowling, Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Maryland

County of Howard

On December 28, 2010 before me, Diana L. Parker personally appeared Karen C. Bowling personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



My Commission Expires: 8/10/2013



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POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 219657

Certificate No. 003784293

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Diana L. Parker, and Karen C. Bowling

of the City of Columbia, State of Maryland, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1st day of March, 2010.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 1st day of March, 2010, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

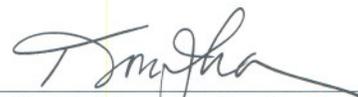
**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 2<sup>nd</sup> day of December, 2010.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

  
Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

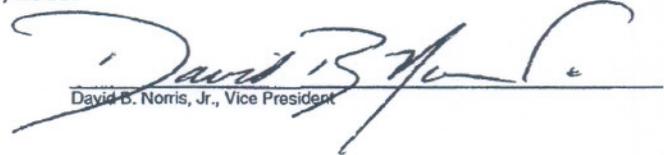
**Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

**Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Karen C. Bowling and Diana L. Parker of Columbia, Maryland and Richard Garth Avery of Berwyn, Pennsylvania**

each as their true and lawful Attorney- in- Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this **13th** day of **October, 2008**.

  
Kenneth C. Wendel, Assistant Secretary

  
David B. Norris, Jr., Vice President

STATE OF NEW JERSEY  
County of Somerset

ss.

On this **13th** day of **October, 2008** before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By- Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By- Laws and in deponent's presence.

Notarial Seal



**KATHERINE KALBACHER  
NOTARY PUBLIC OF NEW JERSEY  
No. 2316685  
Commission Expires July 8, 2009**

  
Notary Public

**CERTIFICATION**

Extract from the By- Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys- in- Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing extract of the By- Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this December 28, 2010



  
Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656 e-mail: surety@chubb.com

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**Power of Attorney**  
**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**  
**COLONIAL AMERICAN CASUALTY AND SURETY COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, corporations of the State of Maryland, by THEODORE G. MARTINEZ, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Richard G. AVERY, Karen C. BOWLING, Diana L. PARKER and Peter F. JONES, all of Columbia, Maryland, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Richard G. AVERY, Karen C. BOWLING, Diana L. PARKER, Peter F. JONES, dated May 18, 2007.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seals of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, this 17th day of June, A.D. 2010.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**  
**COLONIAL AMERICAN CASUALTY AND SURETY COMPANY**



*Gregory E. Murray*

*Theodore G. Martinez*

By:

*Gregory E. Murray Assistant Secretary*

*Theodore G. Martinez*

State of Maryland }  
City of Baltimore } ss:

On this 17th day of June, A.D. 2010, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came THEODORE G. MARTINEZ, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Companies aforesaid, and that the seals affixed to the preceding instrument is the Corporate Seals of said Companies, and that the said Corporate Seals and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Maria D. Adamski*

*Maria D. Adamski*

*Notary Public*

My Commission Expires: July 8, 2011

**EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

**EXTRACT FROM BY-LAWS OF COLONIAL AMERICAN CASUALTY AND SURETY COMPANY**

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

**CERTIFICATE**

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the respective By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990 and of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies,

this 28th day of December, 2010.

*Gerald F. Haley*  
Assistant Secretary

ZURICH AMERICAN INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that the ZURICH AMERICAN INSURANCE COMPANY, a corporation created by and existing under the laws of the State of New York does hereby nominate, constitute and appoint Richard G. AVERY, Karen C. BOWLING, Diana L. PARKER and Peter F. JONES, all of Columbia, Maryland, EACH its true and lawful Attorneys-In-Fact with power and authority hereby conferred to sign, seal, and execute in its behalf, during the period beginning with the date of issuance of this power, any and all bonds and undertakings, recognizances or other written obligations in the nature thereof, and to bind ZURICH AMERICAN INSURANCE COMPANY thereby, and all of the acts of said Attorney[s]-in-Fact pursuant to these presents are hereby ratified and confirmed. This Power of Attorney is made and executed pursuant to and by the authority of the following By-Law duly adopted by the Board of Directors of the Company which By-Law has not been amended or rescinded.

Article VI, Section 5. "...The President or a Vice President in a written instrument attested by a Secretary or an Assistant Secretary may appoint any person Attorney-In-Fact with authority to execute surety bonds on behalf of the Company and other formal underwriting contracts in reference thereto and reinsurance agreements relating to individual policies and bonds of all kinds and attach the corporate seal. Any such officers may revoke the powers granted to any Attorney-In-Fact."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY by unanimous consent in lieu of a special meeting dated December 15, 1998

" RESOLVED, that the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile on any Power of Attorney pursuant to Article VI, Section 5 of the By-Laws, and the signature of a Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power. Any such power or any certificate thereof with such facsimile signature and seal shall be valid and binding on the Company. Furthermore, such power so executed, sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding on the Company."

IN WITNESS WHEREOF, the ZURICH AMERICAN INSURANCE COMPANY has caused these presents to be executed in its name and on its behalf and its Corporate Seal to be hereunto affixed and attested by its officers thereunto duly authorized, this 3rd day of June, A.D. 2008. This power of attorney revokes that issued on behalf of Richard G. AVERY, Karen C. BOWLING, Diana L. PARKER, Peter F. JONES, dated May 18, 2007.



ZURICH AMERICAN INSURANCE COMPANY

Gregory E. Murray

Frank E. Martin Jr.

STATE OF MARYLAND }  
CITY OF BALTIMORE }

ss: Gregory E. Murray Secretary Frank E. Martin Jr. Vice President

On the 3rd day of June, A.D. 2008, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came the above named Vice President and Secretary of ZURICH AMERICAN INSURANCE COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument and they each acknowledged the execution of the same and being by me duly sworn, they severally and each for himself deposed and said that they respectively hold the offices in said Corporation as indicated, that the Seal affixed to the preceding instrument is the Corporate Seal of said Corporation, and that the said Corporate Seal, and their respective signature as such officers, were duly affixed and subscribed to the said instrument pursuant to all due corporate authorization.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above.



Maria D. Adams

Notary Public My Commission Expires: July 8, 2011

This Power of Attorney limits the acts of those named therein to the bonds and undertaking specifically named therein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

CERTIFICATE

I, the undersigned, a Secretary of the ZURICH AMERICAN INSURANCE COMPANY, do hereby certify that the foregoing Power of Attorney is still in full force and effect, and further certify that Article VI, Section 5 of the By-Laws of the Company and the Resolution of the Board of Directors set forth in said Power of Attorney are still in force.

IN TESTIMONY WHEREOF I have hereto subscribed my name and affixed the seal of said Company

the 28th day of December 2010

Gerald F. Haley

Gerald F. Haley

Secretary



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# COMPENSATION & PAYMENT PROVISIONS

DESIGN, BUILD, OPERATE AND MAINTAIN

## FIRM FIXED PRICE (FFP)

### Note:

Articles flagged with an asterisk (\*) are Flow-down requirements as defined in Article SUBCONTRACTORS AND SUPPLIERS in Contract Document GENERAL CONDITIONS.

### CP-1 BASIS OF COMPENSATION

Contractor will be paid the Contract Price in accordance with the following Articles, the Schedule of Quantities and Prices (Attachment 2 herein), and all other applicable terms and conditions of the Contract.

### CP-2 PAYMENTS

- A. Progress Payments for Design Build Work. -- The Firm Fixed Price for the design build portion of the Contract shall be paid based upon the Schedule of Values prepared from the Schedule of Quantities and Prices (Attachment 2 herein); as well as all Work authorized under Provisional Sums.
1. Definition: A Progress Payment is a payment of a portion of the Contract Price for partial completion of the Work based upon the PAYMENT SCHEDULE. A Progress Payment shall not include those portions of the Contract Price withheld pursuant to the Article entitled RETENTION AND ESCROW ACCOUNTS herein, nor any other amount properly withheld or deducted under other provisions of this Contract.
  2. Payment Schedule: Within thirty (30) Days after the date of the Notice to Proceed (NTP), but in any event prior to the first Application for Progress Payment (hereinafter referred to as "Application"), the Contractor shall submit a detailed PAYMENT SCHEDULE to Metro, including a SCHEDULE OF VALUES based upon the SCHEDULE OF QUANTITIES AND PRICES attached hereto and a Schedule based upon the milestones in the Critical Path Schedule (or such other Schedule as is required under the Contract). Progress Payments shall be based upon the approved PAYMENT SCHEDULE. Each item of the PAYMENT SCHEDULE shall include its proportionate share of overhead, profit, and all other expenses involved. The quantities and values shall be extended to show the total amount for each item. The PAYMENT SCHEDULE must be approved by Metro prior to any Progress Payment being made. Metro reserves the right to modify or reject and require re-submission of any Payment Schedule which the Contracting Officer determines to be "front-end loaded," "materially

unbalanced” or which otherwise does not represent an accurate representation of the manner in which the Contractor will incur cost. The determination of the Contracting Officer is final.

B. Monthly Payments for Operations & Maintenance Work.

1. The Operations and Maintenance portion of the Work, during the demonstration period, shall be paid based upon the Schedule of Quantities and Prices (Attachment 2 herein) in twelve (12) equal payments, starting thirty (30) Days after NTP for the demonstration period.
2. The mailing costs for such items as Welcome Packets, additional Metro materials, and other related mailings during the Operations and Maintenance portion of the Work shall pass through to Metro at the actual cost.

C. Unit Price Payments for Transponders. – Payment for transponders shall be based upon the unit price in the Schedule of Quantities and Prices (Attachment 2 herein) for the number of transponders issued each month starting sixty (60) Days before the Acceptance Testing and during the OM term. Records shall be maintained to support purchase and inventory control and shall be subject to audit in accordance with SPECIAL PROVISIONS and GENERAL CONDITIONS provided in the Contract Documents.

D. General Invoicing Instructions: Contractor’s Invoice shall include, at a minimum, the following:

1. Clear reference to Metro Contract Number, as well as Metro Project, to which the Invoice applies.
2. Contractor’s Invoice Number, Invoice Date, as well as the contract payment number the invoice represents; for example, Contractor’s submittal of its first invoice is payment number 1, its second invoice submittal is payment number 2, and so on. Any Contractor re-submittal/revision to a submitted invoice shall have a letter suffix (a, b, c, etc.) added to the payment number, signifying the invoice revision; for example, Contractor’s first re-submittal of its first invoice shall be designated as payment number “1a”.
3. Clear reference to the PAYMENT SCHEDULE, or other, Item(s) being invoiced, and the appropriate milestone description of activities and/or work related to the billing.
4. The itemized and total amount being invoiced (in U.S. dollars), less the amount of all contractual retention and deductions applicable for the invoiced amount (in U.S. dollars), and the resulting total net payment due.

5. The Time Period during which the Work was performed and for which the invoice is submitted.
6. Clear reference to Contractor's Taxpayer ID Number.
7. In no event shall Contractor's Invoice include any commercial terms in conflict with, or in addition to, the provisions already provided and agreed upon in the Contract. Any such non-contractual commercial terms included in Contractor's Invoice shall be null and void, superceded by the terms of Contract, and may subject the Invoice to being rejected by Metro.

E. Application For Payment: Contractor's Application shall contain:

1. Contractor's ORIGINAL invoice
2. A description of the Work completed;
3. Conditional and unconditional waivers executed by the Subcontractors as described in the Article entitled PAYMENT TO SUBCONTRACTORS herein and GENERAL CONDITIONS Article entitled SUBCONTRACT ADMINISTRATION;
4. Release of Stop Notice from Subcontractors;
5. Any other documentation Metro requires to process the Progress Payment;
6. A Certification as set forth in Attachment 1, and;
7. Signature of Metro's Authorized Representative acknowledging that the Work described in the Application has been done in accordance with the Contract.

F. Terms of Payment:

1. Contractor shall submit the Application to Metro as set forth in Article INVOICES in the FORM OF CONTRACT, based upon the PAYMENT SCHEDULE, no later than the 25<sup>th</sup> day of each month.
2. Metro will make Payments within thirty (30) Days after its receipt of an undisputed and properly submitted Application. Upon receipt of an Application, Metro shall:
  - a. Review the Application to determine if it is complete and meets Contractual requirements.
  - b. Return any Application that is not complete or does not meet Contractual requirements as soon as practicable, but not later than seven (7) Days after receipt by Metro. Metro shall set forth

in writing the reason(s) why the Application does not meet Contractual requirements.

3. The number of days available to Metro to make a Progress Payment without incurring interest shall be reduced by the number of Days by which it exceeds the seven (7) Day return requirement set forth above.
4. No Payments **of any type** shall be made for Work not performed in accordance with the Contract.
5. Except for Final Payment, an Application shall not be submitted unless the value of the Work is greater than five thousand dollars (\$5,000).

G. Payment For Goods/Equipment Not Incorporated Into The Work:

Metro, at its discretion, may authorize payment for Goods/Equipment not yet incorporated into the Work, subject to the following conditions:

1. Goods/Equipment shall be delivered to the Worksite or delivered to the Contractor and promptly placed in appropriate storage within Los Angeles County or other location, as approved by Metro.
2. Prior to inclusion of such Goods/Equipment in any Application, the Contractor shall submit certified invoices for such Goods to Metro. Metro may allow only such portion of the amount represented by these invoices that, in its opinion, does not exceed the reasonable cost of such Goods.
3. If Goods/Equipment are stored outside Los Angeles County, the Contractor shall pay all personal and property taxes that are levied against Metro by any state or subdivision thereof on account of such storage of said Goods/Equipment.
4. Metro will permit the Contractor to contest, at its own expense, the validity of any such tax levied against Metro in appropriate legal proceedings.
5. In the event of any judgment or decree by the court against the Contractor and/or Metro, the Contractor shall pay it together with any penalty and any other costs relating thereto.
6. All such Goods so accepted shall become the property of Metro.
7. Payments made for Goods/Equipment included in an Application that are subsequently lost, damaged, or unsatisfactory shall be deducted from succeeding Applications.

H. Title:

Title to portions of the Work for which Progress Payments or other payments are made shall pass to Metro as set forth in the General Conditions.”

- I. Payments For General Requirements: Payment of lump sum (LS) pay item GENERAL REQUIREMENTS, will be made in the following manner.
  1. Thirty percent (30%) of the lump sum (LS) will be paid in three (3) equal payments, as part of the first three (3) Progress Payments.
  2. Seventy percent (70%) of the lump sum (LS) price will be paid for in equal amounts over the remaining term of the Contract, beginning with the fourth (4<sup>th</sup>) Progress Payment.

### **CP-3            RETENTION AND ESCROW ACCOUNTS\***

#### **A    Retention:**

Metro shall retain from each Progress Payment ten percent (10%) of the Progress Payment as part security for the fulfillment of the Contract by the Contractor. However, after fifty percent (50%) of the Work has been completed, if in the sole discretion of Metro progress on the Work is satisfactory, Metro will not make further deductions on the remaining Progress Payments, except that the amount of the retention withheld shall not at any time thereafter be less than five percent (5%) of the Contract Price, as amended, or as adjusted by Change Orders. However, if Metro determines that the Work or progress of the Work is unsatisfactory, Metro may reinstate, continue or increase retentions in amounts necessary to increase the total retention to an amount not to exceed ten percent (10%) of the Contract Price. Notwithstanding any payments made to Contractor, out of retention or other monies withheld, or other monies due Contractor under this Contract, in the implementation of 49 CFR Part 26 and the Article herein entitled PROMPT PAYMENT TO SUBCONTRACTORS, in the Contract Document entitled COMPENSATION AND PAYMENT, Metro shall withhold retention from each progress payment, consistent with the amounts allowed above, whereas Metro shall withhold not less than five percent (5%) of the Contract price until final completion and acceptance of the Contract.

#### **B.    Substitution of Securities:**

To ensure performance under the Contract, the Contractor may, at its sole expense, substitute securities equivalent to the retention withheld by Metro. Such securities shall be deposited with an escrow agent approved by Metro, who shall then pay such retention to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor. The Contractor shall be the beneficial owner of any security substituted for monies withheld and shall receive any accrued interest thereon. Securities eligible for investment shall include those listed in Government Code §16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and Metro. No such substitution shall be accepted until the Escrow Agreement, securities, and any other documents related to the substitution are reviewed and accepted in writing by Metro.

In the event Contractor's subcontractors elect to do any of the following the Contractor shall:

1. If a subcontractor elects to substitute securities in lieu of retention with the Contractor, then in accordance with the Article herein entitled "PROMPT PAYMENT TO SUBCONTRACTORS", when Contractor certifies to Metro that all tasks called for in the subcontract have been satisfactorily accomplished and Metro has inspected the Work, Contractor shall release the subcontractor's securities within thirty (30) Days after receipt of Metro's notice on the completed inspection, even though there may be no adjustment(s) to be made to Contractor's substitute securities in lieu of retention.
2. In the event the Contractor elects to substitute securities in lieu of retention and a subcontractor has not elected to substitute securities in lieu of retention, Contractor may withhold from his or her subcontractor the amount of retention that would have otherwise been withheld, yet when, in accordance with the sub-Article herein entitled "Prompt Payment of Withheld Funds to Subcontractors", Contractor certifies to Metro that all tasks called for in the subcontract have been satisfactorily accomplished and Metro has inspected the Work, Contractor shall release the subcontractor's retention within thirty (30) days after receipt of Metro notice on the completed inspection, even though there may be no adjustment(s) to be made to Contractor's substitute securities in lieu of retention.

C. Payment of Escrow Agent:

In lieu of substitution of securities as provided above, the Contractor may request and Metro shall make payment of retention earned directly to the escrow agent at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities consistent with Government Code §16430 and the Contractor shall receive the interest earned on the investments upon the same terms provided for in this Article for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from Metro, pursuant to the terms of this Article. The Contractor shall pay to each Subcontractor, not later than twenty (20) Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to ensure the performance of the Subcontractor. The escrow agreement used by the escrow agent pursuant to this Article shall be substantially similar to the form set forth in §22300 of the California Public Contract Code.

D. Release of Retention:

Upon Final Acceptance of the Work, the Contractor shall submit an invoice for release of retention in accordance with the terms of the Contract.

E. Additional Deductibles:

In addition to the Retentions described above, Metro may deduct from each Progress Payment any or all of the following:

1. Liquidated Damages that have occurred as of the date of the Application for Progress Payment;
2. Deductions from previous Progress Payments already paid, due to Metro's discovery of deficiencies in the Work or non-compliance with the Specifications or any other requirement of the Contract;
3. Sums expended by Metro in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform, and;
4. Other sums that Metro is entitled to recover from the Contractor under the terms of the Contract, including without limitation insurance deductibles and assessments.

The failure of Metro to deduct any of the above-identified sums from a Progress Payment shall not constitute a waiver of Metro's right to such sums or to deduct them from a later Progress Payment.

#### **CP-4 STOP NOTICE\***

In addition to other amounts properly withheld under this Article or under other provisions of the Contract, Metro shall retain from Progress Payments otherwise due the Contractor an amount equal to one hundred twenty-five percent (125%) of the amount claimed under any Stop Notice under Civil Code §3179 et. seq. or other lien filed against the Contractor for labor, materials, supplies, equipment, and any other thing of value claimed to have been furnished to and/or incorporated into the Work; or for any other alleged contribution thereto. In addition to the foregoing and in accordance with Civil Code §3186 Metro may also satisfy its duty to withhold funds for Stop Notices by refusing to release funds held in escrow pursuant to Public Contract Code §22300. However, Metro may release such funds upon receipt of a Release of Stop Notice executed by a Stop Notice Claimant, a Stop Notice Bond, an order of a court of competent jurisdiction, or other evidence satisfactory to Metro that the Contractor has resolved such claim by settlement.

#### **CP-5 PROMPT PAYMENT TO SUBCONTRACTORS\***

##### **A. Requirements**

The Contractor shall pay all Subcontractors for and on account of Work performed by such Subcontractors, not later than ten (10) Days after receipt of each Progress Payment as required by the California Business and Professions Code §7108.5. Such payments to Subcontractors shall be based on the measurements and estimates made pursuant to Article PROGRESS PAYMENTS provided herein.

Pursuant to 49 Code of Federal Regulations (CFR) Part 26, the Contractor shall pay each Subcontractor under this Contract for satisfactory performance of its Contract no later than ten (10) Days after receipt of each Progress Payment received from Metro. The Contractor shall pay to each Subcontractor all amounts it has retained from payments under the Subcontract within ten (10) Days after the Subcontractor's work is satisfactorily completed. Any delay of payment beyond the ten (10) Day time limit shall be only for good cause, and only upon the prior written approval of Metro.

#### B. Waiver and Release Forms

As a condition to Metro's release of any Progress Payment, Contractor shall furnish Metro with:

1. A duly executed Conditional Waiver and Release Form from each Subcontractor listed in the current Application, and;
2. A duly executed Unconditional Waiver and Release Form from each Subcontractor listed in the preceding Application.

The Unconditional Waiver(s) must state the amount that the Subcontractor has been paid with respect to the Progress Payment most recently made to the Contractor. The required waiver and release forms are provided as Exhibits SA-1 and SA-2 to the Contract GENERAL CONDITIONS, as set forth in California Civil Code §3262, clarified to confirm that they are not intended to release claims beyond the amount of the Progress Payment made and do not cover unprocessed or unresolved claims. In the event the Contractor fails to supply any of the foregoing waiver and release forms, Metro may retain the amount attributable to any such Subcontractor until the appropriate form is received.

#### C. Failure to Comply

If Metro determines that the Contractor has failed to comply with this Article, Metro may give written notice to the Contractor and the Contractor's Surety that if the default is not remedied within a specified period of time -- at least five (5) Days -- the Contract may be terminated for cause in accordance with Article TERMINATION FOR DEFAULT in Contract Document GENERAL CONDITIONS.

### **CP-6 PAYMENT OF TAXES**

Unless otherwise specifically provided in this Contract, the Contract Price includes compensation for all taxes the Contractor is required to pay by Laws in effect on the date the Contractor's bid was opened or its proposal was received by Metro. The Contractor shall pay all federal, state, and local taxes, and duties applicable to and assessable against any Work, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The

Contractor shall ascertain and pay the taxes when due. The Contractor will maintain auditable records, subject to Metro reviews, confirming that tax payments are current at all times.

## **CP-7 FINAL PAYMENT**

A. After Final Acceptance of the Work, a Final Payment will be made as follows:

1. Prior to Final Acceptance, the Contractor shall prepare and submit an Application for Final Payment to Metro, including:
  - a. The proposed total amount due the Contractor, segregated by items on the Payment Schedule, Amendments, Change Orders, and other bases for payment;
  - b. Deductions for prior Progress Payments;
  - c. Amounts retained;
  - d. An Unconditional Waiver and Release for each Subcontractor;
  - e. List of Claims the Contractor intends to file at that time or a statement that no Claims will be filed, and;
  - f. List of pending unsettled claims, stating claimed amounts.
2. The Application for Final Payment shall include complete and legally effective releases or waivers of liens and stop notices satisfactory to Metro, arising out of or filed in connection with the Work. Prior Progress Payments shall be subject to correction in Metro's review of the Application for Final Payment. Claims filed with the Application for Final Payment must be otherwise timely under the Contract and applicable Law.
3. Within a reasonable time, Metro will review the Contractor's Application for Final Payment. Any recommended changes or corrections will then be forwarded to the Contractor. Within ten (10) Days after receipt of recommended changes from Metro, the Contractor will make the changes, or list Claims that will be filed as a result of the changes, and shall submit the revised Application for Final Payment. Upon Acceptance by Metro, the revised Application for Final Payment will become the approved Application for Final Payment.
4. If no Claims have been filed with the initial or any revised Application for Final Payment, and no claims remain unsettled within thirty (30) Days after Final Acceptance of the Work by Metro, and agreements are reached on all issues regarding the Application for Final Payment, Metro, in exchange for an executed release, satisfactory in form and substance to Metro, will pay the entire sum found due on the approved

Application for Final Payment, including the amount, if any, allowed on settled Claims.

5. The release from the Contractor shall be from any and all Claims arising under the Contract, except for Claims that with the concurrence of Metro are specifically reserved, and shall release and waive all unreserved claims against Metro and its officers, directors, employees and Authorized Representatives. The release shall be accompanied by a certification by the Contractor that:
  - a. It has resolved all Subcontractor, Supplier and other Claims that are related to the settled Claims included in the Final Payment;
  - b. It has no reason to believe that any party has a valid Claim against the Contractor or Metro which has not been communicated in writing by the Contractor to Metro as of the date of the Certificate;
  - c. All warranties are in full force and effect, and;
  - d. The releases and the warranties shall survive final payment.
6. If any Claims remain open, Metro may make Final Payment subject to resolution of those Claims. Metro may withhold from the Final Payment, or any other payment should claims and Stop Notices be an unresolved issue at the time, an amount not to exceed one hundred fifty percent (150%) of the sum of the amounts of the open Claims, and one hundred twenty-five percent (125%) of the amounts of open Stop Notices referred to in Article entitled STOP NOTICES herein.

## **CP-8**

### **DISCOVERY OF DEFICIENCIES BEFORE AND AFTER FINAL PAYMENT**

Notwithstanding Metro's acceptance of the Application for Final Payment and irrespective of whether it is before or after Final Payment has been made, Metro shall not be precluded from subsequently showing that:

- A. The true and correct amount payable for the Work is different from that previously accepted;
- B. The previously-accepted Work did not in fact conform to the Contract requirements, or;
- C. A previous payment or portion thereof for Work was improperly made.

Metro also shall not be estopped from demanding and recovering damages from the Contractor, as appropriate, under any of the foregoing circumstances as permitted under the Contract or applicable Law.

**AUDIT REQUIREMENTS FOR CONTRACT MODIFICATIONS AND PROVISIONAL SUM AUTHORIZATIONS**A. Applicability

This Section applies to the Contractor, its Subcontractors and Suppliers. The Contractor, its Subcontractors and Suppliers shall be subject to audit at any reasonable time by the Authorized Auditors for;

1. Any Costs proposed for a Modification, or
2. Defective Cost or pricing on the Contract including any Modification; or
3. Any costs propose for a Provisional Sum authorization.

B. Defined Terms

**Audit:** audit, examine, verify, review, excerpt, vouch or transcribe Contractor's, Subcontractors' or Suppliers' Records.

**Authorized Auditors:** Metro employees, any firms appointed by Metro, or other authorized agencies acting as agents of a Governmental Entity. For federally funded Contracts, Authorized Auditors shall also include the FTA/ Administrator, the Comptroller General of the United States, or any of their duly authorized representatives.

**Costs:** Amounts (both direct and indirect) claimed to be due and payable, or anticipated to be incurred in performing the proposed Modification or Provisional Sum authorization.

**Records:** All of the Contractor's, Subcontractors' or Suppliers' Cost or pricing data supporting the Modification, Provisional Sum, or Element thereof, including but not limited to books, data, Records, documents, reports, computations and projections, accounting procedures and practices and other evidence, in all forms (e.g. paper or machine readable media such as disk, tape, etc.) or types (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect the performance of the Work and all Costs claimed to have been incurred or anticipated to be incurred in performing the Work. Any information provided by the Contractor, Subcontractor or Supplier on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The detail and depth of Records required as backup support for Audits shall be that which adequately establishes and maintains visibility of both allowable, and identified unallowable costs including directly associated costs.

**Reproduce:** copy, download, transcribe, print etc. by any means whatsoever free of charge.

C. Access

1. Records

Upon reasonable written advance notice to the Contractor, Subcontractors or Suppliers, with a copy sent to the Contractor's Authorized Representative, the Authorized Auditors shall have access during Contractor's normal business hours to all Records related to Costs or performance of the proposed Modification or Provisional Sum authorization for the purpose of Auditing.

2. Worksites

For any federally funded major capital project, the Authorized Auditors shall include the FTA/FHWA Administrator or his authorized representatives including any PMO Contractor. Access shall include the Worksite.

D. Records Retention

The Contractor, Subcontractors and Suppliers shall maintain all Records required under this Contract for a period of not less than three (3) years after the date of Termination, in whole or in part, or Final Payment, whichever is later. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor, Subcontractors and Suppliers shall maintain all Records related to this Contract until Metro or any Governmental Agency or their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

E. Reproduction of Records

The Authorized Auditors shall have the right to Reproduce any Contractor, Subcontractor or Supplier Records related to Costs proposed for a Modification. The Contractor, Subcontractor or Supplier shall make said evidence (or to the extent accepted by the Authorized Auditors, photographs, micro-photographs or other authentic reproductions thereof) available to the Authorized Auditors at the Contractor's offices at all reasonable times and without charge.

F. Segregation of Data

The Contractor, Subcontractors or Suppliers shall maintain and segregate Cost and pricing data and Records sufficient to properly reflect all direct and indirect Costs of whatever nature claimed to have been incurred or anticipated to be incurred in connection with a Modification to the Contract.

G. Defective Cost and Pricing Data

FAR 52-215-10 Price Reduction for Defective Cost or Pricing Data and 52.215-11 Price Reduction for Defective Cost or Pricing Data-Modifications shall apply to this Contract. The term Government referred to in the FAR clauses shall include Metro for purposes of this Contract.

H. Disposition of Audit Findings

The Contracting Officer may use all evidence in the Records including the Audit findings to:

1. Negotiate Modifications, or
2. Demand payment from the Contractor or adjust any Contractor's invoice to:
  - a. Reduce amounts found by the Contracting Officer to be unallowable costs; or
  - b. Adjust for prior overpayments or underpayments.

**END OF COMPENSATION & PAYMENT PROVISIONS**

**Contract No. PS0922102333**

**Metro HOT ExpressLanes Project  
ATTACHMENT 1 CERTIFICATION FOR REQUEST FOR PAYMENT**

I hereby certify under penalty of perjury as follows:

That the claim for payment is in all respects true, correct; that the services mentioned herein were actually rendered and/or supplies delivered to Metro in accordance with the contract.

I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to Metro a false claim for payment or approval. A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts.

I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other remedies which Metro may have either under contract or law.

I hereby further certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification;
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and
- (4) This certification is not to be construed as final acceptance of a subcontractor's performance.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

## ATTACHMENT 2 –SCHEDULE OF QUANTITIES & PRICES

**SCHEDULE OF QUANTITIES AND PRICES**

**SCHEDULE A – BASE PROPOSAL**

ITEM NO.	REFERENCE	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
<b>A.1</b>		<b>GENERAL REQUIREMENTS</b>				
	Div. 1 except as called out below					
1010	00700-06	General Requirements	1	Lump Sum	13,400,000.00	13,400,000.00
1020	01460-0B	Design Management	1	Lump Sum	1,800,000.00	1,800,000.00
1030	01590-0B	Project Quality Program Requirements	1	Lump Sum	1,500,000.00	1,500,000.00
1040		Field Office	1	Lump Sum	800,000.00	800,000.00
<b>A.2</b>		<b>CIVIL CONSTRUCTION</b>				
		<b>I-10</b>				
2010	Various, incl 2.20.2.21	I-10 Civil Design	1	Lump Sum	150,000.00	150,000.00
2020	2.3	I-10 Survey	1	Lump Sum	400,000.00	400,000.00
2030	2.4	I-10 Roadway Work	1	Lump Sum	4,200,000.00	4,200,000.00
2040	2.5	I-10 Structures	1	Lump Sum	1.00	1.00
2050	2.6	I-10 Grading	1	Lump Sum	425,000.00	425,000.00
2060	2.7	I-10 Geotechnical	1	Lump Sum	50,000.00	50,000.00
2070	2.8	I-10 Drainage	1	Lump Sum	350,000.00	350,000.00
2080	2.9	I-10 Sign Panels	1	Lump Sum	290,000.00	290,000.00
2090	2.10	I-10 Sign Structures	1	Lump Sum	4,200,000.00	4,200,000.00
2100	2.11	I-10 Toll Facilities	1	Lump Sum	4,100,000.00	4,100,000.00
2110	2.12	I-10 Temporary Water Pollution Control	1	Lump Sum	600,000.00	600,000.00
2120	2.13	I-10 Erosion Control	1	Lump Sum	13,000.00	13,000.00
2130	2.15	I-10 Lighting	1	Lump Sum	450,000.00	450,000.00
2140	2.18	I-10 Maintenance of Traffic	1	Lump Sum	2,200,000.00	2,200,000.00
2145	2.19	I-10 Ramp Metering	1	Lump Sum	250,000.00	250,000.00
2150	3.1	I-10 Utilities Coordination	1	Lump Sum	315,000.00	315,000.00
2160	3.2	I-10 Electrical	1	Lump Sum	1,265,000.00	1,265,000.00
		<b>I-10</b>				

SCHEDULE A - BASE PROPOSAL

SCHEDULE OF QUANTITIES AND PRICES

ITEM NO.	REFERENCE	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
2210	Various, incl 2.20, 2.21	I-110 Civil Design	1	Lump Sum	135,000.00	135,000.00
2220	2.3	I-110 Survey	1	Lump Sum	400,000.00	400,000.00
2230	2.4	I-110 Roadway Work	1	Lump Sum	1,700,000.00	1,700,000.00
2240	2.5	I-110 Structures	1	Lump Sum	1.00	1.00
2250	2.5.2, 2.5.3, 2.5.5	I-110 Adams Boulevard Overcrossing Modification and Widening	1	Lump Sum	1,200,000.00	1,200,000.00
2260	2.5.4, 2.5.5, 2.5.6	I-110 Adams Boulevard Pedestrian Overcrossing	1	Lump Sum	1,400,000.00	1,400,000.00
2270	2.6	I-110 Grading	1	Lump Sum	300,000.00	300,000.00
2280	2.7	I-110 Geotechnical	1	Lump Sum	95,000.00	95,000.00
2290	2.8	I-110 Drainage	1	Lump Sum	245,000.00	245,000.00
2300	2.9	I-110 Sign Panels	1	Lump Sum	470,000.00	470,000.00
2310	2.10	I-110 Sign Structures	1	Lump Sum	2,900,000.00	2,900,000.00
2320	2.11	I-110 Toll Facilities	1	Lump Sum	4,500,000.00	4,500,000.00
2330	2.12	I-110 Temporary Water Pollution Control	1	Lump Sum	425,000.00	425,000.00
2340	2.13	I-110 Erosion Control	1	Lump Sum	19,000.00	19,000.00
2350	2.14	I-110 Traffic Signals	1	Lump Sum	280,000.00	280,000.00
2360	2.15	I-110 Lighting	1	Lump Sum	195,000.00	195,000.00
2370	2.16	I-110 Landscaping	1	Lump Sum	295,000.00	295,000.00
2380	2.17	I-110 Overhead Contact System	1	Lump Sum	34,000.00	34,000.00
2390	2.18	I-110 Maintenance of Traffic	1	Lump Sum	1,700,000.00	1,700,000.00
2400	3.1	I-110 Utilities Coordination	1	Lump Sum	315,000.00	315,000.00
2410	3.2	I-110 Electrical	1	Lump Sum	1,100,000.00	1,100,000.00
2420	3.3	PROJECTWIDE Projectwide Communications System				
A.3		SYSTEM INTEGRATION	1	Lump Sum	2,500,000.00	2,500,000.00

SCHEDULE OF QUANTITIES AND PRICES

SCHEDULE A - BASE PROPOSAL

ITEM NO.	REFERENCE	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
3010	4.1-4.21 excl 4.3.5.1	System Engineering, Design, Development, Installation, Integration, Training and Documentation	1	Lump Sum	3,380,000.00	3,380,000.00
3110	4.3.5.1	Transponder Procurement	100,000	Each	14.50	1,450,000.00
3210	5.1 - 5.4	General Test Planning and Reporting	1	Lump Sum	43,000.00	43,000.00
3215	5.5	Transponder Testing	1	Lump Sum	5,000.00	5,000.00
3220	5.6	Factory Acceptance Testing	1	Lump Sum	17,000.00	17,000.00
3230	5.7	System to System Interface Tests	1	Lump Sum	41,000.00	41,000.00
3240	5.8	Installation Test	1	Lump Sum	55,000.00	55,000.00
3250	5.9	I-10 Commissioning Test	1	Lump Sum	67,000.00	67,000.00
3260	5.9	I-110 Commissioning Test	1	Lump Sum	67,000.00	67,000.00
3270	5.10	I-10 System Acceptance Testing	1	Lump Sum	165,000.00	165,000.00
3280	5.10	I-110 System Acceptance Testing	1	Lump Sum	165,000.00	165,000.00
A.4		<b>OPERATIONS AND MAINTENANCE - Demonstration Period</b>				
4010	6.3	Operational Mobilization	1	Lump Sum	1,500,000.00	1,500,000.00
4020	6.1, 6.4, 6.9, 6.11, 6.13	I-10 Operations	12	Months	103,000.00	1,236,000.00
4030	6.1, 6.4, 6.9, 6.11, 6.13	I-110 Operations	12	Months	103,000.00	1,236,000.00
4040	6.2, 6.5, 6.6, 6.7, 6.10, 6.11, 6.12	I-110 Maintenance	12	Months	34,000.00	408,000.00
4050	6.2, 6.5, 6.6, 6.7, 6.10, 6.11, 6.12	I-10 Maintenance	12	Months	30,000.00	360,000.00
4055	SP-44	Operations and Maintenance Extended Demonstration Period	6	Months	252,000.00	1,512,000.00
4060	6.8	Spare Parts	1	Lump Sum	210,000.00	210,000.00
4070	6.14	Business Continuity	1	Lump Sum	20,000.00	20,000.00



**SCHEDULE C - OPTIONS**

ITEM NO.	REFERENCE	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
C.1	9.1	Option 1: I-105 Enhancements	1	Lump Sum	1,500,000.00	1,500,000.00
C.2	9.2	Option 2: Additional Signage Required By MUTCD	1	Lump Sum	2,750,000.00	2,750,000.00
C.3	9.3	Option 3: Additional Self-Declaration Transponders	450,000	Each	16.50	7,425,000.00
C.4	9.4	Option 4.1: Additional Year Of Operation & Maintenance - Year 1	12	Months	252,000.00	3,024,000.00
C.5	9.4	Option 4.2: Additional Year Of Operation & Maintenance - Year 2	12	Months	254,000.00	3,048,000.00
C.6	9.4	Option 4.3: Additional Year Of Operation & Maintenance - Year 3	12	Months	256,000.00	3,072,000.00
C.7	9.4	Option 4.4: Additional Year Of Operation & Maintenance - Year 4	12	Months	258,000.00	3,096,000.00
C.8	9.4	Option 4.5: Additional Year Of Operation & Maintenance - Year 5	12	Months	260,000.00	3,120,000.00
C.9	9.5	Option 5: Enforcement Technology	1	Lump Sum	20,000.00	20,000.00
C.10	9.6	Option 6: Additional Language Support	1	Lump Sum	20,000.00	20,000.00
<b>SUBTOTAL SCHEDULE C:</b>						<b>27,075,000.00</b>

**Schedule C Notes:**

Metro may, at its sole discretion, exercise Options within the following time periods:

- Option 1, within 60 CD after NTP
- Option 2, within 30 CD after NTP.
- Option 3, at any time in quantities of 5,000 - 10,000.
- Option 4, at least 90 days prior to the scheduled termination of the current year of O&M service.
- Option 5, within 60 CD after NTP.
- Option 6, within 180 CD after NTP.

**SUMMARY OF TOTALS**

<b>TOTAL BASE PROPOSAL PRICE (Subtotal of Schedule A) =</b>	<b>\$</b>	<b>69,103,002.00</b>
Total (in words)		U.S. Dollars
SIXTY NINE MILLION ONE HUNDRED THREE THOUSAND AND TWO DOLLARS		
<b>TOTAL PROVISIONAL SUM ITEMS (Subtotal of Schedule B) =</b>	<b>\$</b>	<b>3,260,700</b>
Total (in words)		U.S. Dollars
THREE MILLION TWO HUNDRED SIXTY THOUSAND SEVEN HUNDRED		
<b>TOTAL OPTIONS (Subtotal of Schedule C) =</b>	<b>\$</b>	<b>27,075,000.00</b>
Total (in words)		U.S. Dollars
TWENTY SEVEN MILLION SEVENTY FIVE THOUSAND		
<b>TOTAL PROPOSED PRICE (Schedules A+B+C) =</b>	<b>\$</b>	<b>99,438,702.00</b>
Total (in words)		U.S. Dollars
NINETY NINE MILLION FOUR HUNDRED THIRTY EIGHT THOUSAND SEVEN HUNDRED AND TWO DOLLARS		

**Summary of Totals General Notes:**

1. In accordance with the Instructions to Proposers, the Contract will be evaluated on the basis of the TOTAL BID PRICE, including options
2. Metro may, at its sole discretion, exercise options as noted.