

Crenshaw/LAX Transit Corridor



IFB No. C0991 Division 16: Southwestern Yard Design-Build

LA County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012-2952



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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.

SECTION 1 – LETTER OF INVITATION

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Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

August 29, 2014

ATTENTION: Prospective Bidder

SUBJECT: **INVITATION FOR BIDS (IFB) FOR (IFB No. C0991),
DIVISION 16: SOUTHWESTERN YARD**

Los Angeles County Metropolitan Transportation Authority (METRO) has established a contracting opportunity for the final design and construction for the Division 16: Southwestern Yard. This is a new Metro Light Rail Vehicle (LRV) operations and maintenance facility, to be constructed within an approximate 18-acre site located near Los Angeles International Airport. Please refer to Appendix A regarding project milestones and duration. The estimated value for the project is \$120 – \$130 million. The resultant Contract, if awarded, will be partially federally funded and is subject to fiscal year funding. The Project Labor Agreement and Construction Careers Policy will apply to this Procurement.

Contract No. C0991 is a design-build project and will be procured via a **Two-Step** procurement process. Step One will determine the technically acceptable Bidders. Step Two will determine the lowest price, responsible Bidder with a responsive Bid. Contract award will be made on a Firm Fixed Price basis to the technically acceptable and responsible Bidder with the lowest price responsive bid. The Two Step instructions and submittal requirements are outlined in detail in the Instruction to Bidders and Submittal Requirements.

You are hereby invited to submit to Metro a bid in accordance with the instructions for the two step process, the submittal requirements, and all other requirements of this Invitation for Bid, to furnish all of the labor, materials, and any other related items required for the performance of IFB No. C0991.

An original and five (5) copies of the Step One Technical Bids must be submitted in sealed envelopes or package, and one original of the Step Two Price Bid must be submitted in an individually sealed envelope and delivered by hand or mail to the address below.

Los Angeles County
Metropolitan Transportation Authority (METRO)
One Gateway Plaza
Los Angeles, CA 90012-2952
9th Floor Receptionist
(IFB No. C0991)

Both the Step One Technical Bid and Step Two Price Bids must be received by Metro's 9th Floor receptionist no later than 2 p.m. on ~~Thursday, January 8, 2015~~. Thursday, January 22, 2015. Bids received after that time will not be considered. The only acceptable evidence to establish the time of receipt is the date/time stamp imprinted upon the Bid packages by the date/time recorder at the 9th floor Procurement Reception Desk. Firms whose Step-One Technical Bids are determined "Acceptable" by Metro shall be notified that their Step-Two Price Bid will be publicly opened. All bidders shall be notified of the public Price Bid opening schedule.

The complete IFB documents are available for purchase and/or examination Monday through Friday (except holidays) between the hours of 9:00 a.m. and 4:00 p.m. at the METRO Gateway Plaza building on the 9th floor at the address above.

The non-refundable price for IFB documents (full size drawings) is \$10 when picked up at the above address; or \$15 if documents are to be mailed. Requests must be accompanied by payment to the METRO in the form of a money order, a company check, a cashier's check, or a certified check. Personal checks or cash are not acceptable forms of payment.

***Drawings are not available for review on the METRO's website.**

All communications in connection with this IFB, shall be provided as follows:

- By U.S. Mail, FedEx, UPS, or courier
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012-2952
Attention: Arlene Blazevic, Contract Administrator
(IFB No. C0991)

- By Phone to (213) 922-2516
Los Angeles County
Metropolitan Transportation Authority
- By FAX to (213) 922-1005
Attention: Arlene Blazevic, Contract Administrator
(IFB No. C0991)

- By e-mail to:
BlazevicA@metro.net
Diversity & Equal Opportunity, Jerome Jacobsen,
(213) 922-3443

Ethics or Lobbyist Registration Information, (213) 922-2900

Pre-Qualification Department, (213) 922-4130

A **Pre-Bid Conference** will be held on **Wednesday, October 1, 2014, at 10:00 am**, in the **Board Room** on the **3rd Floor** of the METRO's Gateway Plaza Building. Prospective bidders are highly encouraged to attend the Pre-Bid Conference, please refer to Pre-Bid Conference schedule noted below.

10:00 a.m. – 12:00 p.m. Pre-Bid Conference
12:30 p.m. – 2:00 p.m. Site Visit (reservations required)

- METRO will be providing transportation to the Site Visit from Metro Headquarters. Those planning on attending the Site Visit must make a reservation with the Contract Administrator by no later than 2:00 p.m., Monday, September, 29, 2014. All planning to attend must have appropriate safety gear to enter the site.

- Please note METRO **does not** pay for parking or validate parking tickets.

The METRO reserves the right to reject any or all bids, to waive informalities or irregularities to the extent permitted by law in any bid received, and to be the sole judge of the merits of the respective bids received. The award, if made, will be made to the lowest-priced responsive and responsible bidder.

This is not an exclusive contract and the METRO expressly reserves the right to contract for services and goods such as those referenced herein through other contractors.

Issued by:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

Frederick P. Origel
Director of Contract Administration

LETTER OF INVITATION SUPPLEMENT (CONSTRUCTION)

The following paragraph(s) apply to this procurement:

All bidders must possess the proper license at the time of Contract award. A California State Contractor's License Classification A or B is required of the prime bidder. All subcontractors must possess the appropriate licenses for each specialty subcontracted.

LETTER OF INVITATION SUPPLEMENT DESIGN BUILD (RC-FTA)

Offerors are hereby notified that:

This project is funded in whole or in part with US Department of Transportation (DOT) funds and will comply with Metro's Race Conscious Disadvantaged Business Enterprise (RC DBE) Program requirements.

- A. Metro established a **"Race Conscious Disadvantaged Business Enterprise"** contract goal for this project in the percentage of:

Twenty Percent (20%) of the Total Contract Price for Design Cost

Sixteen Percent (16%) of the Total Contract Price for Construction Cost

For an Offeror to be considered responsive at time of award, they must document that they obtained enough DBE participation to meet the goal for Design, or document that it made adequate Good Faith Efforts (GFE). The Offeror shall provide Metro, as part of its bid/proposal for this Contract, a complete list (with names and addresses) of all certified DBE subcontractors that will perform any portion of the Design Work, together with a description of their work and the dollar amount of their participation.

To be responsive to DBE requirements, Offeror must submit as part of its bid/proposal a DBE Contracting Plan for the utilization of DBE firms to achieve the Construction contract goal specified herein.

Offerors shall provide Metro, as part of its bid/proposal, a complete list (including names and addresses) of all subcontractors (DBE and non-DBE) who will perform any portion of the required scopes of work. Offerors shall include the scope of work and dollar amount(s) committed to each subcontractor

1. RC DBE contract goal(s) only apply to DBE groups who were found in Metro's Disparity Study to have significant statistical disparity. The race conscious male and female owned DBE groups include: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, and Subcontinent Asian Americans.
2. The participation of non-minority women and other DBE firms, who have not been statistically determined as significantly underutilized, will be counted towards Metro's Race Neutral (RN) measures. Offerors shall report both Race Conscious and Race Neutral DBE commitments.
3. DBE Instructions to Bidders/Proposers provide guidelines on how DBE participation will be counted toward the goal and designates the DBE Commitment Forms that must be completed and submitted by all Offerors by the bid/proposal due date.
4. All DBE firms must be certified under the California Unified Certification Program (CUCP) by the bid/proposal due date. A List of Certified DBE Firms is attached for your convenience, and may be used to assist with outreach efforts. An additional resource is the online CUCP database inclusive of certified DBEs from all certifying

agencies participating in the CUCP. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep>.

- Click on the link in the left menu titled Disadvantaged Business Enterprise (DBE);
- Click on Search for a DBE Firm
- Click on Click here To Access DBE Query Form
- Searches can be performed by one or more criteria
- Follow instructions on the screen
- "Civil Rights Home," and "Caltrans Home" links are located at the top of the query form

DBE CONTRACTING PLAN

To be responsive for Design and Construction at the time of award, Offeror must submit as part of its proposal a DBE Contracting Plan for the utilization of DBE subcontractors. The Plan shall include identification of a DBE Liaison Officer and shall also include, but is not limited to the following:

1. Estimated monetary subcontractor commitments
2. Identification of the scopes of work for all DBE subcontractors commitment on Design; and all known DBE subcontractor for Construction
3. Identification of scopes of work committed and/or anticipated for award to DBE firms
4. Work Breakdown Structure (WBS) submitted monthly
5. Monthly Provisional Sum Work Status Report (include provisional sum items, request and approvals) reflecting DBE subcontract performance and payment
6. Document efforts used to meet or exceed race conscious and/or race-neutral DBE commitments

The Contracting Plan shall identify the delivery or subcontracting method that will be used for each element or package of 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 subcontractor(s) identified in the contractor's bid/proposal, or (3) performance by subcontractor(s) subsequently selected in accordance with a competitive process approved by Metro. Contractors shall provide monthly update of DBE Performance Plan through the term of contract.

Refer to General Conditions for additional guidance concerning DBE commitments.

- B. Metro has not established a "**Race Conscious Disadvantaged Business Enterprise (RC DBE)**" contract goal for this project.

It is Metro's policy to provide equal opportunity for DBE firms to compete on its federally-assisted contracts. The successful Offeror shall utilize DBE firms when opportunities are available during the performance of the contract. DBE participation obtained when a contract goal is not established is counted as RN participation.

GOALS IN SOLICITATION v. COMMITMENTS IN BIDS AND PROPOSAL

The level of DBE participation Offerors commit to in its bid/proposal becomes the Offeror's DBE contract commitment. The DBE commitment will be listed in the Special Provisions of the contract and shall be enforced by Metro. After award DBE commitments shall apply to contract options, changes and/or modifications. Metro will monitor DBE commitments through the contract term, as described in the Contract Compliance Manual (Federal), General Conditions and Special Provisions of the contract.

METRO ASSURANCE

Metro shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any federal-assisted contract or in the administration of its DBE program or the requirements of 49 Code of Federal Regulations (CFR) Part 26 as amended.

LIST OF CERTIFIED FIRMS (DISCLAIMER)
(DBE Instructions to Bidders/Proposers and Forms Document 068 – Attachment I)

SECTION 2 – CONTRACT DOCUMENTS

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

CONTRACT NO.C0991

DIVISION 16: SOUTHWESTERN YARD

FIRM FIXED PRICE CONTRACT

BETWEEN

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

AND

(NAME OF CONTRACTOR TO BE FILLED IN AT TIME OF AWARD)

TO BE FILLED IN AT TIME OF AWARD

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

CONTRACT NO: C0991

Between

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

and

**CONTRACTOR NAME
PHYSICAL ADDRESS
EMAIL ADDRESS
PHONE NUMBER**

DIVISION 16: SOUTHWESTERN YARD

This Contract is entered into by and between the Los Angeles County Metropolitan Transportation Authority (Metro), and _____(Contractor).

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

ARTICLE I: CONTRACT DOCUMENTS 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 (Pro Form 018)
 - 2. Special Provisions, (Pro Form 093-D/B, Dated 06/21/12)
 - 3. General Conditions, (Pro Form 042-D/B, Dated 06/20/12)
 - 4. Compensation and Payment Provisions, Firm Fixed Price, (Pro Form 045, Dated 6/20/12)
 - 5. Document 2-3 Metro Specifications, Division 01 General Requirements
 - 6. Document 2-2 Metro Rail Design Criteria and Standard Drawings
 - 7. Document 2-1 Design Build Requirements
 - 8. The following documents are of equal precedence:
 - a) Document 2-3 Metro Specifications Divisions 02 through 45
 - b) Document 2-5 Project Definition Drawings

- 9.. Document 2-6 Threat and Vulnerability Analysis
10. . Document 2-7 Safety and Security Management Plan Crenshaw
11. . Compliance Manuals are of equal precedence.
 - a) Labor Compliance Manual, Revision 1, (Dated 5/20/13)
 - b) Diversity & Economic Opportunity Department Contract Compliance Manual (Federal) (Pro Form 087, Dated 6/26/13)
 - c) Construction Safety and Security Manual (Revision 4.1, Dated 09/01/12)
12. . 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 is more fully described in the Technical Specifications (available under separate cover) to provide the management, coordination, professional services, labor, equipment, materials and other services to perform the final design and construction of the Southwestern Yard.

ARTICLE IV: COMPENSATION

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 \$ _____ as provided in the Schedule of Quantities and Prices Form and in the Contract Document entitled Compensation and Payment Provisions.

B. Payment Schedule

Except as otherwise expressly provided, the Contract Price shall be paid to the Contractor based upon completion of milestones as provided in Attachment 2: Payment Schedule and Prices Forms and in the Contract Document entitled COMPENSATION AND PAYMENT PROVISIONS.

C. Delay Compensation

As provided in the Article entitled EXTENSION OF TIME in Contract Document GENERAL CONDITIONS, and described in the Article entitled DELAY COMPENSATION in Contract Document COMPENSATION AND PAYMENT PROVISIONS, LACMTA will pay the Contractor DELAY Compensation.

For purposes of C0991 Work:

LACMTA will pay Contractor a daily Delay Compensation Rate in accordance with the Schedule herein or the LACMTA may within its sole discretion, direct the Contractor to submit a RFC for a delay that is both Excusable and Compensable, and occurs between Notice to Proceed and Completion of Milestones, Special Provisions, Appendix A Work Completion Schedule

When a daily rate is paid to contractor for a delay using the rates set forth in the Schedule of Delay Compensation Rates, the daily rate shall constitute the total value of daily compensation LACMTA shall pay to the Contractor for a compensable delay.

The LACMTA may within its sole discretion, notwithstanding the Article entitled COMPENSATION, direct the Contractor to submit a RFC for Excusable and Compensable Delays.

Item No.	Schedule of Delay Compensation Rates
1	TO BE COMPLETED AT TIME OF AWARD
2	
3	

D. Applications for Progress Payments

All Applications for Progress Payments shall be submitted in writing in accordance with the Contract Documents entitled COMPENSATION AND PAYMENT and THE 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. **C0991**

E. Final Payment

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

F. Effective January 1, 2009, LACMTA 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: CONTRACT TERM AND PERIOD OF PERFORMANCE

The Effective Date of this Contract is **TBD**. 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 in accordance with Special Provisions Appendix A-Work Completion Schedule after the Commencement Date, unless this Contract is terminated earlier or extended by Metro, in writing, as provided in the Contract.

ARTICLE VI: OPTION

Metro shall have the option to exercise the following option(s) at its sole discretion at the pricing provided in **Attachment 2: Payment Schedule and Prices Forms Option(s) (TO BE COMPLETED AT TIME OF AWARD)** of the Contract shall be exercised at the sole discretion of Metro.

ARTICLE VII: LICENSES

Contractor and its Subcontractors shall possess and maintain all required State of California Contractor license(s), Professional license(s) and registrations needed for the Work.

ARTICLE VIII: LIMITATION 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.

ARTICLE VIII: 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.

CONTRACTOR

**LOS ANGELES COUNTY
METROPOLITAN
TRANSPORTATION AUTHORITY**

ARTHUR T. LEAHY
CHIEF EXECUTIVE OFFICER

BY: _____
FREDERICK P. ORIGEL
DIR. OF CONTRACT ADMINISTRATION

SIGNATURE OF AUTHORIZED OFFICIAL

BY: _____
(PRINT OR TYPE NAME)

DATE

TITLE

APPROVED AS TO FORM
JOHN F. KRATTLI
ACTING COUNTY COUNSEL

DATE

TAX ID NO.: _____

EXHIBIT A - STATEMENT OF WORK

Volume 2
(under separate cover)

GENERAL CONDITIONS (DESIGN/BUILD)

GC-01 GLOSSARY OF TERMS

1.1 Abbreviations and Symbols

The following abbreviations are used in the Contract Documents:

* **The asterisk identifies required provisions that must flow down to all Subcontracts as defined herein.**

AAR	Association of American Railroads
ADR	Alternative Disputes Resolution
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
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
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
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	Los Angeles County Metropolitan Transportation Authority
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 (California)
PPE	Personal Protective Equipment
PUC	Public Utilities Code (California)
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
SP or SPTC	Southern Pacific Transportation Company
SOP	Standard Operating Procedure
SOW	Statement of Work
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
- 1.1.1 Additional abbreviations may be found in the following:
 - Contract Document STATEMENT OF WORK;
 - Contract Document SPECIAL PROVISIONS; and
 - 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 other Contract Documents.

Term	Definition
Acceleration Costs	Increase in costs by Contractor (above the Contract Price) that are directly attributable to increasing the performance level of the Work, to complete necessary segments of the Work earlier than otherwise required by the Contract.
Acceptance	LACMTA's express notification to Contractor that Contractor has satisfied the requirement(s) of the Contract.
Acceptance Test	Any one of the tests described in the Contract to validate and/or confirm operability, form, fit or function of the Work or an element of the Work.
AFC (Approved for Construction) Design Documents	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. Any Design Document provided to LACMTA for information only, in accordance with the Contract, shall become an AFC Design Document only when the

Term	Definition
	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 LACMTA for LACMTA Approval, in accordance with the Contract, shall become an AFC Design Document only when the Contractor and LACMTA'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.
Alignment	Horizontal and vertical location of a track, railway, street and/or highway as distinguished from its profile, gradients, curves, tangents and elevations.
Alternative Dispute Resolution (ADR)	Process for settling a Dispute by means other than litigation, which may include arbitration, mediation or any other recognized procedure or combination of procedures voluntarily used to resolve issues in controversy.
Approve (or Approval)	The formal written action taken by LACMTA's Contracting Officer or other Authorized Representative under the Contract, whereby LACMTA confirms, ratifies, assents, sanctions or consents to specific documents submitted by, and/or specific actions to be taken by, the Contractor, relating to the Work.
Assessment	A cost imposed on the Contractor for non-compliance with contractual requirements.
Authority	See LACMTA
Authorized Auditor	Any LACMTA Authorized Representative, any Government Entity and/or any firm of auditors appointed by LACMTA or other Government Entity to perform any audit on behalf of LACMTA or Government Entity.
Authorized Representative	Person or firm authorized or empowered by LACMTA, or other Government Entity to act for, on behalf of, or in place of, LACMTA, or other Government Entity, respectively. The scope of authority of LACMTA's Authorized Representative(s) shall be as set forth in the Article entitled AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORIZED REPRESENTATIVES herein.

Term	Definition
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.
Certificate of Final Acceptance	The formal written document from LACMTA acknowledging the Contractor's certification that the Work has been fully completed.
Certificate of Substantial Completion	The formal written document from LACMTA acknowledging to the Contractor that the Work, or an element thereof, has met the essential requirements of the Contract in order to be used by LACMTA for the purpose for which it was intended.
Change	<p>Additions, deletions, alterations, substitutions, or other revisions to the Work, or to the Contract terms and conditions that are within the general scope of the Contract.</p> <p>A Change does not include Work performed or time spent by Contractor to correct any Deficiency.</p>
Change Notice (CN)	A written document issued by LACMTA to the Contractor describing a proposed Change and requesting the Contractor to submit a Contractor's Cost and Schedule Proposal (CSP).
Change Order (CO)	A unilateral written order by LACMTA's Contracting Officer directing a Change.
Changed Work	Work that has been authorized under a Change.

Term	Definition
Chief Executive Officer (CEO)	The Chief Executive Officer of LACMTA.
Claim	<p>A written demand by the Contractor to LACMTA to resolve a dispute for:</p> <ol style="list-style-type: none"> 1. A time extension; 2. An adjustment or interpretation of Contract terms; 3. Payment or money; or 4. Other legal, equitable or contractual relief.
Compensable Delays	An Excusable Delay for which Contractor is entitled to an equitable adjustment in the Contract Price, as allowed under the terms of the Contract.
Construction	The Work under this Contract includes 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 design scope of the contract.
Construction Documents	Shop Drawings, Working Drawings, Approved for Construction Design Documents, 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 LACMTA's Authorized Representative designated, or retained, by LACMTA to monitor the performance of the Contract. 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 Staging Area	Real 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 LACMTA and the Contractor which sets forth the rights and obligations of the Parties in connection with the Work, and includes all Contract Documents.

Term	Definition
Contract Administrator	LACMTA's designated contract administration staff with the authority to administer all non-technical contractual matters related to this Contract.
Contract Documents	<p>Individually each, and collectively all, of the following:</p> <ol style="list-style-type: none"> 1. The Contract; 2. All drawings and specifications, of any kind, provided by LACMTA or prepared by Contractor in the performance of the Work; 3. All Change Orders and Modifications to the Contract.
Contract Drawings	<p>A part of the Contract Documents, 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 also includes those documents described above, which are a part of the AFC Design Documents furnished by the Contractor.</p>
Contract Modification	See Modification.
Contract Price	See Total Contract Price.
Contract Specifications	<p>A part of the Contract Documents, 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."</p> <p>Contract Specifications including the AFC Design Documents furnished by the Contractor to the extent they include specifications as described above.</p>
Contract Time	The number of calendar days, or portion thereof, allowed for completion of the Work and Final Acceptance by LACMTA, including all authorized time extensions. The date specified in the NTP shall be the date on which the Contract Time begins.

Term	Definition
Contracting Officer	The CEO of LACMTA. Contracting Officer also means a qualified member of LACMTA's Procurement Department that has delegated authority consistent with LACMTA Acquisition Policy and Procedures Manual.
Contractor	The individual, firm, partnership, corporation, joint venture, or combination thereof, that has entered into the Contract with LACMTA. Includes Contractor's successors, assigns, employees, officers, Contractor's Project Manager(s), designated representative(s), and agents. Also included in this definition is the term "it" when referring to the Contractor.
Contractor's Project Manager	The Contractor's designated representative or employee authorized and empowered to act on behalf of the Contractor for the full performance of the Contract and who shall direct the activities of the Contractor.
Critical Path	The planned sequence of activities with a logical relationship for the elements of the Work that control the time of completion of the Work, and is depicted on a schedule.
Critical Path Schedule	A document that depicts 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 to complete the Work within the Contract Time.
Cure Notice	Written notice from LACMTA to the Contractor to cure a deficiency, which if not corrected may result in a Termination for Default, and is a condition precedent for a Termination for Default in accordance with the Article entitled TERMINATION FOR DEFAULT herein.
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, whether or not capitalized "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"> 1. Defect(s) in any of the Work related to its construction, materials, workmanship or

Term	Definition
	<p>functionality.</p> <ol style="list-style-type: none"> 2. Design defect(s), omission(s), and deviation(s) in any of the engineering/design work furnished by the Contractor. 3. Unapproved deviation(s) not in compliance with the requirements of the Contract, any applicable codes, or any applicable standards. 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.
Delay	A postponement that prolongs 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.
Design/Build (D/B)	"Design/Build" (or "D/B"), is a project delivery system whereby LACMTA contracts with a Contractor for delivery of a complete and operational Project. The Contractor is given overall responsibility for project implementation, including design and construction, subject to Approval by LACMTA.
Design-Builder	Is equivalent or equal to the term Contractor.
Design Documents	<p>Those documents, including but not limited to, 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.</p> <p>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 LACMTA, either for LACMTA Approval or for information only, in accordance with the Contract.</p>
Design Manager (DM)	LACMTA's Authorized Representative responsible for monitoring the design of the Work.
Differing Site Condition (DSC)	Subsurface or latent physical conditions at the Site that differ materially from those indicated in the Contract Documents; and physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as

Term	Definition
	<p>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> <p>Differing materially means 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.</p>
Dispute	<p>A disagreement between the parties as to the merits, entitlement, amount or remedy arising out of an issue in controversy, including a Claim or asserted default.</p>
Effective Date	<p>The date the Contract becomes enforceable, as set forth in the Contract Document, FORM OF CONTRACT.</p>
Emergency	<p>Any sudden, unforeseen occurrence that requires immediate attention without full deliberation because it will 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.</p>
Engineer of Record	<p>The individual, firm, entity that performs the design, that imprints the engineer's/architect's seal on the drawings, and is responsible and liable for the final design.</p>
Entity	<p>Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Government Entity.</p>

Term	Definition
Environmental Laws	All Laws, regulations, codes, and common law applicable to LACMTA or to the Work, now or hereafter in effect relating to pollution control, remediation, hazardous or contaminated substances, resource conservation and management, protection of public health, public welfare, and the natural environment.
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 identical to, alike, or corresponding with the form fit and function of 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 and parts used by the Contractor or provided by the Contractor to LACMTA pursuant to this Contract. Does not include Construction Equipment as defined herein.
Excusable Delay	An act or event that has caused, or will result in, an identifiable and measurable disruption to the Critical Path from unforeseen causes beyond the control and without fault or negligence of the Contractor, and is not otherwise specifically excluded as an Excusable Delay by the terms of this Contract.
Final Acceptance	Written acceptance by LACMTA of all Work under the Contract by the issuance of a Certificate of Final Acceptance.
Final Design	Any design activities following preliminary engineering design and expressly includes the preparation of final construction plans and detailed specifications, resulting in Design Documents that depict the construction ready design and that have been clearly marked as Approved For Construction.
Float	The difference between early completion times and late completion times for activities as shown on the Contract Critical Path Schedule, and shall include any such time contained within an activity as well as any period containing an activity that is not encompassed within the meaning of the word "Work".

Term	Definition
Flow Down Requirements (or Flow-Down)	Provisions of this Contract required to be included in all Subcontracts, regardless of tier, as identified by an asterisk.
Force Majeure	An extraordinary event or circumstance beyond the control of the Parties, including but not limited to war, strike, riot, crime or criminal acts, terrorism, epidemic, weather, labor disturbances, acts of a public enemy (foreign or domestic), action or inaction of a Government Entity (unless separately and specifically addressed as a performance requirement in a written agreement with LACMTA), or an event described by the legal term "act of God" (i.e. flood, tornadoes, earthquakes (the magnitude of which is defined in Article entitled EXTENSION OF TIME, volcanic eruption, discovery of a threatened or endangered species, or other unforeseeable conditions of nature) that prevents either or both LACMTA and the Contractor from fulfilling their obligations under the Contract.
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 LACMTA.
Governmental Approval	Approval, authorization, certification, consent, license, permit, registration or ruling, issued by any Government Entity required for performance of the Work or commencement of operations of the Project.
Hazardous Substances	Any substance, or combination of substances, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness, or pose substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged. Includes flammable, toxic or radioactive substances. A substance may be a "hazardous substance" if it meets the statutory definition or has been so defined by Federal or State statute or regulations.
Impacted Schedule	A potentially adjusted Critical Path Schedule based on

Term	Definition
	pending Changes, known Delays, and unresolved Claims for Delay.
Inspect or Inspection	The review and testing of all Work, Construction Equipment, the Worksite, and all other Goods or materials wherever located, including the review of the documents, calculations, supporting programs and printouts on which the Work is based, for compliance with Contract Requirements.
Inspector	LACMTA 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.
LACMTA (MTA or Metro)	Los Angeles County Metropolitan Transportation Authority, its predecessors, its successors, or any successors in interest, (e.g. SCRTRD, LACTC, or Authority).
Milestone (or Contract Milestone)	An established point, event or occurrence during the Work that is included in or that is associated with the Schedule and which may be tied to a contract requirement in the Contract.
Modification	A written addition, deletion, adjustment or alteration to the Contract, whether arising out of a mutual agreement/action executed by the Parties, or a unilateral Change Order by LACMTA.
LACMTA Operations	The Department within LACMTA that operates and maintains existing LACMTA facilities and equipment.
Notice(s)	An express written announcement of an event or fact, required by law, regulation or terms of this Contract.
Notice of Completion	A document recorded with the Los Angeles County Recorder by LACMTA signifying completion of all Work.
Notice of Termination	Written notice from LACMTA to the Contractor and its Surety terminating the Contract, or an element or a portion thereof, either for convenience of LACMTA or due to Contractor's default, as provided in this Contract.
Notice to Proceed	Written authorization from LACMTA to the Contractor

Term	Definition
(NTP)	stipulating the date on which Work under the Contract is to start and from which Contract Time shall be measured.
Parties	LACMTA, and the Contractor, between whom the Contract is actually made or entered into.
Period of Performance	The total time period as set forth in the Contract for the Contractor to fulfill or accomplish any and all obligations under the terms of the Contract.
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	That portion of the Transit System to be developed 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 Documents	The portion of the Contract Documents, including but not limited to, performance and prescriptive specifications, drawings, and other documents that are furnished to Contractor by LACMTA. 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>
Provide	In reference to Work performed by the Contractor, whether or not capitalized, shall mean to furnish and/or install complete in place.
Punch List	The list of Work that remains to be completed after issuance of the Certificate of Substantial Completion.

Term	Definition
Reference Documents	Documents that provide additional information and clarification for the Work and are not Contract Documents.
Reference Standards	Authoritative principles, rules, and models used to determine or measure the acceptability of the Work or elements thereof and are incorporated into the Contract by reference.
Relocation (or Relocate)	The necessary removal, rearrangement, or abandonment (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)	A written request submitted by the Contractor to LACMTA, detailing any proposed Change to the Contract.
Request for Information (RFI)	A written request submitted by the Contractor to LACMTA requesting any clarification or additional information regarding the Contract or any element of the Work, and shall be the only mechanism by which LACMTA's Authorized Representative shall respond to any such request.
Resident Engineer	An LACMTA Authorized Representative, to be designated by the Contracting Officer, and charged with managing, administering, organizing, coordinating and inspecting the Work in accordance with the Contract Documents.
Revenue Operations Date (ROD)	The date certain upon which LACMTA shall commence revenue operations of the Project.
Right-of-Way	<p>The real property, inclusive of all estates, interests therein, and permanent easements within the Alignment 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 data-bbox="578 1419 1148 1493">1. Utility easements outside of LACMTA ROW (as defined in the applicable LACMTA-furnished Contract Documents); and <li data-bbox="578 1514 1148 1619">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.
Safety & Security Manual / Specification(s)	The Contract Document that specifies certain minimum requirements and provisions of the LACMTA safety and security program.

Term	Definition
Samples	A physical example of a representative part or item of any Goods, Equipment, materials, fixtures or workmanship, when presented for inspection or provided as evidence of quality of the Work.
Schedule	A document, whether hard copy or electronic, depicting a time-phased and resource-loaded Work execution plan approved by LACMTA, identifying all activities necessary to complete the Work in a logical manner in a Critical Path Schedule. The meaning shall also 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, from the Contract Document SCHEDULE OF QUANTITIES AND PRICES, into specific components of the Work to demonstrate the plan for progress payments.
Scheduled Completion Date	The date all Work is to be completed, and the date that Contract Time ends.
Shop Drawings	<p>Drawings, plans, diagrams, schedules and other data (part of Construction Documents) pursuant to the Work specifically prepared and submitted to LACMTA 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 data-bbox="545 1325 1153 1377">1. The proposed fabrication and assembly of a specific portion of the Work; and <li data-bbox="545 1388 1153 1440">2. The installation (form, fit and attachment details) of a specific portion of the Work. <p>Shop Drawings shall include Product Data, literature, and performance and test data, as appropriate.</p>
Special Provisions	A Contract Document containing requirements of the Contract that may modify and supplement these General Conditions and other Contract Documents.
Standard Drawings	Drawings included as part of or referenced in the Contract, that have been developed to attain uniformity in Goods,

Term	Definition
	geometries, arrangements, details, and procedures and, that establish general recognition and conformity to established practice 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, as determined by Contractor and approved by LACMTA, commencing no earlier than 7:00 a.m. and ending no later than 7:00 p.m., unless otherwise required by the Contract or agreed to by the Contractor and LACMTA in writing.
Standard Work Week	Five (5) Standard Work Days (Monday through Friday) commencing on Monday and ends on Friday, unless otherwise required by the Contract or agreed to by the Contractor and LACMTA in writing.
State	State of California.
Subcontract	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.
Subcontractor	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.
Substantial Completion	Completion of the Work or portion thereof to such a condition that, in the determination of LACMTA, it is complete and in accordance with the Contract documents and can be utilized by LACMTA for the purposes for which it was intended. Substantial Completion does not require completion of minor items which do not impair LACMTA's ability to occupy and fully utilize the Work for its intended purpose.
Substitution (or Substitute)	Any Goods, Equipment, service(s), or system(s) that the Contractor proposes, and LACMTA's Authorized Representative subsequently Approves, to use in lieu of that specified in the Contract Documents.
Supplier	Any Subcontractor not performing Work at the Site that

Term	Definition
	supplies Goods, Equipment, or Construction Equipment. 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.
Surety	Properly licensed company or other person approved by the California State Insurance Commissioner to do business in California, and approved by LACMTA, that issues insurance policies and coverage or bonds for this Project.
Suspension	The written order issued by the LACMTA Contracting Officer, at any time and for any reason within its sole discretion, to the Contractor suspending all or any part of the Work for a specified period of time.
Temporary Construction Easement	For real property not belonging to LACMTA or Contractor, a right of use on which Work can take place during the Construction period, subject to any limitations described in the Contract or easement agreement.
Temporary Relocation	<p>Temporary Relocation shall mean:</p> <ol style="list-style-type: none"> 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 2. Any removal and reinstallation of a Utility in the same place pending future removal or abandonment.
Third Party	A Government Entity, utility company, railroad or other entity that contracts with LACMTA in writing regarding the construction, reconstruction, rearrangement, betterment, and/or improvement of facilities owned or controlled by the Third Party, to facilitate the Work of the Contractor.
Total Contract Price	The total compensation payable to the Contractor under the Contract for the completion of the Work, including all Change Orders or Modifications.
Transit System	The entire bus and/or fixed-guideway rail transportation system described in LACMTA-furnished Contract Documents, including LACMTA Right-of-Way, and all other related property of LACMTA.
Unit	A single item of any kind measuring quantity which is

Term	Definition
	identified as a Unit or Unit Priced item in the Contract Document SCHEDULE OF QUANTITIES & PRICES.
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 item, including any fire or police signal system as well as streetlights associated with any publicly-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 LACMTA regarding the nature, description, usefulness, suitability, lifecycle, condition, construction, or materials, to assure or guarantee workmanship or any other aspect of the Work, or any portion thereof, intended for the fitness of a particular purpose expressed or implied, including any assurance or performance requirements in the Contract Documents.
Work	The Project and all services to be performed as described in the Contract Documents, 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 Project.
Worksite	The area(s) depicted or described by the Contract Documents for performance of the Work. For purposes of safety and security requirements, and for payment for Goods, the term includes 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. Any such use requires prior written Approval by LACMTA's Contracting Officer.
Working Drawings	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

Term	Definition
	decking, bulkheads, excavation supports, utility support, groundwater control, forming, and false work.

GC-02 INTERPRETATION*

2.1 General

2.1.1 The Contract shall be interpreted as a whole and all its parts read 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 LACMTA 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 that is an LACMTA employee, is final, without prejudice to Contractor's rights to pursue a Change to the Contract.

2.1.2 LACMTA 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 Contract for a fully functional facility or Project.

2.2 Contract Documents

2.2.1 The individual documents comprising the Contract Documents are complementary, indicating all aspects of the Work and should be interpreted collectively.

2.2.2 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 LACMTA), along with the other requirements of the Contract, are the basis for development of Contractor's Design Documents, Construction Documents, other deliverables, and the performance of the Work, 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 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 that depict and describe the final design, and are approved/issued as "Approved For Construction"(AFC) in accordance with the Contract, 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 Unless the Design Document is for information only, Contractor shall be responsible for obtaining LACMTA's Approval of the AFC Design Document. LACMTA's Approval of the AFC Design Documents is subject to the provisions of Government Code 830.6.

2.6 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. 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.

2.7 Standard Specifications

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

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

- 2.7.2 All references to the "Engineer" or similar term when referring to the provider of compliance judgment shall mean LACMTA or its Authorized Representative.
- 2.7.3 All references to the "plan(s)" or other similar term shall mean the Contract Document(s).
- 2.7.4 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.

2.8 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 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 stated.

2.9 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 Contract specifically agrees the information contained therein shall not be used directly or indirectly as the basis for any Claim.

2.10 Conflicts Between Contract Documents

2.10.1 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 one Contract Document, the more stringent requirement (within the conflicting Contract Document) shall govern.

2.10.2 Conflicts between LACMTA- Project Definition Documents: If Contractor, or its Subcontractors and Suppliers of any tier, discovers a conflict between any LACMTA Project Definition Documents, the Contractor shall notify LACMTA's Authorized Representative in writing (with an RFI) upon discovery, citing the specific documents and provisions that are in conflict. Upon receipt of an RFI, LACMTA 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 the conflicting LACMTA Project Definition Documents in question, to remove any conflict.

2.10.3 Conflicts between Contractor Design or Construction Documents: If LACMTA, or Contractor's Subcontractors and Suppliers of any tier, discovers a conflict between Contractor Design or Construction Documents, the party which discovered the conflict shall notify Contractor in writing upon discovery, citing the specific documents and provisions that are in conflict. Upon receipt of such a notice, Contractor shall do the following:

- A. Respond in writing, providing notice to all affected parties (including LACMTA), 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 LACMTA, Contractor shall revise the Documents in question, to remove any conflict and shall reissue such documents to LACMTA.

2.10.4 Conflicts Between Contract Drawings

Notwithstanding the provisions set forth above, the following additional interpretation rules, specific to Contract Drawings, shall apply:

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

2.11 Omissions, Misdescriptions, and Interpretations

2.11.1 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.
- C. Contractor shall promptly notify LACMTA of all Deficiencies (including inaccuracies, inconsistencies and/or omissions) it may discover in LACMTA-furnished Contract Documents, and obtain specific instructions in writing regarding any such Deficiency, before proceeding with the Work affected thereby.
- D. Should it appear that the Work to be done, or any of the matters relative thereto, is not sufficiently detailed or explained in any LACMTA furnished Contract Documents, Contractor shall promptly submit a Request for Information (RFI), in writing, asking for such further written explanations as may be necessary. Contractor shall obtain specific instruction from LACMTA before proceeding. Upon receipt of LACMTA's interpretation and/or explanation, Contractor is required to perform the Work and Contractor shall conform to the explanation provided.

- E. Omission of any technical provisions in the Contract Documents, or the misdescription of details of the Work which are necessary to carry out the intent of LACMTA-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

2.12 Information Supplied To The Contractor:

2.12.1 Furnished by LACMTA:

If LACMTA made available to Proposers (including the Contractor) during the solicitation of this Contract information described in the Proposal Documents as "Information Available to Proposers", such information is not a part of this Contract, but was made available to share then existing information, without warranty, with Proposer (including the Contractor). LACMTA made reasonable efforts to ensure that all such information was reliable, accurate and complete. However, because the information is not a part of the Contract and does not meet Contract Document standards, LACMTA 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 and LACMTA will rely on the Contractor's determination.

2.12.2 Furnished by Others:

LACMTA 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 said information in any way, the Contractor, not LACMTA, shall be fully responsible for the use of said information; and
- B. Any use of said information is entirely at the Contractor's own risk and at its own discretion.

2.13 Headings

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.

2.14 Word Construction

Where appropriate:

- 2.14.1 The singular includes the plural and vice versa;
- 2.14.2 References to any Law include all statutory or regulatory provisions consolidating, amending or replacing the Law referred to;
- 2.14.3 The word "including", "includes" and "include" shall be deemed to be followed by the words "without limitation";
- 2.14.4 Unless otherwise indicated, references to Articles, Sections, Paragraphs, Subparagraphs, Exhibits, Attachments, Appendices or Schedules are to this Contract;
- 2.14.5 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;
- 2.14.6 Words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings;
- 2.14.7 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;
- 2.14.8 Words of any gender shall include each other gender where appropriate;
- 2.14.9 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
- 2.14.10 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".

2.15 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.

2.16 Default Language and Units of Measure (UOM)

- 2.16.1 Language – All information, communication, documentation, and submittals on this Project shall be in the English language.
- 2.16.2 Units of Measure (UOM) – Unless explicitly specified as otherwise in the Project Definition Documents or in a written notice by LACMTA'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 LACMTA, 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.

2.17 Request for Information (RFI)

- 2.17.1 Should Contractor determine that it requires clarification, an explanation or interpretation of any provision of the Contract, it shall do so through a written request for information (RFI).
- 2.17.2 LACMTA's Authorized Representative will only provide explanation, interpretation or clarification in response to any RFI, and LACMTA reserves the right to ignore any request for information that does not conform to this process.
- 2.17.3 Except under extraordinary circumstances, Contractor shall submit RFI(s) a minimum of thirty (30) Days prior to the need date for the information. LACMTA will provide a timely response, and if a Change or other Modification is required, initiate a Change Notice, Change Order or other Modification.
- 2.17.4 If Contractor performs any Work that is the subject of an RFI prior to LACMTA's written response (to the RFI), it shall be at the Contractor's risk.

GC-03 AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORIZED REPRESENTATIVES

3.1 Authority and Responsibility of LACMTA's Contracting Officer

- 3.1.1 LACMTA's Contracting Officer has the authority to enter into, administer, modify or terminate the Contract and exercise all other powers, rights, and/or privileges that have been lawfully delegated to the Contracting Officer by the LACMTA Board of Directors.
- 3.1.2 Only the Contracting Officer may delegate specific administrative functions to an Authorized Representative(s).
- 3.1.3 Any authority or responsibility of the Contracting Officer not delegated to an Authorized representative shall remain solely with the Contracting Officer.

3.2 Authority and Responsibility of LACMTA'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 performance of Authorized Representative's duties does not include express or implied apparent authority to enter into, modify, change or terminate the Contract, and shall not be the basis for Contractor to seek a Change or Modification to the Contract.
- 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 LACMTA for acts of any LACMTA 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.

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 the requirements set forth in the Contract:

- A. Design Services. Contractor shall furnish the design of the Project in a timely manner, in accordance with all professional architectural and engineering principles, practices and “standard of care” generally accepted as standards of the industry in the State of California.
 - B. Construction Services. Contractor shall construct the Project as designed in a timely manner, 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.
 - C. Maintain and Protect the Work. Contractor shall maintain and protect the Work, unless otherwise specified in the Contract, until such time as the Contracting Officer issues a Certificate of Substantial Completion or Certificate of Final Acceptance.
- 4.1.2 Compliance with Requirements. Contractor shall perform all services, 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 LACMTA or other persons) to construct the Project in accordance with the requirements of the Contract Documents, the Schedule, all applicable Laws, all Governmental Approvals, LACMTA Approved Quality Assurance & Quality Control Plans, Contractor’s approved Safety Program, the AFC Design Documents, and the Construction Documents provided to LACMTA, 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, and who shall assume professional responsibility for the accuracy and completeness of the Work prepared, verified or confirmed by them.
- 4.1.4 Governing Dimensions. Contractor shall verify all governing dimensions at the Worksite, examine all adjoining work and activities that may have an impact on the Work, and ensure that the Contract Documents (and any other documents related to the Work) accurately depict all governing and adjoining dimensions,

unless otherwise identified as a Contract Document that Contractor may rely upon.

- 4.1.5 Scheduling. Contractor shall schedule and direct its work to provide an orderly work progression for on-time completion of all Milestones set forth in the Schedule, and complete the Work within the Contract Time. 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 the performance of the Work in accordance with the most efficient means, methods, sequences, and procedures, and for coordination of all portions of the Work in compliance with the Contract. For the purposes of this section, most efficient shall mean without excess or waste.
- 4.1.7 Continued Performance of the Work. At all times during any pending RFC, Claim or Dispute, Contractor shall continue to prosecute the Work, including Work that is all or part of any RFC, Claim or Dispute, and shall comply with all provisions of the Contract. LACMTA will continue to satisfy its payment obligations for any undisputed amounts.
- 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 and Suppliers. Contractor shall be responsible to LACMTA for the acts and omissions of its Subcontractors and Suppliers.
- 4.1.10 Assistance to LACMTA. Contractor shall provide such assistance as is reasonably requested by LACMTA 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. Cooperate with LACMTA 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. 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 Notice of Revised Documents. Contractor shall notify LACMTA in writing of any changes to Design Documents or Construction Documents previously delivered to LACMTA, in advance of implementation of such changes, and following such notice shall promptly deliver the corrected Construction Documents to LACMTA.
- 4.1.14 Emergencies. The Contractor shall notify LACMTA immediately of any Emergency. In case of an Emergency or hazard to health or safety requiring immediate curative action, Contractor shall immediately take all reasonable and appropriate action to mitigate the emergency, notifying LACMTA 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, LACMTA may without prior notice undertake such action as is necessary to correct the hazard or deal with the Emergency. As any curative action proceeds, LACMTA may issue specific instructions, which the Contractor shall follow.

4.2 Contractor's Representations, Warranties and Covenants

Contractor represents, warrants and covenants for the benefit of LACMTA 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. Contractor 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.
- A. The Contractor is responsible for ensuring that all Subcontractors are properly licensed at all times during their performance.

- B. The Contractor is also responsible for ensuring that the work of a Subcontractor is not voluntarily assigned or transferred or performed by other than the original Subcontractor listed in the original proposal, without the prior consent of the LACMTA.
- 4.2.3 Control of Employees and Subcontractors. Contractor 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 prior written consent of the Contracting Officer.
- 4.2.4 Review of Information and Inspection of Worksites. Contractor has, in accordance with prudent and generally accepted engineering and construction practices:
- A. Contractor represents that it is capable of conducting, and is obligate hereunder, to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement any information furnished by LACMTA and others;
 - B. Contractor represents that it has inspected the Worksite and surrounding area, and has taken steps reasonably necessary to ascertain the nature and location of the Work to be performed, and that it has investigated and satisfied itself as to the general and local conditions that could in any way affect the Work or its cost, including but not limited to the following:
 1. Constraints related to the design criteria requirements of the Work;
 2. The character, quality, and quantity of surface and subsurface substances or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Worksite, and a review of all documentation relating to the Worksite and the Work, including without limitation, documents describing any exploratory work performed by LACMTA; Reference Documents; LACMTA furnished Contract Documents; and other information made available to the Contractor, or available as public record;
 3. Conditions bearing upon transportation, disposal, handling, and storage of materials, Goods, and Equipment;
 4. The availability of labor, water, electric power, and roads;
 5. Uncertainties of weather, or physical conditions at the site;
 6. The character of Equipment and facilities needed preliminary to and during Work performance;

7. Conditions bearing upon security and protection of material, Goods, Equipment, and Work in progress;
 8. Laws and Codes; and
 9. Local Tax Structure.
- C. Contractor is solely responsible 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 LACMTA.
- 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 Contractor's review of the Contract Documents, Contractor shall be able to obtain and keep in effect throughout the Contract Time all Governmental Approvals and permits the Contractor is obligated to obtain in accordance with the Contract.
 - 4.2.9 Responsibility for Performance. Any failure of the Contractor to take the actions described in this Section 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 LACMTA.

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 LACMTA. 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.

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 and Contractor shall require the same of all its Subcontractors. LACMTA 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 and its Subcontractors.

4.5 Data Collection & Reporting

Contractor shall collect and preserve each of the following types of data in written form contemporaneously during the Contractor's performance of the Work, unless described otherwise by a Contract Specification:

- 4.5.1 Monthly Utilization Report. A monthly report summarizing all manpower and equipment utilized to perform the Work during the month, in detail as follows:
- A. Labor: By classification of management, engineering (if applicable), and other technical, trade, and craft personnel.
 - B. By categories of Goods and Equipment.
 - C. Construction Equipment by category.
- 4.5.2 Weekly Utilization Report. A weekly report of utilized manpower and equipment, detailed by Contractor and each Subcontractor, as well as by Contract activity (i.e., as depicted on the Approved Critical Path Schedule);
- 4.5.3 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 Approved Critical Path Schedule);

- 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);

4.5.4 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 LACMTA.

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

a. Disposal of Waste

Unless otherwise specified in the Contract, 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.

4.7 Other Rights and Remedies

- 4.7.1 Contractor acknowledges that the rights and remedies of LACMTA specified herein are in addition to and do not limit any rights or remedies of LACMTA afforded by the Contract or by Law;
- 4.7.2 Contractor agrees that it is Contractor's obligation to design and construct the Work, or cause the design and construction of the Work, in accordance with the Contract Documents, and that LACMTA and the other Indemnified Parties under this Contract are fully entitled to rely on the Contractor's performance of such obligation.
- 4.7.3 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.

GC-05 CONTRACTOR'S PROJECT MANAGER, ORGANIZATION AND PERSONNEL

5.1 Organization

The Contractor shall submit for LACMTA review and acceptance, an organization chart showing the organization established by the Contractor for the performance of the Work, showing the names, titles, and functions of all of the Contractor's key personnel.

5.2 Contractor's Project Manager

5.2.1 Contractor's Project Manager shall have full authority to represent and act for the Contractor, organize and direct the Work.

5.2.2 During performance of the Work, Contractor's Project Manager 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 Project Manager and Key Personnel

The Contractor shall secure the prior written acceptance of LACMTA's Authorized Representative for any change or reassignment of the Contractor's Project Manager and other key personnel, submitting written documentation of the new individuals' qualifications to the satisfaction of LACMTA. The Contractor shall not reassign key personnel to other projects until a satisfactory replacement has been approved by LACMTA.

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 LACMTA and the Work. The Contracting Officer's decision to require Contractor to remove any Contractor personnel, including Contractor's Project Manager, 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, LACMTA. Any person(s) removed for any reason shall not be re-employed on any other LACMTA project.

GC-06 SUBCONTRACTORS AND SUPPLIERS

6.1 Performance of Work

- 6.1.1 Subcontractor Coordination and Responsibility. The Contractor shall coordinate the Work performed by its Subcontractors and Suppliers, and be fully responsible to LACMTA for all acts and omissions of Subcontractors, Suppliers and their employees.
- 6.1.2 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.
- 6.1.3 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.
- 6.1.4 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.

6.2 Contracting Plan for Subcontractors Not Identified in Bid

Contractor may enter into Subcontracts with the Subcontractors identified in the Article entitled SUBCONTRACTORS AND SUPPLIERS in Contract Document SPECIAL PROVISIONS without following the following requirements, but Contractor shall not enter into any other Subcontracts, except in accordance with the following requirements.

Prior to soliciting any subcontracts 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:

- 6.2.1 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 LACMTA.
- 6.2.2 Submission to LACMTA. The Contractor shall, within ten (10) Days after receipt of the Notice to Proceed, submit to LACMTA the Contracting Plan for the Work for review and approval. The

Contracting Plan shall be updated monthly and be subject to the review and approval of LACMTA. The Contractor shall submit to LACMTA, for its approval, any necessary or proposed revisions and updates to the Contracting Plan.

- 6.2.3 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 Subcontractor identified in the Contractor's bid/proposal; or (3) performance by a Subcontractor subsequently selected in accordance with a competitive process approved by LACMTA. The Contractor shall not subcontract, and 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).
- 6.2.4 Debarred Subcontractor. 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.
- 6.2.5 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 LACMTA Pre-Qualification Application requirements, before a Subcontract is awarded.
- 6.2.6 Self Performance. The Contracting Plan must provide that a percentage of the Work (based on the Total Contract Price), will be self performed by the Contractor, as designated in the Contract Document SPECIAL PROVISIONS.
- 6.2.7 Full and Open Competition for Subcontracts. All Subcontractors shall be retained by Contractor only following an open and competitive procurement process. LACMTA shall have sole discretion to disapprove any procurement process for Subcontracts that LACMTA determines does not provide for full and open competition. LACMTA'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. Contractor shall provide public notice of the availability of work to be subcontracted at least once in a newspaper of general circulation at least ten (10) Days before the date for receipt of proposals, and in its public notice provide a fixed date and time on which the subcontracted work will be awarded. The Contractor acknowledges that it shall be responsible for demonstrating to LACMTA that the price for any Work not competitively procured is fair and reasonable or otherwise in the best interest of LACMTA. Contractor shall promptly notify the Contracting Officer in writing of the identity of each Subcontractor selected.

- 6.2.8 Inclusion of DBE/SBE Firms. The Contracting Plan shall include an identification of the Work that will be performed, or is anticipated to be performed, by DBE/SBE firms in order to achieve either the DBE or SBE goals set forth in the Contract Document SPECIAL PROVISIONS. 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/SBE participation.

6.3 Substitution of Subcontractors*

- 6.3.1 Substitution and Subcontract Price Increase. Once Contractor has entered into any Subcontract, Contractor shall not have the right to make any Substitution of such Subcontractor except as specified in this Article, and Contractor shall not amend any existing 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 Subcontractor (whether listed under the Article entitled SUBCONTRACTORS AND SUPPLIERS in Contract Document SPECIAL PROVISIONS, or selected in accordance with Section 6.2 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 LACMTA shall not unreasonably withhold approval of Substitutions submitted for Approval, 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. 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. LACMTA will be a third party beneficiary of all Subcontracts.
- 6.3.6 Substitution Request Form. Requests for Approval hereunder shall include information in the same form and content as in the proposal form contained in the Contractor's original 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 DIVERSITY & ECONOMIC OPPORTUNITY DEPARTMENT CONTRACT COMPLIANCE MANUAL.

6.4 Flow-down Requirements *

The Contractor shall incorporate into each Subcontract, and require insertion into all lower tier Subcontracts, all Flow Down Requirements as follows:

- 6.4.1 All Articles, Sections, Paragraphs, and/or Subparagraphs of the Contract noted by an asterisk ("*");
- 6.4.2 All provisions required by Law or otherwise required in this Contract; and
- 6.4.3 The following provisions:

Contractor and Subcontractor acknowledge and agree:

- A. All Work being performed and Goods being furnished by a Subcontractor under its Subcontract shall comply with the Contractor's Contract with LACMTA.
- 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 LACMTA under its Contract.

- 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 LACMTA, under the Contract.
- D. All guarantees and warranties, express or implied, shall inure to the benefit of both LACMTA 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 LACMTA.
- E. Nothing contained in the Subcontract shall be deemed to create any privity of Contract between LACMTA and the Subcontractor, nor shall it create any duties, obligations, or liabilities on the part of LACMTA to the Subcontractor except those required by Law. In the event of any claim or dispute arising under the Subcontract or the Contract with LACMTA, 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 LACMTA. 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.

6.5 Subcontract Administration

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

- 6.5.1 Executed Subcontract Agreements. The Contractor shall submit to the LACMTA Contracting Officer complete copies of all executed Subcontracts and/or Purchase Orders, of any tier and regardless of value of the work, 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 redact 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.

- 6.5.2 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.
- 6.5.3 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 PAYMENT TO SUBCONTRACTORS, Contractor shall cause that its Subcontractors and Suppliers complete and provide Conditional and Unconditional Waiver and Release forms, attached thereto 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.
- 6.5.4 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 GOODS, WARRANTY, and INDEMNIFICATION, shall survive Final Acceptance and any payment to Contractor by LACMTA for any element of the Work performed by a Subcontractor or Supplier under this Contract.
- 6.5.5 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 LACMTA prior to Final Acceptance of the Contract, regardless of: (1) whether such nondisclosures were fraudulent, negligent, or otherwise; and (2) LACMTA 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.

- 6.5.6 No Exception. Inspection of a Subcontractor's work, under the terms of this Article, shall not constitute Acceptance as contemplated by the Article entitled PERFORMANCE AND INSPECTIONS, sub-article 19.1.4.
- 6.5.7 Contractor Responsibilities. The terms of this Section, as it relates to the Article entitled PERFORMANCE AND INSPECTIONS, creates an LACMTA 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, nor shall such inspections create any privity of contract between LACMTA and the Subcontractor.
- 6.5.8 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.
- 6.5.9 Warranties. Notwithstanding any terms of this Article, the terms of Warranty, either express or implied in this Contract remain unchanged.

GC-07 PERFORMANCE AND PAYMENT BONDS

7.1 General

Concurrently with the execution of the Contract, Contractor shall provide LACMTA with Performance and Payment Bonds in compliance with the following requirements:

- 7.1.1 Performance and Payment Bonds shall be in the form supplied by LACMTA as appendices to the Contract Document SPECIAL PROVISIONS;
- 7.1.2 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 LACMTA, and authorized to issue such bonds in the state of California;

7.1.3 Performance and Payments Bonds shall remain in effect for the entire Contract Time, each at one hundred percent (100%) of the Total Contract Price;

7.2 Warranty Bond

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

7.3 Replacement of Surety

If at any time the A.M. Best Rating of any Surety falls below A- and/or Class VII, LACMTA may provide written notice to the Contractor to replace the Surety. The failure of LACMTA to provide such notice immediately upon learning that any Surety's A.M. Best Rating has fallen below A- and/or Class VII shall in no way be construed "as a" or "to be" a waiver of the LACMTA's right to provide such notice at any time in the future. **No further payments shall be due, nor will LACMTA make any payments under the Contract, until a new Surety shall qualify and be accepted by LACMTA.** Contractor shall pay all costs of compliance with this Article

7.4 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.

7.5 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-08 NOTICE TO PROCEED (NTP)

8.1 Start of Work

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 date stated in the Notice to Proceed (NTP). The Contracting Officer will issue the NTP after the following conditions have been satisfied (not necessarily in this order):

- 8.1.1 Concurrently with the execution of the Contract, Contractor shall submit all required bonds and insurance certificate(s) specified in the Contract. LACMTA's receipt of the Contractor's bonds and required insurance certificate(s) is a condition precedent to the issuance of the NTP;
- 8.1.2 If any construction shall commence on the issuance of the NTP, Contractor shall have satisfied all other requirements related to the commencement of construction of the applicable element(s) of the Work, including surveys and notices to adjacent landowners; and
- 8.1.3 If any construction shall commence on the issuance of the NTP, 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 LACMTA Design Approval has issued/distributed all corresponding AFC Design Documents.

8.2 Work Prior to LACMTA 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 the Work 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.

8.3 Contract Time

The Contract Time shall commence on the date stated in the NTP. Contractor shall commence and diligently prosecute the Work to completion within the Contract Time and the Work Completion schedule as set forth in the Contract Special Provisions Article entitled PROSECTUION AND COMPLETION OF WORK.

In the event Contractor delays LACMTA's issuance of the NTP later than forty-five (45) days from LACMTA's written Notice of Award, 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.

GC-09 TEMPORARY FACILITIES

9.1 Personnel and Public Safety

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 LACMTA. The Contractor shall be responsible for the timely erection, maintenance, repair, replacement, and removal of such safeguards, without specific instructions from LACMTA, or anyone else.

9.2 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 LACMTA.

9.3 Offices and Utilities

9.3.1 Contractor shall determine the type of temporary office facilities and temporary utility services required, and shall make all arrangements with utility companies and governmental agencies to secure such services. Contractor represents and agrees that all associated costs are included in the Total Contract Price.

9.3.2 In the event an integrated project office (IPO) or integrated project management office (IPMO) is to be utilized on the Project, the Contractor shall provide, furnish, and maintain the integrated project office and/or other field offices in accordance with the designated General Requirements Section of the Contract Documents, and may provide other temporary office facilities that Contractor 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. Contractor represents and agrees that all associated costs are included in the Total Contract Price.

9.3.3 All temporary utilities, services, and office facilities shall be furnished, installed, connected and maintained by the Contractor in a manner satisfactory to LACMTA, and shall be removed by the Contractor in like manner at its sole expense prior to Final Acceptance, except for such temporary utilities, services, and office facilities as may be specified by LACMTA to remain in place.

GC-10 GOVERNMENTAL APPROVALS

10.1 Licenses and Permits

- 10.1.1 Contractor Responsibility. Except for the permits listed in the Article entitled LACMTA FURNISHED PERMITS in Contract Document SPECIAL PROVISIONS, prior to beginning the 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 LACMTA's Authorized Representative with fully executed copies.
- 10.1.2 Contractor's Representation. Contractor affirms 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.
- 10.1.3 Compliance with Laws. Contractor shall comply with all applicable 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 LACMTA, including changes prior to award Compliance with any changes in laws and licenses/permits that materially differ from those in effect at the time of Contractor's proposal submittal may result in entitlement for time or compensation, subject to the Articles CHANGES and EXTENSION OF TIME.

10.2 Payment

Contractor shall obtain and pay for all permits 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 LACMTA.

10.3 Issuance to LACMTA

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

10.4 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 Third Party.

10.5 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 LACMTA 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 LACMTA directed Change.

GC-11 EMERGENCIES*

The Contractor shall notify LACMTA and all appropriate public agencies immediately of any Emergency. In case of an Emergency or hazard to health or safety requiring immediate curative action, Contractor shall immediately take all reasonable and appropriate action to mitigate the Emergency, notifying LACMTA of the action(s) taken as soon as possible but no later than one (1) working day thereafter. As any curative action proceeds, LACMTA may issue specific instructions, which the Contractor shall follow.

GC-12 GOODS*

12.1 General

12.1.1 Contractor shall furnish all Goods required to complete the Work, except those designated, if any, to be furnished by LACMTA.

12.1.2 Goods incorporated into the Work shall be new, of good quality, of the grade specified and shall have the specified capacity, functionality and features for the purpose intended.

12.1.3 LACMTA will reject Goods not conforming to the requirements of the Contract.

12.1.4 LACMTA reserves the right to review and accept 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.

12.2 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. Contractor may use any Goods that are Equivalent to those named, subject to prior written consent of the LACMTA Contracting Officer or Authorized Representative, which consent shall be exercised in the sole and absolute discretion of LACMTA.

12.3 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 and availability for the Work.

12.4 Risk of Loss

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

GC-13 LACMTA FURNISHED GOODS*

13.1 Furnished Goods

LACMTA may furnish Goods to the Contractor to incorporate in the Work or other use in carrying out Work under the Contract. LACMTA furnished Goods will be available as specified in the Appendix entitled LACMTA FURNISHED GOODS in the Contract Document SPECIAL PROVISIONS.

13.2 Contractor Responsibilities

13.2.1 General. Contractor shall store, protect, handle and transport LACMTA furnished Goods at its expense, including necessary loading and unloading, as part of the Contract Price.

13.2.2 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 are scheduled and available for delivery by LACMTA.

13.3 Contractor Liability

The Contractor shall be liable to LACMTA for the cost of replacing, repairing, or storage of LACMTA furnished Goods 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. LACMTA may deduct the costs from any monies due or to become due the Contractor.

13.4 Scheduling

The Contractor shall include delivery of LACMTA furnished Goods in its Critical Path Schedule. When appropriate, Contractor shall schedule delivery dates for the return of any LACMTA furnished Goods in a like manner.

GC-14 COOPERATION, COORDINATION AND ACCESS*

14.1 Cooperation and Coordination with Other Contractors and/or LACMTA Operations

14.1.1 LACMTA reserves the right and may undertake or award other contracts for other work on or near the Worksite.

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

14.1.3 The obligation and duty of the Contractor under the Contract to coordinate the Work with the work of others includes the following:

- A. Contractor shall not have exclusive access to or use of Work areas or the Worksite. LACMTA may require that Contractor use certain facilities and areas concurrently with others.
- B. 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.

14.2 Contractor Dependency on Work by Others

If any part of the Work depends on the work of any other contractor or LACMTA for proper execution or results, prior to Contractor proceeding with Work, Contractor shall notify LACMTA 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 Work.

14.3 Coordination Meetings

Contractor's Project Manager (or its fully-empowered delegate) shall attend such meetings and conferences, including a pre-construction meeting, arranged by LACMTA for the purpose of coordinating the Work. Attendance at and participation in such meetings and conferences by Contractor's Project Manager is a basic part of the Work.

GC-15 WORKSITE MAINTENANCE

15.1 Clean Up

15.1.1 Throughout all phases of 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.

15.1.2 Before completing the Work, Contractor shall remove from the Worksite any rubbish, tools, scaffolding, and goods that are not the property of LACMTA.

15.1.3 Upon completing the Work, Contractor shall leave the Worksite in a clean, neat, and orderly condition satisfactory to LACMTA.

15.2 Dust Abatement

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

15.3 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-16 WORKMANSHIP*

16.1 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.

16.2 LACMTA Rejection of Work

In accordance with the Article entitled PERFORMANCE AND INSPECTIONS herein, LACMTA may reject as defective all workmanship

not conforming to the requirements of applicable Law, and/or the Contract.

GC-17 UNAUTHORIZED WORK*

Any additional work must be authorized by LACMTA pursuant to the Article herein entitled CHANGES. 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 LACMTA 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 LACMTA to remove unauthorized work, LACMTA may remove the work at the Contractor's sole expense.

GC-18 SURVEY AND VERIFICATIONS

18.1 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 for the duration of their usefulness. If Contractor loses or disturbs any survey references and marks, and LACMTA needs to replace them, such replacement shall be at the sole expense of the Contractor.

18.2 Conformance with Plans and Variations

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

18.2.2 Contractor shall report any variation to LACMTA 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 LACMTA, the Contractor shall correct the Work, and/or replace such Work to comply with the requirements of this Section, at its own expense.

18.3 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 the Work is in any way dependent, according to the Contract Documents. The Contractor shall notify LACMTA of any defective or non-conforming governing and adjoining dimensions that are observed before the Contractor begins that part of the Work.

GC-19 PERFORMANCE AND INSPECTIONS*

19.1 Inspection and Testing During Contractor Performance

- 19.1.1 LACMTA will, at all times during the performance of the Work, have access to the Work at all Worksites, and all documents on which the Work is based.
- 19.1.2 At any time during the performance of the Work, upon reasonable notice, LACMTA may review the documents, calculations, supporting materials, data, and all other information, including computer programs and printouts, on which the Work is based; inspect the Worksite, and all Work, Construction Equipment and all other Goods or materials wherever located.
- 19.1.3 Such Inspection will be for the sole benefit of LACMTA, and is in addition to those inspections and tests the Contractor is required to perform as part of its Quality Control responsibility.
- 19.1.4 Except to the extent specified in writing by LACMTA, no Inspections, reviews, tests, statements of no objection or consent shall be construed as constituting or implying Acceptance, and LACMTA may reject or accept any Work, direct, or request Changes, or identify additional Work which must be done at any time prior to Final Acceptance of the Work, whether or not previous inspections, reviews, tests or approvals were conducted by LACMTA, its Authorized Representative, or any such other Entity, associated with their respective interests.
- 19.1.5 LACMTA 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.

19.2 LACMTA's Remedies for Deficient Work

If any Work provided by the Contractor is Deficient, LACMTA, by providing written notice to Contractor of such Deficiencies, may reject the Work and/or take any or all of the following actions:

- 19.2.1 Require the Contractor to promptly segregate and remove rejected Work from the Worksite at its own expense and without any extension of Contract Time;
- 19.2.2 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;

- 19.2.3 Withhold payments related to the rejected Work that otherwise may be due to Contractor hereunder;
- 19.2.4 Seek Liquidated Damages as provided in the Contract Document SPECIAL PROVISIONS if and when the correction of the rejected Work results in a delay to the Contract milestones therein;
- 19.2.5 Have such Work performed and Goods provided by others at the sole expense of the Contractor;
- 19.2.6 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.

19.3 Work Performed without Inspection

- 19.3.1 At all times before Final Acceptance, Contractor shall remove or uncover such portions of the finished construction Work for Inspection, as directed by LACMTA. After Inspection by LACMTA, Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or Inspected 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.
- 19.3.2 Any Work done or materials used without adequate notice to and opportunity for prior Inspection by LACMTA, or without Inspection, as provided for in the LACMTA 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.
- 19.3.3 In instances where LACMTA has received adequate notice and opportunity, and LACMTA requires the Work to be exposed or examined, and the Work is in conformance with the requirements of the Contract Documents, then a delay to the Critical Path (if any) from uncovering, removing and restoring Work shall be considered a delay caused by LACMTA, and Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of the delay to the Critical Path occasioned thereby.

19.4 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 LACMTA 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.

19.5 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 inspecting the Work associated with their respective interests. Visits will be coordinated through LACMTA.

19.6 Inspection of Off-Site Facilities

19.6.1 LACMTA 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. Contracts awarded by LACMTA, LACMTA and other authorized agencies may also review and inspect Contractor's Design Documents, AFC Design Documents, and/or Construction Documents, whether located at its project office(s), or its home office, including a subcontractor's project or home office.

19.6.2 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 LACMTA.

GC-20 PARTIAL ACCEPTANCE*

If portions of the Work (due to having independent utility or a subcontract being fully completed) are completed in advance of the deadlines specified herein, LACMTA 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. Partial Acceptance shall in no way change Contractor's responsibility for maintenance during construction or its Warranty obligations under the requirements of this Contract.

GC-21 SUBSTANTIAL COMPLETION*

21.1 Notice

Contractor shall provide to LACMTA's Contracting Officer a written Notice of Substantial Completion of the Work, or a specified portion thereof, when all of the following have occurred:

- 21.1.1 Contractor has substantially completed the Work or specified portion thereof (except for Punch List items and final clean-up);
- 21.1.2 Contractor has ensured that all Work or specified portion thereof has been performed and substantially completed in accordance with the requirements of the Contract;
- 21.1.3 All Deficiencies in the Work or specified portion thereof have been corrected (other than Punch List items);
- 21.1.4 The Contractor has ensured that the Work or specified portion thereof is ready for operation and may be operated without damage to any other Work or property on or off the Worksite, and without injury to any Entity.
- 21.1.5 LACMTA has received all safety certifications as required by the Contract Documents needed for operation of the Project.
- 21.1.6 The Contractor has received and provided to LACMTA all applicable Governmental Approvals required for Project use.

21.2 Inspection

Within thirty (30) Days after the Contractor provides the Contracting Officer with the written Notice of Substantial Completion of the Work or specified portion thereof, Contractor and LACMTA's Authorized Representative shall confirm any prior inspections and other obligations for Substantial Completion for the Work or specified portion thereof and complete any outstanding inspections, that are the subject of the Notice to determine its status of completion and to establish a Punch List.

21.3 Substantial Completion

- 21.3.1 Substantial Completion of the Work or specified portion thereof (except for Punch List items) shall occur on the date:
 - A. The Contracting Officer determines that the Work or specified portion thereof, respectively, has been completed in accordance with all requirements of the Contract;

- B. Contractor has corrected all Deficiencies and deviations with respect to the Work;
- C. LACMTA and Contractor have agreed to a Punch List, if any, of items remaining to be completed or corrected prior to Final Acceptance; and
- D. The Work, or specified portion thereof, shall be completed and ready for use for the purpose intended.

21.3.2 Upon Substantial Completion, the Contracting Officer will issue a Certificate of Substantial Completion for the completed Work or specified portion thereof, as a condition precedent for beneficial occupancy or revenue service/operation.

21.4 LACMTA Acceptance

21.4.1 The Contracting Officer may either:

- A. Reject the Contractor's written Notice of Substantial Completion because the Work that is the subject of the Notice 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 upon Punch List, if any, of Work items remaining. The Punch List may have items added from time to time, prior to Final Acceptance.

21.4.2 If the Contracting Officer rejects the Contractor's Notice of Substantial Completion, the Contractor shall, at no additional cost to LACMTA, promptly respond to all Deficiencies, deviations, and uncompleted Work as listed by the Contracting Officer. 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.

21.5 Completion of the Punch List

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

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

21.6 Responsibility for Maintenance, Loss and Damage

Upon the Contracting Officer's issuance of a Certificate of Substantial Completion, LACMTA shall be responsible for the maintenance, loss, or damage to the Work or any element thereof, except as follows:

- 21.6.1 The Contracting Officer's issuance of a Certificate of Substantial Completion will not relieve the Contractor of its obligations to complete the Work or any element thereof, the non-completion of which was not disclosed to LACMTA (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise);
- 21.6.2 The Contractor's action, negligence or breach of this Contract or the warranty causes loss or damage to the Work or any element thereof;
- 21.6.3 The Work or any element thereof remains within the custody or control of the Contractor, or;
- 21.6.4 A Responsibility for maintenance, loss or damage, remains with the Contractor pursuant to the terms of the Certificate of Substantial Completion.
- 21.6.5 The Contract Documents include maintenance requirements as part of the Work.

21.7 Responsibility to Complete the Work

Notwithstanding any other provision of this Contract (including Contract Documents of higher precedence) that could be interpreted to the contrary, except for Modifications that explicitly change the Contract requirements, 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 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, LACMTA 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-22 FINAL INSPECTION AND ACCEPTANCE OF THE WORK*

22.1 Punch List and Other Obligations

- 22.1.1 Promptly after receipt of a Certificate of Substantial Completion for the Work or element thereof, the Contractor shall perform all

Punch List Work, if any, and shall satisfy all of its other obligations under the Contract.

22.1.2 Contractor shall submit 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 LACMTA in 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.

22.2 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 LACMTA specified in the Contract have been made, it shall submit to the Contracting Officer a written Request for Final Acceptance specifying that the Work is completed; certifying and documenting the following, and the date on which each was completed:

22.2.1 Contractor has determined that the entire Work is fully completed, including satisfactory completion of inspections, tests, safety related items, and documentation, including without limitation the As-Built Schedule, specified in the Contract;

22.2.2 All Punch List and clean-up Work, including all removal of Construction debris is completed.

22.2.3 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;

22.2.4 All Equipment, special tools, spare parts or other Goods purchased by the Contractor as provided in the Contract have been delivered to and accepted by the Contracting Officer free and clear of Liens;

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

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

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

22.2.8 Contractor has delivered to LACMTA 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 that have not been bonded around, together with unconditional releases from all Subcontractors that have filed stop notices during the term of the Contract. Contractor shall not submit any new Claims as of the date of Contractor's Request for Final Acceptance.

22.2.9 Contracting Officer has received and accepted the final As-Built Schedule and As-Built Drawings.

22.3 LACMTA Inspection and Acceptance

22.3.1 Within sixty (60) Days after receipt of Contractor's Request for Certificate of Final Acceptance, LACMTA will inspect the Work and 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.

22.3.2 If the Contracting Officer rejects the Request for Final Acceptance, specifying Deficiencies or uncompleted portions of the Work, the Contractor shall, at no additional cost to LACMTA, 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 requirements above.

22.4 No Implied Acceptance

Any failure by LACMTA 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 LACMTA of the Work for any purpose, nor imply approval of the Contractor's Request for Final Acceptance.

22.5 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 INDEMNIFICATION, GOODS, and WARRANTY herein, and the Article entitled INSURANCE REQUIREMENTS in the Contract Document SPECIAL PROVISIONS, shall survive Final Acceptance.

22.6 Undisclosed Incomplete Work

Contractor will not be relieved of its obligations to complete any element of the Work, or any portion or element thereof, the non-completion of which was not disclosed to LACMTA (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise) nor discovered by LACMTA 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-23 WARRANTY*

23.1 Warranty

Contractor warrants that:

23.1.1 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.

23.1.2 The Goods furnished shall be new, unless otherwise specified in the Contract Documents, and of a quality that meets all of the requirements of the Contract.

23.1.3 Contractor further warrants that all design Work, based on the Contract Documents and/or 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, and that the Work shall be constructible as designed.

23.2 Commencement and Duration

23.2.1 General. Warranties shall commence upon the Contracting Officer's issuance of a Certificate of Final Acceptance ("Warranty Commencement Date") or twelve (12) months after issuance of a Certificate of Substantial Completion, whichever occurs first, and shall remain in effect until one (1) year 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.

23.2.2 Landscape Warranty. The Contractor completely warrants all plant materials after the prescribed plant establishment period for one (1) calendar 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 LACMTA, and shall be warranted for one (1) additional year by the Contractor. Any additional one (1) year warranty period beyond the initial one (1) year warranty period will be considered an extended warranty period, and apply only to the replaced plant material found deficient during the first one (1) year 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.

23.3 Warranty Claims

23.3.1 If LACMTA determines that the Work contains Deficiencies at any time within the Warranty Period, LACMTA will make a Warranty claim and Contractor shall correct, repair or replace such Deficient Work at its sole expense ("Warranty Work").

23.3.2 Contractor shall respond to LACMTA's Warranty claim within one (1) working day, and shall repair the Deficiency within ten (10) Days thereafter. If the Deficiency cannot be repaired within said ten (10) Days, Contractor, within those ten days, shall submit a schedule for completion of repairs, subject to the acceptance of the Contracting Officer or Authorized Representative, and shall diligently proceed to complete the repairs within the approved schedule.

23.3.3 If any Deficiency affects operation of the Work, or any essential element thereof, LACMTA may, in its sole discretion, require Contractor to complete repairs in less than ten (10) Days.

23.4 Warranty on Corrected Deficiencies

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

23.4.1 The remainder of the Warranty Period; or

23.4.2 One (1) year after Acceptance by LACMTA of any corrected Work.

23.5 LACMTA Right to Correct Deficiencies

If Contractor fails to remedy Deficiencies that are the subject of a Warranty claim or otherwise comply with this Warranty or any other Warranty in this Contract, or fails to implement a timely and adequate remedy, LACMTA, after notice to Contractor, may perform or have performed by Third Parties the necessary remedy, and the costs thereof shall be borne by Contractor and LACMTA may deduct such costs from any monies due Contractor under this Contract or any other Contract Contractor may have with LACMTA.

23.6 Emergencies

23.6.1 In the event a Deficiency creates an Emergency or hazard to health or safety requiring immediate curative action during the Warranty period, LACMTA may without prior notice undertake such curative action as is necessary for the hazard or the Emergency, and the cost thereof shall be borne by the Contractor.

23.6.2 LACMTA will notify Contractor of the Deficiency and any curative action taken or planned and Contractor shall take immediate action to correct the Deficiency.

23.7 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.

23.8 Acceptance of Deficient Work

If LACMTA makes a determination to accept any Deficient Work without requiring it to be fully corrected, Contractor shall reimburse LACMTA a portion of the Total Contract Price in an amount equal to Contractor's cost savings in not correcting the Work, as estimated by LACMTA and agreed upon with the Contractor.

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

23.9 Subcontractor's Warranties

23.9.1 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 LACMTA 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 LACMTA and Contractor inspections, tests and acceptances, and;
- B. Shall run directly to and be enforceable by the Contractor and LACMTA.

23.9.2 Upon receipt from LACMTA of notice of any Subcontractor or Supplier failure to satisfy any Warranty or other obligation,

Contractor shall enforce or perform any such Warranty or other obligation as a part of Contractor's Warranty obligations hereunder. LACMTA's rights under this Section shall continue until the expiration of the later of the Contractor'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, Subcontractor and Supplier.

23.10 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 entity other than the Contractor is 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, had it not been voided.

23.11 Spare Parts

LACMTA's spare parts shall not be used to repair Deficiencies to resolve a Warranty claim unless authorized in writing by LACMTA. If so authorized, then Contractor shall be responsible for replacing all such spare parts within a time agreed upon with LACMTA. The security, control, shipping, and disposition of Contractor owned parts shall be the responsibility of Contractor. Damage to LACMTA's property caused by the Contractor shall be the sole responsibility of the Contractor and shall be corrected at Contractor's expense.

23.12 Bond

To the extent that any Performance Bond also remains applicable, Surety shall be liable to LACMTA under its Performance Bond as well as Warranty Bond for any breach of Contractor's obligations hereunder.

23.13 Disputes

In the event of a Dispute between LACMTA and Contractor relating to this Article, the Dispute shall be resolved in accordance with the Article entitled DISPUTES.

23.14 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.

GC-24 SAFETY AND LOSS PREVENTION *

24.1 Contractor Actions

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. 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 provided by Contractor.

24.2 Compliance with Laws

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

24.3 Safety Practices

Contractor shall inform its personnel of the requirements of LACMTA's safety program. If any of Contractor's personnel are required to visit any Worksites, 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 LACMTA, the Contracting Officer, any Authorized Representative or any other person shall relieve Contractor of any of its obligations and duties hereunder.

24.4 Public / Personnel Safeguards and Loss Prevention

Contractor shall at a minimum protect the lives and health of employees and other persons entering into a Worksite or any temporary office facility, prevent damage to property, goods and avoid Work interruptions. Contractor shall also:

24.4.1 Provide appropriate protective devices, safety barricades, jersey barriers, mobile variable message signs (VMS), warning signs, and signal lights;

24.4.2 Comply with the requirements of LACMTA's safety program and all applicable Laws;

- 24.4.3 Take additional measures that LACMTA may determine are reasonably necessary. This determination, when delivered to Contractor, Contractor's Project Manager, or Contractor's agent, shall be deemed sufficient notice from LACMTA of noncompliance, and Contractor shall immediately begin required action. If Contractor fails or refuses to take action promptly, LACMTA may issue an order stopping all or part of the Work until satisfactory 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;
- 24.4.4 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 LACMTA; and
- 24.4.5 Be responsible for compliance with this Article by its Subcontractors of any tier.

GC-25 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT & VEGETATION*

25.1 Protection

Contractor shall protect existing structures, equipment and vegetation within and adjacent to the Worksite and shall exercise due caution to avoid damage to such.

25.2 Repair and Replacement

Unless otherwise provided, Contractor shall repair or replace all existing structures, equipment, and vegetation damaged or removed by Contractor. Repairs and replacements shall be at least equal to the existing structures, equipment, or vegetation, and shall match them in finish and dimension.

25.3 Costs

All costs for protecting, removing and restoring existing structures, equipment, and vegetation shall be the sole expense of Contractor. If Contractor fails or refuses to make timely repairs, restoration or replacement LACMTA may make the repairs, restoration or replacement. All costs incurred by LACMTA, as determined by LACMTA, for such repairs, restoration or replacement shall be repaid by Contractor without limitation of any of LACMTA's rights and remedies provided by Law or under this Contract, LACMTA may deduct the cost from any amount due under this Contract.

GC-26 DAMAGE TO WORK AND RESPONSIBILITY FOR GOODS*

26.1 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. Any such Certificate for a portion of the Work shall only relieve Contractor of responsibility for the Goods delivered and Work performed that are covered by the Certificate. However, Contractor shall remain responsible for all Punch List and Warranty Work that may exist after issuance of a Certificate of Substantial Completion.

26.2 Risk of Loss

Contractor shall bear the risk of injury, loss, or damage to any and all parts of the Work from whatever cause ("Loss"), whether arising from the execution or from the non-execution of the Work and shall properly rebuild, repair, or restore the portions of the Work that have been damaged or destroyed from any causes prior to Final Acceptance as provided in the Section entitled Responsibility for Work in this Article, bearing the expense thereof. Notwithstanding the foregoing, Contractor will not bear the risk of any of the following:

1. Costs covered by Builder's Risk Insurance (provided by LACMTA or Contractor);
2. A Loss that results from a Force Majeure event, provided that Contractor could not have reasonably prevented such damage by performing the Work in a timely manner, consistent with generally accepted industry standards, and in accordance with Contract and design specifications; or
3. A Loss covered by California Public Contract Code §7105, provided that Contractor could not have reasonably prevented such damage by performing the Work in a timely manner, consistent with generally accepted industry standards, and in accordance with Contract and design specifications.

LACMTA may issue a Contract Modification to compensate the Contractor for re-building, repairing, or restoring any damaged or destroyed portions of the Work that are part of the permanent facilities required under the Contract. The Contract Modification shall be priced in accordance with the Article herein entitled BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE.

26.3 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.

27.4 Responsibility for Goods

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-27 TITLE*

27.1 Transfer

Title to portions of the Work for which Progress Payments or other payments are made shall pass to LACMTA 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 LACMTA proper bills of sale or other written instruments of title in a form as required by LACMTA. If title has not been vested in LACMTA previously, title shall pass to LACMTA upon Final Acceptance.

27.2 Encumbrances

Contractor shall not pledge or otherwise encumber Work in any manner that would result in any lien, security interest, charge, and/or claim upon or against said Work.

27.3 Transfer of Title Not Acceptance

The transfer of title of Work to LACMTA shall not constitute or imply LACMTA's Acceptance of any Work. Notwithstanding the transfer of title, Contractor shall continue to be liable and responsible to LACMTA for any damage to or loss of Work as provided in the Article entitled DAMAGE TO WORK AND RESPONSIBILITY FOR GOODS.

27.4 Delivery

To transfer title, Contractor shall promptly execute, acknowledge, and deliver to the LACMTA Authorized Representative proper bills of sale or other written instruments of title in a form acceptable to the Contracting Officer; said instruments shall convey to LACMTA 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 LACMTA; and shall not permit such Goods to become commingled with non-LACMTA owned Goods.

GC-28 DIFFERING SITE CONDITIONS (DSC)*

28.1 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 as described below, Contractor shall not disturb, or further disturb, the condition or interfere with LACMTA's right or ability to investigate. However, Contractor may continue Work around the condition.

28.2 Notice of Discovery of Subsurface Conditions

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

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

28.2.2 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.

28.3 Contractor Discovery of a Hazardous Substance

28.3.1 If Contractor encounters substances during performance of the Work that it reasonably believes to be a Hazardous Substance, a Type 2 Condition, Contractor shall first give LACMTA notice and then shall not disturb, or further disturb the condition, and shall suspend Work in the immediate area of the suspected Hazardous Substances until LACMTA authorizes it to resume.

28.3.2 LACMTA reserves the right to use other labor forces to investigate and to perform work to determine the nature and extent of any suspected substances(s) and to handle and/or remove the Hazardous substance(s) from the area. LACMTA's use of other labor forces shall not constitute the basis for a Change or Claim.

28.4 LACMTA's Responsibility and Determination

LACMTA will promptly investigate the conditions, and if it finds the conditions do differ materially, 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 LACMTA will

make an adjustment in Contract Time and/or Total Contract Price in accordance with the Article entitled CHANGES herein.

28.5 Proceed With Work

If a Dispute or a Claim arises related to 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-29 EXTENSION OF TIME

Any determination for an extension of time shall be based on the Approved Critical Path Schedule and the following requirements:

29.1 Critical Path Schedule

All Work shall be performed in accordance with the requirements of the Contract and the Approved Critical Path Schedule.

29.2 Inexcusable Delay

An Inexcusable Delay is any Delay, including Delay in the start of the Work as 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. In the event an Inexcusable Delay, resulting from Contractor's actions or inactions, severely impacts the Scheduled Completion Date, such delay may be cause for termination of the Contract, if the Contracting Officer chooses to exercise this right.

29.3 Excusable Delay

A delay to the Critical Path shall be an "Excusable Delay" when the 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 and when all of the following apply:

29.3.1 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 Scheduled Completion Date.

29.3.2 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.

29.3.3 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;

29.3.4 The act or event causing the Delay is not excluded from Excusable Delays under any other provision of the Contract.

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

Contractor shall 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 shall 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 the Contracting Officer's Approval 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 Project Schedule.

29.4 Force Majeure and Severe Weather

Subject to Contractor meeting the requirements of the Section entitled Excusable Delay in this Article, Contractor will receive an extension of Contract Time for an Excusable Delay caused by a Force Majeure event, including severe weather as described in the Article entitled WEATHER DELAYS CAUSED BY RAIN in Contract Document SPECIAL PROVISIONS or the General Requirements Specification entitled COST SCHEDULE/INTEGRATION SYSTEM, and provided the Contractor has also taken reasonable precautions to prevent further delays arising out of such Force Majeure event or severe weather.

29.4.1 LACMTA may grant an extension of time for severe weather Delays only to the extent the Work is actually delayed, as determined by LACMTA. LACMTA 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 or the General Requirements Specification entitled COST SCHEDULE/INTEGRATION SYSTEM. Contractor's exclusive remedy for any Approved Excusable Delay shall be an extension of Contract Time, as provided in this Article. No compensation will be forthcoming under this Contract for any delay due to a Force Majeure event. The sole and exclusive remedy for Force Majeure events shall be an equitable adjustment to the Contract Time.

29.4.2 LACMTA may grant an extension of time for 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 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.

29.5 Compensable Delay

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

- 29.5.1 By an act of representative with apparent authority of LACMTA in the administration of this Contract that is not expressly or impliedly authorized by this Contract.
- 29.5.2 By a failure of LACMTA to act within the time specified in this Contract, or within a reasonable time if not specified.
- 29.5.3 By a failure of a Third Party to act within the time specified in a written Agreement between the Third Party and LACMTA for this Contract, provided that the Contractor has provided properly submitted Contractor-Furnished documents, or otherwise supplied all information or materials required.
- 29.5.4 Contractor shall 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, LACMTA will 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.
- 29.5.5 This Contract provides for Delay Compensation for Compensable Delays under certain circumstances. The daily rate of Delay Compensation is the rate set forth in the SCHEDULE OF QUANTITIES & PRICES. The actual number of days of Compensable Delay may be greater or lesser than the estimated quantity. Contractor will be paid Delay Compensation only for actual Compensable Delays, without respect to the estimated quantity. The Total Contract Price adjustment shall only be at the specified Delay Compensation rate.

The Delay Compensation rate is a fixed amount(s) payable to the Contractor based upon a daily rate of compensation for Compensable Delays. Such fixed amount(s) constitutes the total compensation for Compensable Delays for all costs associated

with the Delay, whether foreseen or unforeseen, including without limitation:

- A. Allowable Costs;
- B. Extended and extraordinary overhead (direct and home office);
- C. Added insurance and bond costs;
- D. Loss of productivity or inefficiency;
- E. Labor, wage, material and Construction Equipment escalation costs;
- F. Other costs, expenses and damages, direct and indirect, arising from or related to the Compensable Delay; and
- G. The "impact" or "ripple effect" of the Compensable Delay on the Work.

29.5.6 A Modification 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.

29.5.7 If and to the extent that any provision of this Contract providing for the payment of compensation for Delay 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.

29.6 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 LACMTA will, by Modification, extend the Contract Time. Contractor will not be entitled to any adjustment 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 Modification extending Contract Time for a Concurrent Delay will be Contractor's sole remedy arising out of the Concurrent Delay. LACMTA will not assess or collect any Liquidated Damages as a result of any Modification for a Concurrent Delay.

29.7 Delay due to Shortage of Goods

29.7.1 Compensable Delay due to Shortage of Goods:

Except for a Delay in delivery by LACMTA of LACMTA-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.

29.7.2 Excusable Delay due to Shortage of Goods:

- A. Shortage of Goods may be an Excusable Delay if, in addition to meeting all other requirements for an Excusable Delay:
 - 1. Contractor supplies LACMTA with documented proof that it made every effort to obtain such Goods from every known source within reasonable distance of the Worksite; 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 Contractor's operations.
- B. Only the physical shortage of Goods will be considered as a basis for an Excusable Delay. LACMTA will not accept or consider any claim that Goods could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of LACMTA that:
 - 1. The Goods could have been obtained only at exorbitant prices or;
 - 2. The prices available 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.

29.8 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 only one extension of Contract Time for the cumulative Change to the Critical Path Schedule.

29.9 Submittal of Information regarding Delay

Contractor shall submit the following information to the Contracting Officer at the earliest possible date, but no later than thirty (30) Days after Contractor provides notice to the Contracting Officer of the asserted

Delay, as provided in this Article, and shall thereafter provide supplemental information as it becomes available:

29.9.1 A detailed description of the events causing the Delay;

29.9.2 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

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

29.10 No LACMTA Waiver

LACMTA's granting of an extension of time prior to Substantial Completion shall not constitute a waiver of any of LACMTA's rights under the Contract other than those specifically provided for in the extension.

GC-30 INCREASED OR DECREASED QUANTITIES

Increases or decreases in the quantity of a Unit, as identified in the Contract Document SCHEDULE OF QUANTITIES AND PRICES, will be determined by comparing, at the time the Contracting Officer issues the Certificate of Final Acceptance, the actual or measured quantity of the Unit used to complete the Work with the estimated quantity of that Unit shown in the SCHEDULE OF QUANTITIES AND PRICES. If the actual or measured quantity of a Unit varies more than twenty-five percent (25%) above or below the estimated quantity of the Unit, an adjustment may be made upon the demand of either party, as further described below.

The adjustment shall be based upon any increase or decrease in costs due solely to the variation in quantity of the Unit as provided below. This Article shall not apply to variations in quantity due to a Modification to the Contract, which will be governed by the Article entitled CHANGES or by the terms of the specific Modification. The Contractor's actual price of the Units, supported by documentation of Supplier invoiced cost, shall be used to calculate the adjustment of the Unit Price of the Unit (not including overhead and profit). The adjustment shall be measured as follows:

30.1 When the actual or measured quantity of a Unit required to complete the Work is more than a 25% increase from the estimated quantity of the Unit, as shown in the SCHEDULE OF QUANTITIES AND PRICES, an adjustment shall be made, upon demand of either party, to the price of those Units which are above 125% of the estimated quantity. The actual or measured quantity of Units up to 125% of the estimated quantity will be paid at the Unit Price shown in the SCHEDULE OF QUANTITIES AND PRICES. If neither party makes a demand for an adjustment in Unit Price for quantities above 125% of the estimated quantity, LACMTA will pay the

Contractor the Unit Price shown in the SCHEDULE OF QUANTITIES AND PRICES for each such Unit.

- 30.2 When the actual or measured quantity of a Unit is less than seventy-five percent (75%) of the estimated quantity of the Unit, as shown in the SCHEDULE OF QUANTITIES AND PRICES, an adjustment shall be made, upon demand of either party, to the price of those Units. LACMTA will pay the lesser of:
- 30.2.1 The actual cost of the actual or measured quantity of the Units, including fixed costs; or
 - 30.2.2 The Unit Price of the Unit, as shown in the SCHEDULE OF QUANTITIES AND PRICES, multiplied by 75% of the estimated quantity of the Unit.
- 30.3 In either of the above situations any adjustment in time will be allowed only to the extent of a negative impact to the Critical Path Schedule as demonstrated by a critical path analysis, and agreed upon by the Parties.

GC-31 CHANGES *

31.1 General

- 31.1.1 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 a Change 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.
- 31.1.2 Only written direction by an LACMTA Authorized Representative may be the basis for a Modification for additional Compensation or Contract Time.

31.2 Request for Change (RFC)

- 31.2.1 Contractor may submit a Request for Change (RFC) to LACMTA's Authorized Representative describing any proposed Change. Contractor shall describe the discovery of conditions or the occurrence of an event, and date, supporting the RFC, identifying LACMTA-furnished Contract Document(s) that it proposes to change, including relevant circumstances and impacts on the Schedule. If Contractor is requesting a Change to the Total Contract Price or Time, it shall submit the following with its RFC:
- A. The reasons why Contractor believes additional compensation or time will or may be due;

- B. The name, title, and activity of each LACMTA 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. For Changes affecting Schedule, a fragnet analysis showing how the Critical Path will be impacted by the Change; and
 - E. Contractor's CSP, as provided in the Section entitled CONTRACTOR'S COST AND SCHEDULE PROPOSAL (CSP) below (in this Article),
- 31.2.2 If Contractor receives direction, instruction, interpretation, or determination from a LACMTA Authorized Representative that Contractor believes would constitute Change, Contractor shall promptly submit a Request for Change in accordance with this Article.
- 31.2.3 Contractor shall submit RFCs within a time period so as not to have a negative impact on the Approved Critical Path Schedule or within thirty (30) Days (whichever occurs first) after the date of the discovery of the condition, event, or the date Contractor should have discovered the condition or event, that is the basis of the RFC. If Contractor delivers any RFC later than thirty (30) Days after the condition or event, Contractor shall be deemed to have waived any increase in Total Contract Price or Time arising out of the condition or event for the period prior to the date of delivery of the RFC, unless Contractor can show that:
- A. LACMTA was not materially prejudiced by the lack of notice; or
 - B. LACMTA's Authorized Representative had personal knowledge of the condition or event prior to the expiration of the thirty (30) Day period.
- 31.2.4 If an RFC concerns any condition or event related to the Articles herein entitled DIFFERING SITE CONDITIONS (DSC), HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL AND SCIENTIFIC DISCOVERIES; or other conditions affecting the Work, Contractor shall immediately provide notice of the condition or event to LACMTA's Authorized Representative, and shall afford LACMTA the opportunity to inspect and investigate such condition or event before it is disturbed or further disturbed. If Contractor does not provide LACMTA such a timely opportunity, it shall be deemed to have waived the right to any increase in Total Contract Price or Contract Time in connection with the condition or event.

31.2.5 If LACMTA determines the basis for the RFC is valid and a Change is appropriate, it will issue a CN, CO or other Modification.

31.2.6 If an RFC is based in whole or in part on a request by a Subcontractor:

- A. Subcontractor shall look only to Contractor for any payment, redress, relief or other satisfaction where the basis for an RFC arises as a result of Work performed under a Subcontract.
- B. 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 items and issues that constitute the basis for the Subcontractor's change request and determined that each is justified hereunder, and that Contractor is justified in requesting an increase in the Contract Price, Contract Time, and/or Contract Schedule in the amounts specified in the Contractor's Request for Change.
- C. Contractor shall include in its RFC a summary of Contractor's analysis of all components of the Subcontractor change request and a sworn certification as shown herein, signed by Contractor's Project Manager:

"I certify that this Request for Change, based in whole or in part on a Subcontractor's change request is made in good faith; has been duly investigated, is not falsely represented, and I have determined it is justified as to entitlement and amount of time and/or money requested, and that all supporting data is 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 LACMTA is liable; and that I am duly authorized to make this certification on behalf of the Contractor."

- D. Any RFC involving Subcontractor Work or a Subcontractor's change request that is not accompanied by the above analysis and certification shall be rejected as incomplete.

31.2.7 An RFC shall be at Contractor's risk notwithstanding any argument to the contrary. Contractor shall not be relieved from performing the Work during the time LACMTA considers the RFC and will not receive any adjustment in Total Contract Price, Schedule and/or Contract Time if LACMTA's Contracting Officer determines the subject matter of the RFC is not a Change or other Modification.

31.3 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 enter into discussions and/or submit a Contractor's Cost and Schedule Proposal (in the form prescribed by LACMTA). A CN does not authorize the Contractor to commence performance of the proposed Changed Work. Any Change implemented by LACMTA will be incorporated into a CO or Modification.

31.4 Change Orders (CO) and Bilateral Modifications

31.4.1 LACMTA's Contracting Officer 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 either contain a Not to Exceed (NTE) amount to set the maximum limit that may be expended by the Contractor under the CO or a fixed amount (lump sum) that LACMTA considers to be a fair and equitable adjustment to the Contract Price. LACMTA's Contracting Officer may unilaterally, or by agreement with the Contractor, revise the CO amount, based upon additional information or forward pricing subsequent to determination of the initial CO amount.

31.4.2 Contractor shall not commence performance of the Work described in the CO until LACMTA's Contracting Officer executes the CO and transmits it to Contractor.

31.4.3 Until such time as the Parties agree and execute a bilateral Modification, Contractor shall maintain contemporary records as necessary to distinguish the cost of the Changed Work from the cost of all other Work, subject to the Article entitled BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE herein. Payment for the Change under a CO with an NTE amount shall be in accordance with the Article entitled BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE herein, and:

- A. Contractor shall submit reports for the Changed Work, on forms acceptable LACMTA, within one (1) Day after performance of the Work.
- B. All back-up records and reports shall be made immediately available to LACMTA upon request.
- C. All reports shall be certified by the signature of the Contractor's Project Manager and acknowledged by LACMTA's Authorized Representative.

D. All submittals shall be subject to audit and determinations of the accuracy of the submitted information.

31.4.4 In the event the Contractor disputes the Change Order and the Parties are unable to agree on a bilateral Modification, the Dispute shall be resolved following the ADR process in the Contract.

31.4.5 Under no circumstance will LACMTA be liable for or pay any amount in excess of the applicable NTE amount for a CO. Contractor shall notify LACMTA when eighty percent (80%) of the NTE amount has been expended, and provide an estimate of the cost to complete the Changed Work. LACMTA and Contractor shall as early as possible, but not later than the 80% notice, forward price the CO to complete the Work and 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.

31.4.6 Any Change Order or bilateral Modification shall expressly describe the Changed Work and all associated costs therein.

31.5 Contractor's Cost and Schedule Proposal (CSP)

31.5.1 In preparing the CSP, Contractor shall:

- A. Use the forms provided (a Form 60) by LACMTA, 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 the Critical Path Schedule and provide an Impacted Schedule.
- C. Base the proposal on Contractor's actual or expected construction productivity rates (and provide appropriate support for those productivity rates); not on published or trade association composite rates.
- D. Identify any prices or other elements of the CSP that are conditional, such as time-sensitive orders or events.
- E. Certify the CSP as shown in the LACMTA provided form.
- F. Complete the Certificate of Current Cost or Pricing Data as described in the provided form.

G. If the CSP totals two hundred thousand US dollars (\$200,000) or more, include a CERTIFICATION OF CAMPAIGN CONTRIBUTIONS on the form provided by LACMTA.

31.5.2 If the Contractor does not submit the CSP by the required date, LACMTA reserves the right to issue a unilateral Change Order (CO) at an amount the Contracting Officer determines is fair and reasonable.

31.6 Deleted Work

When a Change Order or Modification deletes Work from the Contract, the amount of the reduction in the Total Contract Price shall be based upon historical costs or estimated actual costs, 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). Documented cancellation and restocking charges may be included in the determination of the costs.

31.7 Audit

Contractor's records pertaining to Changes are subject to audit in accord with the audit provisions of this Contract.

31.8 Limitations on Authority

Nothing in this Contract shall be construed to bind LACMTA for acts of any LACMTA employee or any other person, or for the acts of the Contracting Officer or any other Authorized Representative, including its Construction Manager, that exceed their authority as set forth in the Article entitled AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORIZED REPRESENTATIVES herein.

31.9 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 that results in a time extension, the mark ups for overhead and profit for the CO or other Modification for that period shall be deducted from any extended overhead or profit that may otherwise be payable to Contractor under this Contract for the Suspension or Delay.

31.10 Interest

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

- 31.10.1 Execution of a Change Order or Modification by LACMTA; or
- 31.10.2 When the amounts become due and payable under the terms of the Change Order or Modification.

31.11 Final Resolution of Change

The execution of a bilateral Modification by the Contracting Officer and Contractor's Project Manager shall constitute a complete resolution of all amounts payable, all time extensions allowable and all other Claims arising out of the condition, event, or Change that is the subject matter of the bilateral Modification. There will be no reservation of rights by either Party on a bilateral Modification.

GC-32 BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE *

32.1 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, including a mark-up for overhead and reasonable profit as set forth herein.

32.2 Ineligible & Eligible Costs

32.2.1 Ineligible Costs:

- 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 by, including but not limited to, 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 re-sequencing, reallocation, or redeployment.

32.2.2 Eligible Costs:

- A. Only those allowable and reasonable additional costs that will be incurred by Contractor and shall not include costs for labor and equipment already on the Worksite to perform other Work.
- B. Elements of eligible costs shall be only those costs identified metrometroexas such in Sections 32.3 through 32.11 provided in this Article.

32.3 Construction Labor Costs

- 32.3.1 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, Workers Compensation insurance 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.
- 32.3.2 Subsistence & Travel Allowance. Such costs that are allowable and applicable shall be based on either estimated or the actual incurred costs for the Changed Work.
- 32.3.3 Excluded Construction Labor Cost Items. Construction Labor costs shall not include costs for management personnel above general foreman, office personnel (home and field), timekeepers, maintenance mechanics and other similar support personnel unless authorized by the Contracting Officer prior to the start of Changed Work.

32.4 Material Costs

- 32.4.1 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.
- 32.4.2 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. The invoices or quotations shall be made available to LACMTA upon request.
- 32.4.3 Other LACMTA Rights. LACMTA reserves the right to review and accept 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 Changed Work.

32.5 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:

32.5.1 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 mobilize additional 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), if Contractor is not charging some other entity for moving the Construction Equipment.
- B. Loading & Transportation Costs. Loading and transporting costs shall be allowed, 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).

32.5.2 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 Changed Work is completed, or LACMTA's Authorized Representative instructs Contractor to discontinue the use of such Construction Equipment.

32.5.3 Fixed Costs. Equipment ownership fixed costs, for additional equipment mobilized for the Changed Work, shall be limited to the following for multiple shift operations:

- A. Overhead: At the hourly overhead rate listed in the Rental Rate Blue Book® 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 Rental Rate Blue Book® for the first shift each day and at fifty percent (50%) of that same hourly rate for the second and third shifts each day.

32.5.4 Small Tools. Construction Equipment and tools having a replacement value of two thousand US Dollars (\$2,000) or less, whether or not consumed or used, shall be considered small tools and no payment shall be made for them.

32.5.5 Excluded Construction Equipment Cost Items:

- 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).

32.5.6 Rates for Standard Contractor-Owned Construction Equipment:

- A. LACMTA will recognize the use of Contractor-owned Construction Equipment at the total hourly cost rates listed for such Construction Equipment in the Rental Rate Blue Book® (published by EquipmentWatch®), which edition shall be the latest edition in effect at the time the Changed Work is priced. No adjustment to the total hourly cost rates listed in the Rental Rate Blue Book® shall be made except as stated in the Paragraphs for multiple shift operations and standby.
- B. Notwithstanding the Paragraph on rates for rented/leased Construction Equipment, any Construction Equipment proposed for the Changed Work under a rental agreement, lease-purchase or sale-lease back arrangements, from a company that is wholly or partially owned by Contractor, or is a subsidiary / affiliate of Contractor or of Contractor's parent

company, or that of a member of the Contractor Joint Venture, shall be treated as Contractor-owned equipment under this Article at the rates set forth in the Rental Rate Blue Book®.

32.5.7 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 Rental Rate Blue Book®, Contractor shall submit all cost data to LACMTA's Contracting Officer for its use in establishing the rate.

32.5.8 Rates for Rented/Leased Construction Equipment:

- A. Supporting Cost Data for rented/leased 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 LACMTA's Contracting Officer, for LACMTA's use in estimating and verifying rental/lease costs. Acceptable cost data required includes both of the following:
1. Supporting Cost Data prior to Start of Change. Signed/written Supplier quotes, or published price lists (rate sheets).
 2. Supporting Cost Data after Change. Paid Supplier invoices.
- B. LACMTA Fair Cost Determination for Rented/Leased Construction Equipment. If Contractor does not submit acceptable supporting cost data or if in LACMTA's opinion the cost of such rented/leased Construction Equipment is excessive, then the cost of such Construction Equipment shall be determined utilizing the Rental Rate Blue Book® .

32.5.9 Rates for (Manufacturer-Approved) Modified Construction Equipment. Unless otherwise specified; only manufacturer-approved modifications may be used to classify Construction Equipment for the determination of applicable rental rates.

32.5.10 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 at the minimum rating recommended by the manufacturer for that Construction Equipment.

32.5.11 Construction Equipment Operators. Such operators shall be paid for as stipulated in the Section entitled Construction Labor Costs of this Article.

32.5.12 Idle/Standby Construction Equipment. Proposed Construction Equipment for Changed Work that is estimated to be idle for sixteen hours (16-hr) in a twenty-four hour (24-hr) period shall be deemed to be on standby, and the cost 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.

32.6 Engineering Labor Costs

32.6.1 General:

- A. For the purposes of this Section, Design/Engineering Services includes design, architectural, landscape architectural, engineering, geotechnical investigations, land surveying, permits, environmental, and other similar aspects of the Work, performed by Contractor's employees or its subcontractors' employees who are licensed professional architects, engineers, or surveyors.
- B. 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.

32.6.2 Engineering Labor Costs. Engineering Labor shall be limited to those direct labor costs that meet all of the following elements:

- A. The engineering labor costs do not arise from incidental engineering (as set forth in Subparagraph 32.7.3-B below).
- B. The engineering costs that arise directly from Design Engineering Services specified in the Modification.
- C. The engineering labor costs are for the re-work of completed Design Engineering Services or new additional Design Engineering Services within the general scope of the Contract.
- D. A licensed engineer or architect as specified in the scope of any Change is actually utilized.
- E. Extended performance claims for design engineering personnel shall apply only where the total time of performance actually estimated by the Contractor, as demonstrated in the Contractor's escrowed proposal documents is extended, and then, only to the extent of compensable time extensions, and

not time extensions due to Force Majeure events or non-compensable time extensions, granted by the LACMTA. Compensation will be limited to the actual payroll costs incurred for the claimed individual(s) by the Contractor for the extended and compensable time.

32.6.3 Non-qualifying Engineering Labor Costs. Any Design Engineering Services that do not meet the criteria set forth above in this Section shall be considered incidental engineering pursuant to the provisions set forth in Subparagraph 32.7.3-B below.

32.7 Overhead and Profit

32.7.1 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) on such direct costs are:

- A. For Construction Labor costs (as set forth in Section 32.3 above): Twenty percent (20%);
- B. For Material costs (as set forth in Section 32.4 above): Fifteen percent (15%);
- C. For Construction Equipment use costs (as set forth in Section 32.5 above): Fifteen percent (15%); and
- D. If applicable (as set forth in Section 32.6 above), for Engineering Labor costs: One-hundred forty-five percent (145%).

32.7.2 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) on such direct costs shall be subject to determination by LACMTA's Contracting Officer, which may be based upon audited overhead rates, and a reasonable profit, not to exceed the markups set forth in Paragraph 32.7.1 above.

32.7.3 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 the Sections entitled Construction Labor Costs and Material Costs), all fringe benefits of any nature (except fringe benefits covered herein under the Section entitled Construction Labor Costs), small tools, incidental job burdens, incidental engineering (as

set forth in Subparagraph 32.7.3-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 32.7.3-A above), shall include all time spent by architects, engineers, or similar professions on:
1. Preparation, review, planning, coordination, and/or any other administration relating to Construction Documents, drawing preparation, 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).

32.8 Subcontractor Costs

- 32.8.1 LACMTA will pay Contractor one mark-up negotiated up to 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.
- 32.8.2 When a Subcontractor performs Changed Work, Subcontractor shall be allowed the same markups as provided in Section 32.7 herein.
- 32.8.3 LACMTA will not pay markups for goods furnished by Suppliers, including but not limited to Goods specially fabricated either fully or partially or modified for use in the Contract.
- 32.8.4 LACMTA will not pay a mark-up for Units with Unit Prices established in the Contract.
- 32.8.5 LACMTA will not pay a mark-up for Goods furnished by LACMTA.

32.9 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.

32.10 Acceleration Costs

32.10.1 Acceleration Costs shall be allowed hereunder only as part of a Change Order issued by LACMTA as an alternative to allowing a Compensable Delay pursuant to the Article entitled EXTENSION OF TIME herein.

32.10.2 Calculation of profit, overhead, and indirect costs in connection with acceleration efforts shall not exceed the mark-ups set forth in this Article.

32.11 Time and Material Changes

The basis of compensation for Changed Work performed on a time and material basis shall be calculated in accord with the above Sections of this Article and the following:

32.11.1 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 Paragraph 32.3.1 above.

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

32.11.3 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.

32.11.4 Idle/Standby Construction Equipment. Construction Equipment for Changed Work that is idle for sixteen hours (16-hr) in a twenty-four hour (24-hr) period shall be deemed to be on standby, and the cost 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.

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

32.11.6 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 32.6 above.

GC-33 VALUE ENGINEERING PROPOSALS*

33.1 Value Engineering Proposals (VEP) – General

Contractor may submit to LACMTA, in writing, value engineering proposals (VEPs) for modifying the requirements of any Project Definition Documents 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.

33.2 Value Engineering Proposals (VEP) – Contents

33.2.1 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 Project Definition 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, but not earlier than thirty (30) Days from submission of the VEP.

33.2.2 The detailed estimate of costs shall be determined in the same manner as if the VEP work were to be implemented as a Change pursuant to the provisions in the Articles entitled CHANGES and BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE herein. LACMTA may at its sole discretion, and after notifying the Contractor, inspect Contractor's and its Subcontractors' original Proposal estimates, relating to the VEP,

whether or not such documents have been Escrowed with LACMTA.

33.3 Value Engineering Proposals (VEP) – LACMTA Review

LACMTA shall not be liable to Contractor for any Delays or damages resulting from any VEP submitted pursuant to this Article and LACMTA's subsequent evaluation, acceptance or rejection, and other action or inaction.

33.4 Value Engineering Proposals (VEP) – LACMTA Approval

34.4.1 LACMTA may accept, in its sole discretion, in whole or part, the VEP, and determine the estimated net savings. Unless and until a Modification is issued based on a VEP, Contractor shall remain obligated to perform in accordance with the Contract Documents.

33.4.2 Unless Contractor has received a Contract Modification from LACMTA to proceed with VEP work, Contractor shall not have the right to proceed with such work. Furthermore, if Contractor proceeds with any work 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.

33.4.3 If a submitted VEP is similar or part of a Change already under consideration by LACMTA, LACMTA may proceed with such Change pursuant to the Article entitled CHANGES herein without respect to the VEP.

33.5 Contract Price Adjustment

If LACMTA accepts a VEP submitted by Contractor pursuant to this Article, the Total Contract Price will be adjusted in accordance with the following:

33.5.1 In determining the Estimated Net Savings, LACMTA may disregard the original contract proposal estimates for any related Work or Goods, which in the judgment of LACMTA, 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 LACMTA (in accordance with the Change Order procedures set forth herein); less

3. Any additional costs incurred by LACMTA resulting from the VEP.

33.5.2 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 LACMTA's costs resulting from the VEP, including maintenance costs and cost of LACMTA-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.

33.5.3 The Total Contract Price shall be reduced by an amount equal to the sum of fifty percent (50%) of the Estimated Net Savings (as the term is defined in Paragraph 35.5.1 of this Article).

33.6 Modifications – LACMTA Issuance

After a value-engineering proposal (VEP) is accepted by LACMTA, in whole or in part, LACMTA will issue a Modification that shall specifically state it is executed pursuant to this Article. Such Modification shall identify all the Changes to the Contract Documents, Contract Time, and Milestones, and specify the adjustment to the Total Contract Price.

33.7 Execution of Modification

If the Contractor does not sign the issued Modification within five (5) working days or acceptance is documented by some other writing, LACMTA reserves the right to issue the Modification as a Unilateral Change Order. Contractor's acceptance of any Modification executed by LACMTA pursuant to this Article shall be unconditional and the compensation stated therein shall constitute full compensation for all Work and Goods covered by the VEP Modification.

33.8 Use of Value Engineering Proposals (VEPs) by LACMTA

All approved or disapproved VEPs will become the property of LACMTA, and shall contain no restrictions imposed by Contractor on their use or disclosure. LACMTA 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-34 CLAIMS

34.1 Notice of Intent to Claim (NOIC)

- 34.1.1 Conditions to Claim. As a condition precedent 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.
- 34.1.2 Time Limits. Contractor shall submit a written Notice of Intent To Claim (NOIC) to the Contracting Officer within ten (10) Days after the event or condition 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 LACMTA.
- 34.1.3 Content. The NOIC shall set forth the reasons Contractor believes the Claim is valid including any additional compensation or time due, the element of the costs or Delay involved, and the estimated amount of the potential Claim, adjustment, or interpretation of Contract terms, and other legal, equitable or contractual relief.

34.2 Submittal of and Response to Claims

- 34.2.1 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 condition or event giving rise to the Claim, in sufficient detail (in LACMTA's sole discretion) for LACMTA to evaluate its basis and amount. Contractor shall furnish such further information and details as the LACMTA Contracting Officer may require to evaluate the Claim. Contractor shall give LACMTA's Authorized Representative(s) access to its Records and other materials relating to the Claim, and shall cause its Subcontractors to do the same, so that LACMTA can fully investigate the Claim.
- 34.2.2 Delay Claims. Contractor shall submit to the Contracting Officer with each Claim based in whole or in part on an alleged Delay, for any cause, an Impacted Schedule incorporating the effects of the Delay claimed. The Claim shall also contain reasonable mitigation plans for the claimed Delay and its effects. If the Critical Path Schedule submitted to LACMTA 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. The Impacted Schedule shall also contain all other pending Modifications, Change Orders, Delays or Claims of

Delay that are not included in the currently Approved Critical Path Schedule.

34.2.3 A Claim based in whole or in part on a Subcontractor claim:

- A. In the event any Claim or Dispute arises under a Subcontract, Subcontractor shall look only to the Contractor for any payment, redress, relief or other satisfaction.
- B. Prior to submission by Contractor of any Claim which is based in whole or in part on a claim by a Subcontractor to the Contractor for a price increase or time extension under its Subcontract, Contractor shall have reviewed all items and issues that constitute the basis for the Subcontractor's claim and determined that each 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 Contractor's Claim.
- C. Contractor shall include a summary of Contractor's analysis of all components of the Subcontractor's claim.
- D. Any Claim involving Subcontractor Work or a Subcontractor's claim that is not accompanied by the above analysis and certification shall be considered incomplete and shall be rejected.

34.2.4 Certification of Claim. All Claim submittals shall include a Certificate of Current Cost and Pricing Data. In addition, 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 LACMTA is liable; and that I am duly authorized to certify the Claim on behalf of the Contractor."

34.3 Claims Subject to CPCC Article 1.5

34.3.1 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.

34.3.2 Depending upon the grounds for relief and the nature of relief sought, information and conditions to resolution including additional submittals, not inconsistent with the above referenced CPCC, may be required elsewhere in the Contract.

34.4 Government Code Claims

34.4.1 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.

34.4.2 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. 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. 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.

34.4.3 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. Parties shall participate in an informal "meet and confer" conference for settlement of issues in dispute. 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.

34.5 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, including the Work that is all or part of any Claim or Dispute, except for any performance the Contracting Officer determines in writing should be delayed, suspended or terminated as a result of such Claim or Dispute and LACMTA will continue to satisfy its payment obligations for undisputed amounts.

34.6 Resolution of Claim

The Change Order or bilateral Contract Modification issued to resolve any Claim shall constitute a full resolution of the Claim unless the Modification specifically provides otherwise, and contains a detailed description of those elements of the Claim that are not resolved.

34.7 No Claim After Final Acceptance

Contractor shall not be eligible to, and shall not make or submit 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.

GC-35 DISPUTES

35.1 Administrative Process

35.1.1 Negotiation. If a Dispute under the Contract arises, the Contracting Officer and Contractor's Project Manager shall make their best efforts to resolve the Dispute through negotiation.

35.1.2 Documentation. All Disputes and negotiations shall be documented by each Party in writing, and state the specifics of each Dispute and actions taken.

35.1.3 Agreement to ADR. If a Dispute cannot be resolved by the Contracting Officer and Contractor's Project Manager, they may agree to use an ADR process for settling the Dispute, as discussed in the Section entitled Alternative Dispute Resolution (ADR) below.

35.1.4 Determination by Contracting Officer. In the absence of 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.

35.1.5 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.

35.2 ~~Alternative Dispute Resolution (ADR)~~ Alternative Dispute Resolution (ADR)

If the Parties agree to use the ~~ADR-ADR~~ process to resolve a Dispute:

35.2.1 The results of the ADR shall not be binding on either LACMTA or the Contractor unless the Parties have separately and mutually agreed in writing, prior to the ~~ADR-ADR~~, that the ~~ADR-ADR~~ will be

binding, or thereafter agree by a separate settlement or other agreement that it will be binding.

35.2.2 Disputes Review Board (DRB)

- A. If the ADR is a DRB, the DRB shall consist of one (1) member selected by LACMTA; 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 be free from any conflict of interest with all of the Parties and shall not show any partiality to either LACMTA or to the Contractor.
- B. LACMTA, the Contractor, and the three (3) DRB members shall execute a DRB Agreement prior to the commencement of any DRB proceedings.
- C. 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 LACMTA and the Contractor agree with the DRB's recommendations, they will enter into a Modification to implement such recommendations.

35.2.3 Mediation

- A. If the ADR is mediation, it will not be binding, except by execution of a separate agreement that will confirm the result of the mediation, and in no event will a mediator make any findings or reduce their recommendations or decisions to writing.
- B. Any separate agreement executed by the Parties as a result of mediation shall be implemented as a Modification.

35.2.4 Arbitration

- A. If the ADR is arbitration (or other process in which findings are made), it will not be binding, except by execution of a separate written agreement as a result of the arbitration. If an arbitrator finds a Claim to have merit, and LACMTA and Contractor accept the results, LACMTA and Contractor will enter into a Modification based upon said results.
- B. 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. However, said findings may only be used to the extent and for the purpose that the Parties have agreed in advance that the findings may be used.

- 35.2.5 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, 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.
- 35.2.6 To the extent permitted by law, the Parties may agree in writing 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.
- 35.2.7 Claim/Dispute Categories that are excluded from ADR

In addition to those issues identified throughout the Contract Document GENERAL CONDITIONS, the following categories of Claims/Disputes are excluded from consideration by an Alternative Dispute Resolution (ADR) process:

- A. Interest (monetary) on Progress Payments or Final Payment.
- B. Wage and hour Disputes.
- C. Claims under the jurisdiction of the Owner's Controlled Insurance Program (OCIP) or Contractor's Automobile Insurance.
- D. Delegated signature authority of LACMTA's Authorized Representatives.
- E. Disputes regarding matters governed by Environmental Law or any Grant Agreement from any Governmental Entity.
- F. Disputes on issues covered by policies of the LACMTA Board of Directors.
- G. 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.
- H. Disputes regarding safety issues and/or matters under the jurisdiction of Cal-OSHA.
- I. The right of LACMTA to issue unilateral Changes (i.e., Change Orders).
- J. Issues related to subcontractor Substitutions governed by California Public Contracts Code §4100 et seq.
- K. Stated dollar value of Liquidated Damages as shown in the Article entitled LIQUIDATED DAMAGES in Contract Document SPECIAL PROVISIONS.

35.3 Compensation for ADR

LACMTA and the Contractor shall share equally the fees and expenses of the ADR services and process, including administrative services, such as conference facilities and secretarial services. The Contractor shall pay the invoices for all such fees and expenses, after approval by both Parties. After receipt of the Contractor's paid invoice for ADR services, LACMTA shall reimburse the Contractor fifty percent (50%) of such paid invoices within thirty (30) days.

GC-36 SUSPENSION*

The provisions of this Article shall only apply if a written order of suspension is issued by the Contracting Officer.

36.1 Order of Suspension

The LACMTA Contracting Officer may at any time and for any reason within its sole discretion issue a written order to Contractor suspending all or any part of the Work for a specified period of time.

36.2 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. After receipt of Suspension, Contractor shall:

- 36.2.1 Suspend Work under the Contract on the date and to the extent specified in the Suspension.
- 36.2.2 Place no further orders or Subcontracts for Goods or Work, except as may be deemed necessary by LACMTA for completion of such portions of the Work expressly suspended.
- 36.2.3 Communicate any Suspension to the affected Subcontractors and Suppliers, and any other parties, at any tier.
- 36.2.4 Suspend all orders and Subcontracts that relate to the performance of the Work suspended by the Suspension.
- 36.2.5 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 LACMTA has or may acquire an interest.

36.2.6 Comply with all other requirements of LACMTA as may be specified in the Suspension.

36.3 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 costs or Delays are shown by Contractor to be directly attributable to any suspension. The RFC shall be filed in accordance with the Article CHANGES herein after the end of the Suspension. However, no adjustment shall be made under this Article for any Suspension 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 Contract Price or an extension of Contract Time is provided for, or excluded under any other term or condition of the Contract.

36.4 Work During Suspension

If during the time period set forth in the Suspension, the Contracting Officer authorizes the Contractor to incur any costs or perform Changed Work related to the suspended Work, such authorization shall be by Change Order (CO) in accordance with the Articles CHANGES and BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE herein.

GC-37 TERMINATION FOR CONVENIENCE OF LACMTA*

37.1 Notice of Termination

LACMTA may, in its sole discretion, terminate Contractor's performance, in whole or in part, of the Work under the Contract, without cause, at any time. Such termination will be effected by delivery of a Notice of Termination to the Contractor, specifying the extent to which performance of the Work shall be terminated and the date upon which such termination shall become effective.

37.2 Obligations Upon Termination

After receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, Contractor shall:

37.2.1 Stop Work under the Contract on the date and to the extent specified in the Notice of Termination.

- 37.2.2 Complete performance of that portion of the Work that has not been terminated by the Notice of Termination, in accordance with the Contract.
- 37.2.3 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.
- 37.2.4 Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties, at any tier.
- 37.2.5 Terminate all orders and Subcontracts that relate to the performance of the Work terminated by the Notice of Termination.
- 37.2.6 Upon the Contracting Officer's written Notice of Termination, assign to LACMTA 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:
- 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 LACMTA if the terminated Work had been completed.
- 37.2.7 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 LACMTA to the Contractor under the Contract.
- 37.2.8 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 LACMTA has or may acquire an interest, and for public safety.

37.2.9 Settle outstanding liabilities and claims arising out of such termination of orders and Subcontracts, with the acceptance of the Contracting Officer if required.

37.2.10 Comply with all other requirements of LACMTA as may be specified in the Notice of Termination.

37.3 Submittal and Review of Invoice

Within sixty (60) Days after LACMTA'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. LACMTA will review and the Contracting Officer will either approve the invoice, or approve an adjusted invoice, based upon its determination of the amount due. Contractor's preparation of the final invoice, or LACMTA's adjustment to the final invoice, shall include at a minimum the following:

37.3.1 The portion of the Total Contract Price for the Work properly performed or Goods supplied by the Contractor as of the date of termination, as reduced by any sums previously paid to Contractor.

37.3.2 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, as validated in the same manner as a subcontractors Request for Change under the Article entitled CHANGES herein.

37.3.3 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.

37.3.4 The reasonable cost of preserving and protecting property, 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.

37.4 Partial Payments

Under such terms and conditions as it may prescribe and at its sole discretion, LACMTA 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 LACMTA upon demand, together with interest at a rate equal to that set forth in California Code of Civil Procedure Section 685.010.

37.5 Exclusions

In arriving at the amount due Contractor under this Article, LACMTA shall exclude the following:

- 37.5.1 The amount of any claim that LACMTA may have against the Contractor in connection with the Contract; and
- 37.5.2 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 LACMTA.
- 37.5.3 Except to the extent that LACMTA will have otherwise expressly, in writing, 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 LACMTA or other buyer as described above.)

37.6 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. Compensation 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.

37.7 No Waiver

Notwithstanding anything contained in the Contract to the contrary, LACMTA's termination under this Article shall not waive any right LACMTA may have to claim damages, and LACMTA may pursue any cause of action that it may have by Law or under the Contract.

GC-38 TERMINATION FOR DEFAULT*

38.1 Grounds for Termination for Default

LACMTA may terminate this Contract, in whole or in part, for default for any of the following:

- 38.1.1 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.
- 38.1.2 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.
- 38.1.3 Contractor's violation of an order or requirement of the Contracting Officer authorized by or within the scope of the Contract.
- 38.1.4 Contractor's abandonment of the Contract, 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.
- 38.1.5 Contractor assigns the Contract, or any portion thereof, or subcontracts any Work without prior written acceptance by the Contracting Officer.
- 38.1.6 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.
- 38.1.7 Failure of the Contractor to pay any amounts owing to any Entity 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.
- 38.1.8 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 that relate to or impacts Contractor's performance of this Contract, which is not released, expunged, or discharged within a period of ten (10) working days.
- 38.1.9 The violation or failure to comply with any law or order of a court of competent jurisdiction or 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.

- 38.1.10 Failure to indemnify any Party that the Contractor is obligated to indemnify under the Article entitled INDEMNIFICATION.
- 38.1.11 Failure to promptly correct any Deficiency, or to re-perform or replace rejected Work or Goods that do not meet Contract requirements.
- 38.1.12 Conviction of the Contractor or any of its officers, partners, principals, employees or any Contractor's Project Manager, 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.
- 38.1.13 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.
- 38.1.14 Contractor's offering or giving of any improper consideration, in any form, either directly or through an intermediary, to any LACMTA 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.
- 38.1.15 Contractor is placed on the California State Labor Commissioner's list of debarred contractors pursuant to California Labor Code §1777.1 or §1777.7.
- 38.1.16 Contractor is placed on the Federal list of debarred Contractors pursuant to Executive Order 12549 (3 CFR, 1986 Comp., p. 189 and 51 FR 6370).

38.2 Insolvency and Bankruptcy Defined

- 38.2.1 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.

38.2.2 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.

38.3 Cure Notice

38.3.1 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, **and a copy of the Cure Notice will be sent to the Surety.**

38.3.2 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. If the Contracting Officer does not have the Surety take over the Contractor's performance of the Work, 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 LACMTA's best interest.

38.3.3 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 LACMTA's best interest.

38.3.4 Contractor's Continuing Liability:

Whether or not the Contract or any part thereof is terminated, Contractor shall be liable for any damages to LACMTA resulting from the Contractor's default.

38.4 Contractor Obligations on Receipt of Notice

Upon receipt of a Notice of Termination for Default from LACMTA, Contractor shall:

- 38.4.1 Stop all Work under the Contract on the date and to the extent specified in the Notice of Termination.
- 38.4.2 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.
- 38.4.3 Communicate any Notice of Termination to the affected Subcontractors and Suppliers at all tiers.
- 38.4.4 Terminate all orders and Subcontracts that relate to the performance of Work terminated by the Notice of Termination.
- 38.4.5 Upon the Contracting Officer's written Notice of Termination, assign and transfer to LACMTA, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the rights, title, and interest of the Contractor in and to outstanding orders and Subcontracts affected by the termination and deliver to LACMTA all:
 - A. Fabricated or un-fabricated materials, supplies, Equipment, Goods, tools, dies, jigs, and fixtures constituting Work in process, and all other products of uncompleted Work;
 - B. Completed Work, supplies, Equipment 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 LACMTA if the terminated Work had been completed.
- 38.4.6 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 any payments due Contractor under the Contract.

38.4.7 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 LACMTA has or may acquire an interest, and for public safety.

38.4.8 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.

38.4.9 Settle outstanding liabilities and claims arising out of such termination of orders and Subcontracts, with the acceptance of the Contracting Officer if required.

38.5 LACMTA Completion of Work

Upon LACMTA's termination of the Contract in whole or in part because of Contractor's default, LACMTA will have the right to complete the Work by whatever means and methods it deems advisable. LACMTA:

38.5.1 May take over the Work and complete it by another contractor or otherwise.

38.5.2 May procure, upon such terms as LACMTA deems appropriate, all Goods and services necessary to complete the Work, and Contractor shall be liable for any and all excess costs incurred by LACMTA. LACMTA will not be required to obtain the lowest prices for completing the Work, but shall make such expenditures that, in its sole judgment, best accomplish such completion.

38.5.3 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 LACMTA.

38.5.4 Charge to Contractor the expense of completing the Work together with a reasonable charge for engineering, managerial, and administrative services, as certified by LACMTA. LACMTA will deduct said amount out of such monies that may be due or

may at any time thereafter become due the Contractor under this or any other contract Contractor may have with LACMTA.

38.5.5 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 LACMTA are in excess of the sum which otherwise would have been payable to Contractor and LACMTA is unable to deduct such from any monies that may be due or may at any time thereafter become due the Contractor, then Contractor shall promptly pay the amount of such excess to LACMTA upon notice of the excess so due.

38.6 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 LACMTA in accordance with the Article entitled TERMINATION FOR CONVENIENCE OF LACMTA herein, and adjustment shall be made as provided in that Article.

38.7 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. Compensation 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.

38.8 Remedies Not Exclusive

The rights and remedies of LACMTA provided in this Article are in addition to any other rights and remedies provided by Law or under the Contract.

GC-39 COOPERATION IN EVENT OF TERMINATION

39.1 General

39.1.1 Contractor understands and agrees that LACMTA has obligations that it cannot satisfy without use of the completed Work, and that Contractor's failure to satisfy its obligations under this Contract could result in irreparable damage to LACMTA 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 LACMTA in the

transition of the Work to LACMTA 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.

- 39.1.2 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 LACMTA, other than a failure by LACMTA 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, LACMTA 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.
- 39.1.3 Provided that LACMTA is current in payment of the Contract amounts owed by LACMTA to Contractor (except for disputed amounts and withholds), Contractor shall continue to perform Work, as directed in the Notice of Termination, as well as transition services. The transition services shall include, at a minimum, maintaining current data and records, providing services until transition to LACMTA or to a new contractor, providing on-site assistance, cooperating with LACMTA or its designated contractor, and providing such other services as shall be necessary or appropriate to facilitate the orderly transition of Work to LACMTA or its new contractor.

39.2 Termination Transition Plan

- 39.2.1 Upon receipt of Notice of Termination, Contractor shall develop a Termination Transition Plan, to be completed within ten (10) Days after such Notice. Meet with LACMTA's Authorized Representative as soon as practicable after a Notice of Termination has been given, to discuss a termination transition plan. The Termination Transition Plan shall be subject to LACMTA's Acceptance.
- 39.2.2 If Contractor has not submitted, or LACMTA 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.

39.2.3 Contractor shall use its best efforts to assist LACMTA in effecting a transition of the Work, in accordance with industry best practices, to LACMTA or another contractor chosen by LACMTA.

This Article shall survive the termination of the Contract.

GC-40 ASSIGNMENT*

40.1 Consent

40.1.1 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 the Contracting Officer.

40.1.2 Any attempted Assignment without prior written consent of the Contracting Officer shall be null and void.

40.1.3 No right under the Contract shall be asserted against LACMTA, in Law or in equity, by reason of any Assignment of the Contract, or any part thereof, unless authorized by the Contracting Officer as specified in this Article.

40.2 Setoffs on Assignment Proceeds

Any Assignment of proceeds of the Contract shall be subject to all proper setoffs and withholdings in favor of LACMTA and to all deductions specified in the Contract. All monies withheld, whether assigned or not, shall be subject to being used by LACMTA for completion of the Work, pursuant to the terms of the Contract. If the Contracting Officer consents to such Assignment of monies, Contractor or the Surety shall give written notice thereof to LACMTA at least ten (10) Days before payment is due.

40.3 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 performed prior to the Assignment, unless the Contracting Officer, in its sole discretion, has approved such relief from responsibility.

40.4 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.

GC-41 ENVIRONMENTAL COMPLIANCE*

41.1 Compliance With Environmental Laws

- 41.1.1 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, mitigation measures, and any other requirements of Governmental Entities having jurisdiction related to such Laws.
- 41.1.2 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 LACMTA 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 LACMTA, to the FTA/FHWA, and to the EPA Assistant Administrator for Enforcement.
- 41.1.3 Further, 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 LACMTA that the governing air quality control criteria and requirements are being met. 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.
- 41.1.4 Contractor shall comply with all California Laws regarding pollution controls in purchasing and leasing new motor vehicles with Contract funds.

41.1.5 Contractor shall not burn any Goods that it disposes.

41.1.6 Contractor shall comply with the LACMTA Green Construction Policy, found at www.metro.net/projects_studies/sustainability/images/Green_Construction_Policy.pdf.

41.2 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.).

41.3 Representations and Warranties

Contractor represents and warrants that:

41.3.1 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 or Contract;

41.3.2 Contractor shall transport, store, remediate and dispose of Hazardous Substances in full compliance with all laws;

41.3.3 If offsite storage or disposal is required, 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

41.3.4 If the selected storage or disposal facility loses its permitted status hereafter during the term of the Contract, Contractor shall promptly notify LACMTA of such loss and, and shall secure an appropriately licensed and permitted alternative facility.

41.4 Inclusion in Subcontracts

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

GC-42 HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL AND SCIENTIFIC DISCOVERIES*

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

GC-43 INDEMNIFICATION

43.1 Indemnification for Non-Design Professional

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless LACMTA, its subsidiaries, and any of their respective members, directors, officers, employees and agents (“Indemnified Parties”), from and against any and all claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses (including but not limited to any fees of accountants, attorneys or other professionals), arising out of, in connection with, resulting from or related to any act, omission, fault or negligence of the Contractor or any of its officers, Authorized Representative, employees, Subcontractors, Suppliers, or any person or organization directly or indirectly employed by any of them in connection with or relating to, or claimed to be in connection with or relating to, the Work, the Contract, or the Project including without limitation to any costs or liability arising out of, in connection with, resulting from or related to:

43.1.1 The personal injury to or death of any person (including employees of any Indemnified Parties) or for damage to or loss of use of property (including property of LACMTA); and

43.1.2 LACMTA’s reliance upon the use of data or other information furnished or delivered by the Contractor pursuant to the Contract.

The duties specified above shall apply even in the event of an act, omission, fault or negligence whether active or passive, of the Indemnified Parties and without requiring payment thereof by the Indemnified Parties first. However, Contractor shall not be responsible for indemnifying an Indemnified Party for liability resulting from said Indemnified Party’s sole negligence, willful misconduct, or for that portion of liability directly attributable to Indemnified Parties’ active negligence provided such active negligence is determined by agreement between the Parties or by the findings of a court of competent jurisdiction.

43.1.3 Further, to the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless Indemnified Parties from and against any and all claims, actions, demands, costs,

judgments, liens, penalties, liabilities, damages, losses, and expenses (including but not limited to any fees of accountants, attorneys or other professionals) caused or alleged to have been caused by the passive negligence of the Indemnified Party, without requiring payment thereof by the Indemnified Parties first, in connection with or relating to, or claimed to be in connection with or relating to, the Work, the Contract, or the Project, including without limitation to any costs or liability arising out of, in connection with, resulting from or related to:

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

43.2 Indemnification for Design Professional Work

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless, LACMTA and other Indemnified Parties from and against any and all liabilities, claims, actions, demands, costs, judgments, liens, penalties, damages, losses, and expenses (including but not limited to any fees of accountants, attorneys or other professionals), without requiring payment thereof by the Indemnified Parties first arising from, pertaining to or relating to the negligence, recklessness or willful misconduct of the Contractor in connection with or relating to, or claimed to be in connection with or relating to, the Work or the Contract for all design professional work, including but not limited to any liability arising out of, in connection with, resulting from or related to:

- 43.2.1 Personal injury to or death of any person (including employees of the parties to be indemnified) or for damage to or loss of use of property (including property of LACMTA); and
- 43.2.2 LACMTA's reliance upon the use of data or other information furnished or delivered by the Contractor pursuant to the Contract.

43.3 Defense of Intellectual Property Claims

Contractor shall Indemnify LACMTA and other Indemnified Parties for any claims actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses (including but not limited to any fees of accountants, attorneys or other professionals), without requiring payment thereof by the Indemnified Parties first, made by third parties arising out of, in connection with, resulting from or related to intellectual property provided by the Contractor, and agrees to the following provisions related

to intellectual property, excluding any intellectual property provided by LACMTA or other Indemnified Parties that has not been modified by the Contractor.

43.3.1 Defense. Contractor shall conduct all negotiations with respect to, and settle or defend, all Intellectual Property claims against LACMTA or any other Indemnified Parties.

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

- A. Procure promptly for such Indemnified Party, 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 Indemnified Party to render use of Intellectual Property non-infringing;
- D. Subject to the determination by LACMTA's Authorized Representative that 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 LACMTA's Authorized Representative that the Project will perform satisfactorily without the use of the Intellectual Property, and LACMTA'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 LACMTA, the purchase price thereof and any other costs incurred by LACMTA as a result of the injunction and the inability of LACMTA to use the Intellectual Property.

43.4 Environmental Indemnity

43.4.1 Environmental Impairment Losses. The Contractor shall indemnify, defend and hold harmless LACMTA and the other Indemnified Parties from and against the full amount of 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 under the Contract without requiring payment thereof by the Indemnified Parties first. The term

“Environmental Impairment Losses” shall mean 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 LACMTA under Environmental Laws as a result of the activities conducted by the Contractor under the Contract.

43.4.2 General Environmental Indemnification. In addition to any other indemnification provisions of the Contract, the Contractor shall Indemnify, defend and hold harmless LACMTA and the other Indemnified Parties from and against any and all present and future liability, claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses (including but not limited to any fees of accountants, attorneys or other professionals), without requiring payment thereof by the Indemnified Parties first, (including without limitation, clean-up costs, all related fees from contractors, attorneys and experts), resulting directly or indirectly from any negligent or reckless act or omission of Contractor, Subcontractor or Supplier or anyone employed directly or indirectly by them, in their performance or failure to perform any Work, including without limitation, liabilities arising out of, in connection with, resulting from or related to:

- A. Releases of Hazardous Substances;
- B. Failure to recognize or report the existence, quantity or location of Hazardous Substances
- C. Remedial work required under any Environmental Law;

43.4.3 Notwithstanding the above, the Contractor does not indemnify LACMTA or other Indemnified Parties for pre-existing hazardous substances, however Contractor shall be liable for and Indemnify LACMTA and other Indemnified Parties from any negligent or reckless act or omission by Contractor that makes the pre-existing condition worse.

43.5 Errors and Omissions

43.5.1 Errors and Omissions Indemnification. Contractor shall Indemnify LACMTA and the other Indemnified Parties from and against any and all liabilities, claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses (including but not limited to any fees of accountants, attorneys or other professionals), arising out of, in connection with, relating to, or resulting from errors, omissions, inconsistencies or other defects in the AFC Design Documents furnished by Contractor, regardless of whether such errors, omissions, inconsistencies or defects were also included in the Project Definition Documents or

any Reference Documents (if applicable) without requiring payment thereof by the Indemnified Parties first.

43.5.2 Status of Documents. 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 Contractor, such documents shall not be deemed as "design furnished" by LACMTA or any of the other Indemnified Parties, as the term "design furnished" is used in Civil Code Section 2782 and in this Article. Contractor hereby waives the benefit (if any) of Civil Code Section 2782, and agrees that this Article constitutes an agreement governed by Civil Code Section 2782.5.

43.6 Investigation of Potential Negligence

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

- A. LACMTA agrees that 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 Contractor was not negligent and such costs are determined in that process.

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

43.7 Employee and Third Party Claims

43.7.1 Employee Claims. Claims against any of the Indemnified Parties or the Contractor by anyone directly or indirectly employed by the Contractor, Subcontractors or Suppliers and/or anyone for whose acts Contractor, Subcontractor or Supplier may be liable, 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.

43.7.2 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 LACMTA. 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

LACMTA. Contractor shall indemnify LACMTA in accordance with the provisions of this Article against any claim made by any third party claiming rights under the Contract.

43.8 Joint and Several Liability

If 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 such venturer or partner 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.

43.9 Survival and Rights of LACMTA

43.9.1 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

43.9.2 Reservation of Rights. The rights of LACMTA to indemnification under this Article are in addition to and do not limit any other rights or remedies that LACMTA may have under law or this Contract.

43.9.3 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.

43.9.4 Application of Funds. In the event of any claim or demand made against any Indemnified Party, by a party other than the Contractor, LACMTA may at its sole discretion reserve, retain, or apply any monies due the Contractor under the Contract for the purpose of resolving such claims; provided, however, LACMTA may release such funds if Contractor gives LACMTA reasonable assurance that LACMTA's interests will be protected. LACMTA shall, at its sole discretion, determine whether such assurance is reasonable.

43.10 Savings Clause

If any part of this Article is held by a court of competent jurisdiction to be invalid, void or unenforceable under the Law, then, such indemnity shall be deemed to exclude the invalid part, however such remaining portions of the indemnity that are not affected thereby shall remain in full force and effect.

Additional Indemnified Parties are identified in Contract Special Provisions Article entitled ADDITIONAL INDEMNIFIED PARTIES.

GC-44 PROJECT DEFINITION DOCUMENTS

44.1 Description and Limitations

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

- 44.1.1 Contractor has full responsibility for the design of the Work and LACMTA has not furnished the Contractor with the design of the Work;
- 44.1.2 The Project Definition Documents are preliminary and conceptual in nature;
- 44.1.3 Contractor shall not rely on and has not relied on any documents or information provided by LACMTA 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;
- 44.1.4 Contractor may rely on the Project Definition Documents only with respect to the accuracy of the definitions of the LACMTA provided Worksite, Right-of-Way, and Alignment.
- 44.1.5 Contractor shall ascertain whether there are any design errors, omissions, inconsistencies or other defects inherent in the Project Definition Documents, and notify LACMTA's Authorized Representative in writing regarding such errors, omissions, inconsistencies or defects and potential resulting problems; and
- 44.1.6 Contractor shall verify all calculations and quantity takeoffs contained in the Project Definition Documents or otherwise provided by LACMTA.

44.2 Contractor's Use of Information

LACMTA 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.

Contractor further acknowledges and agrees that:

44.2.1 If and to the extent Contractor or anyone on Contractor's behalf uses any of said information in any way, such use is made on the basis that the Contractor, not LACMTA, has approved and is responsible for said information;

44.2.2 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

44.2.3 Any use of said information is entirely at the Contractor's own risk and at its own discretion.

LACMTA 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 Contractor's Scope of Work, LACMTA does not represent or warrant the accuracy or completeness of any item described in the Project Definition Documents.

44.3 Exception for Reliance Documents

Notwithstanding the conditions set forth in this Article the Contractor may rely on the accuracy of any Geometric Approval Drawings (GAD) report, approved mandatory design exceptions, and the geotechnical reports and investigations for boring locations and core results, Geotechnical Baseline Reports (GBR), As-Built drawings prepared by other Government Agencies, As-Built plans prepared by the utility companies, and any Contract Documents, or elements therein, that are expressly identified by LACMTA as a mandatory requirement. Contractor may also elect to modify such drawings, specifications, and reports, and any such modifications shall be subject to a contractual design review process. Accordingly, any deviation by the Contractor from any expressed mandatory 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.

GC-45 CONTRACTOR-FURNISHED DOCUMENTS

45.1 Submittal Requirements & Schedule – Design Documents

45.1.1 Concurrently with the Design Quality Management Plan, Contractor shall provide to LACMTA's Authorized Representative, for LACMTA's review and acceptance, 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").

45.1.2 In its Design Document Listing & Schedule, Contractor shall distinguish between those Design Documents it recommends should be reviewed and Approved by LACMTA, versus those it recommends should only be provided to LACMTA for informational purposes only. After LACMTA completes its review of Contractor's Design Document Listing & Schedule, LACMTA's Contracting Officer, or its duly-delegated Authorized Representative, shall notify Contractor which Design Documents shall be submitted for its review/Approval, and which for its information only, at the sole discretion of LACMTA. In its subsequent submittals of the actual Design Documents to LACMTA, Contractor shall clearly note/stamp "Provided to LACMTA For Information Only" or "Provided to LACMTA For Review and Approval" on all Design Documents, accordingly.

45.2 Submittal Requirements & Schedule – Construction Documents

45.2.1 Not later than thirty (30) Days prior to beginning any element of construction work, Contractor shall provide to LACMTA's Authorized Representative, for LACMTA's review and acceptance, 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").

45.2.2 In its Construction Document Listing & Schedule, Contractor shall distinguish between those Construction Documents it recommends should be reviewed and Approved by LACMTA, versus those it recommends should be provided to LACMTA for informational purposes only. After LACMTA completes its review of Contractor's Construction Document Listing & Schedule, LACMTA's Contracting Officer, or its duly-delegated Authorized Representative, shall notify Contractor which Construction Documents shall be submitted for its review/Approval, and which for its information only, at the sole discretion of LACMTA. In its subsequent submittals of the actual Construction Documents to LACMTA, Contractor shall clearly note/stamp "Provided to LACMTA For Information Only" or "Provided to LACMTA For Review and Approval" on all Construction Documents, accordingly.

45.3 LACMTA Review and Document Revision Requirements

45.3.1 LACMTA Review. LACMTA will have the right to review and comment on all Contractor-furnished documents as described above for compliance with the requirements of the Contract. For those Contractor-furnished documents which have been designated by LACMTA as requiring LACMTA review and Approval, LACMTA shall complete its review, issue its comments,

and confirm its approval/rejection, within thirty (30) Days of LACMTA's receipt of a properly-submitted Contractor-furnished document.

45.3.2 Contractor Analysis of LACMTA Review Comments. Contractor shall notify LACMTA's Authorized Representative in writing within seven (7) Days after receipt of any LACMTA 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, LACMTA will have the right to modify the comment(s) in question. Contractor's failure to so notify LACMTA shall constitute Contractor's full acceptance of LACMTA'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.

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

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

45.4 Contractor Design Reviews with Other Local Agencies & Stakeholders

45.4.1 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. All other local agencies; and
- C. 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).

45.4.2 Administration and attendance to such design reviews by Contractor's Project Manager (or its fully-empowered delegate) is considered a basic part of the Work, and thus Contractor shall not be entitled to any additional compensation from LACMTA for such reviews.

45.5 Ownership of Contractor-Furnished Documents

45.5.1 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 LACMTA property upon their preparation by the Contractor, Subcontractors, or Suppliers of any tier.

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

45.6 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 LACMTA with final As-Built revisions of all Contractor-furnished documents used during the prosecution of the Work.

GC-46 RIGHTS IN CONTRACTOR-FURNISHED DOCUMENTS, SHOP DRAWINGS, SAMPLES, TECHNICAL DATA, PATENTS AND COPYRIGHTS*

46.1 Hardcopy Document Submittals

Hardcopy submittals of any of the documents listed in this Section, which are provided to LACMTA by the Contractor, Subcontractors, or Suppliers of any tier pursuant to the Contract are the property of LACMTA, and thus LACMTA may use and disclose such submittals in any manner and for any purpose that LACMTA sees fit. The only exceptions to the above provision relating to disclosure are those submittals listed that 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:

46.1.1 Shop Drawings;

46.1.2 Construction Documents; and

46.1.3 Contractor's Design Documents and AFC Design Documents.

46.2 Electronic Document Submittals

46.2.1 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 LACMTA 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 LACMTA.

46.2.2 The same rights reserved by LACMTA 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.

46.3 Samples

When specified or requested by LACMTA, 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 LACMTA. 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 examination and notification from LACMTA. 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 LACMTA.

46.4 Technical Data

46.4.1 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 administrative information. 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.

46.4.2 LACMTA will have the right to use, duplicate, modify or disclose (except as limited by the Article entitled PUBLIC RECORDS ACT herein) 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.

46.5 Patents and Copyrights

46.5.1 LACMTA 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 LACMTA to use such technical data in the manner herein described.

46.5.2 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 LACMTA, 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 LACMTA, and bear all damages and cost associated therewith.

46.5.3 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 prohibited, Contractor, at its own expense, shall with the concurrence of LACMTA, do one of the following:

- A. Secure for LACMTA 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 LACMTA.

46.5.4 Contractor shall promptly submit to LACMTA 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 LACMTA 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 LACMTA 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.

46.6 LACMTA Design

The preceding Section shall not apply to any Goods manufactured to the detailed design of LACMTA contained in the Contract Documents.

GC-47 NO WAIVER OF CONDITIONS*

Failure of LACMTA 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 LACMTA 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 LACMTA 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 LACMTA 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-48 CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC*

48.1 Approval of Copy

Prior to publication, the Contractor shall submit to LACMTA for its review and approval all LACMTA related copy it proposes to use for advertising or public relations purposes. Contractor shall not allow LACMTA 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 LACMTA endorses the Contractor's firm, services or products.

48.2 Contact With News Media

Contractor shall refer all inquiries from the news media relating to the Contract or the Work, including Worksite visits, to LACMTA, and shall comply with the direction of LACMTA's Authorized Representative for Media Relations department regarding statements to the media.

48.3 Coordinating With the Public

Contractor shall designate a staff person accepted by LACMTA to keep LACMTA informed of all impacts on the community resulting from the Work.

48.4 Complaints

If Contractor receives a complaint from a member of the community, Contractor shall inform LACMTA promptly and comply with the direction of LACMTA.

48.5 Tours

LACMTA will notify Contractor at least **five (5) working days** in advance of a media related site visit to the Worksite.

48.6 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 LACMTA's Public Affairs staff at least ten (10) Days prior to the anticipated event.

GC-49 CONFLICT OF INTEREST*

49.1 Conflicts of Interest

49.1.1 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, LACMTA shall have the right to terminate the Contract for failure of Contractor to fulfill its Contract obligations.

- 49.1.2 Contractor agrees that, for the term of the Contract, no member, officer, or employee of LACMTA, or of a local public body during their employment and for one (1) year thereafter, shall have any interest, direct or indirect, in the Contract, or to any benefit arising thereof as prohibited by Government Code sections 1090 and 87100.
- 49.1.3 The employment by Contractor of personnel on the payroll of LACMTA for the performance of Work under the Contract is not permitted, even though such employment may be outside of the employee's regular working hours or on Saturdays, Sundays, holidays, or vacation time. The employment by the Contractor of personnel who have been on LACMTA payroll within one (1) year prior to the date of Contract award, where the LACMTA employee held a position of substantial responsibility in the area of service to be performed by the contract or participated in any way in developing the contract or its specifications, is also prohibited.
- 49.1.4 Neither the Contractor nor its employees nor its subcontractors or their employees shall give or offer to give any campaign contribution to any member of LACMTA in violation of Government Code section 84308 or Public Utilities Code section 130051.20.

49.2 Organizational Conflicts of Interest

- 49.2.1 State Organizational Conflict of Interest laws and policy may apply to this procurement. If the Project is funded with assistance from the Federal Transit Administration, this Contract is also subject to the restrictions regarding organizational conflicts of interest promulgated by the Federal Transit Administration. 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.
- 49.2.2 An Organizational Conflict of Interest arises where the work product of a person, firm, corporation, joint venture or partnership, or any employee thereof, completed on behalf of LACMTA or another public or private entity has been relied upon, or significantly influenced, the specifications or statement of work for this procurement.

49.2.3 An Organizational Conflict of Interest arises where the work product of a person, firm, corporation, joint venture or partnership, or any employee thereof, completed on behalf of LACMTA or another public or private entity, was offered an opportunity to make or influence findings with the intent of bidding on or participating in subsequent projects based on those findings.

49.2.4 An Organizational Conflict of Interest arises where a person, firm, corporation, joint venture or partnership, or any employee thereof, that completed work on behalf of LACMTA or another public or private entity, would be required to evaluate its own work product.

GC-50 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-51 CONFIDENTIALITY*

51.1 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 LACMTA and will not be divulged to any person, firm, corporation, or other entity except on the direct authorization of LACMTA. 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 LACMTA.

51.2 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 LACMTA.

51.3 Effects of Violation

Failure to follow the terms of this Article shall constitute a breach of the 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 LACMTA at law or equity. Violation of this Article shall require the Contractor to fully indemnify, defend and hold harmless LACMTA in the event litigation must be filed to recover and protect any improperly disclosed Documents.

GC-52 WHISTLEBLOWER REQUIREMENTS*

52.1 Disclosure

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.

52.2 Posting and Hotline

Contractor shall post and maintain LACMTA's Telephone Hotline poster provided by LACMTA at the Worksites during the term of the Contract. The Hotline poster shall be posted in prominent locations that are highly visible and accessible to Contractor's employees. Contractor shall not hinder or coerce its employees from using LACMTA Telephone Hotline to report concerns relative to the performance of any LACMTA contract. Contractor shall provide access to LACMTA representatives for the purpose of verifying Contractor's adherence to this Article. In the event LACMTA inspection finds Contractor has failed to comply herewith, Contractor shall correct such failures including, but not limited to, replacing Hotline posters and sponsoring training sessions, with LACMTA representatives, on the use of LACMTA telephone Hotline.

52.3 Reporting

Contractor, or its employees, shall immediately report any attempt by any member, officer, or employee to solicit improper consideration. The report shall be made to the Contracting Officer or LACMTA Inspector General's Hotline.

GC-53 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.

GC-54 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-55 PUBLIC RECORDS ACT*

55.1 Ownership and Disclosure

Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of LACMTA's business, including all information and documents submitted by Contractor ("Records"), shall become the exclusive property of LACMTA and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). LACMTA's use and disclosure of its records are governed by this Act. LACMTA 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 LACMTA. LACMTA will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

55.2 Litigation Related to Disclosure

In the event of litigation concerning the disclosure of any Records, LACMTA'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 LACMTA harmless from all costs and expenses including attorney's fees in connection with any such action.

GC-56 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 LACMTA 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 LACMTA 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.

END OF GENERAL CONDITIONS

SUB-SECTION 2.3 – SPECIAL PROVISIONS

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SPECIAL PROVISIONS (DESIGN/BUILD)

SP-01 SMALL OR DISADVANTAGED BUSINESS PARTICIPATION

(To be conformed at time of award)

- A. **DBE Commitment** - The Contractor shall achieve it's Disadvantaged Business Enterprise (DBE) commitment of _____ percent (____%) of the Contract Price for Design and _____ percent (____%) of the Contract Price for Construction. Achievement of the DBE commitment will be measured by the total amount paid for the work completed by DBE firms identified for race-conscious measures in the Contract Compliance Manual (RC-FTA).
- B. Since the final design is to be completed by the Contractor not all construction subcontractors were identified at the time of award of the Contract. Contractor shall complete FORM 1 - PROPOSED SUBCONTRACTORS & SUPPLIERS – CONSTRUCTION (**Pro Form 068**) for each design package submitted for LACMTA approval. The completed form, identifying all subcontractors (DBE and non-DBE) for the Work represented by the design package shall be submitted to LACMTA's Contracting Officer no later than ninety (90) days after receiving approval of the design package.

C. To obtain accurate record of the Contractor's performance towards meeting its DBE commitments, the Contractor shall utilize LACMTA's web-based Small Business Compliance Reporting System (SBCRS) to report DBE payments, change orders and all other reporting activities for Design and Construction, throughout the performance of the contract. LACMTA or its designee will provide the Contractor, subcontractors, suppliers, brokers, and truckers online training, login and password information, at no cost to the Contractor or its subcontractors, suppliers, and truckers. The Contractor must complete monthly reports of DBE payments, change orders and other required reporting information by the 15th of each month. Administrative sanctions shall be assessed for failure to comply with DBE reporting requirements as identified in the Contract Compliance Manual (Federal).

The Contractor is responsible for ensuring that all Design and Construction subcontractors, suppliers, brokers, and/or truckers participate in the SBCRS based webinar trainings to comply with verification of payments and other related reporting requirements through the software system.

The Contractor will be notified in writing by Metro within 45 days of Contractor and subcontractors first monthly reporting in the SBCRS identifying the hard copy DBE reports that will be replaced with online SBCRS reporting.

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SP-02 PERCENTAGE OF WORK PERFORMED BY THE CONTRACTOR

Contractor shall perform with its own organization Work amounting to **at least Twenty (20%)** of the Total Contract Price.

SP-03 LACMTA PROJECT LABOR AGREEMENT AND CONSTRUCTION CAREERS POLICY *

Contractor understands and agrees to comply with the Project Labor Agreement (PLA) between the LACMTA and the Los Angeles/Orange County Building and Construction Trades Council and with the LACMTA Construction Careers Policy (CCP). ~~The Project Labor Agreement and the LACMTA Construction Careers Policy are available at <http://www.metro.net/about/pla/>.~~

- A. Purpose: The purpose of the LACMTA PLA and CCP is to facilitate careers in the construction industry, promote employment opportunities during the construction of the Project and provide for orderly settlement of labor disputes and grievances without strikes or lockouts.
- B. Contractor and Subcontractor Obligations: Contractor and its Subcontractors, with respect to construction, shall accept and be bound to the terms and conditions of the PLA for the duration of the Contract.
- C. Contractor Letter of Assent: Contractor shall evidence its acceptance of the PLA by submitting to LACMTA a signed Letter of Assent, as required by the PLA, before LACMTA will issue the Notice to Proceed for the Work.
- D. Subcontractors Letter of Assent: Contractor's Subcontractors, with respect to construction, shall submit to LACMTA prior to starting any work the signed Letter of Assent required by the PLA. Contractor shall ensure each Subcontractor's timely submittal of a signed Letter of Assent.
- E. Contractor Employment Hiring Plan: Prior to LACMTA issuing the Notice to Proceed for the Work, the Contractor shall prepare, submit and obtain LACMTA's approval of its Employment Hiring Plan (EHP), and have held its pre-job conference with the appropriate affected Union(s), as required by and further described in the CCP.
- F. Subcontractors Employment Hiring Plan: Contractor's Subcontractors, with respect to construction, shall submit their EHP to LACMTA for approval at least twenty (20) business days prior to the planned date for starting work. No Subcontractor shall be approved to work on the project without an approved EHP. Contractor shall ensure each Subcontractor's timely submittal of their EHP and also ensure a Subcontractor has an approved EHP before starting any work.
- G. Jobs Coordinator: In accordance with the CCP, Contractor shall recommend a qualified Jobs Coordinator for approval by LACMTA. The

recommended Jobs Coordinator shall meet the qualification requirements set forth in the PLA and CCP.

- H. Zip Code Area Tables: A reference table for “Economically Disadvantaged Area”, “Extremely Economically Disadvantaged Area”, and “Targeted Workers”, as defined in the PLA and CCP, is available at <http://www.metro.net/about/pla/> to assist the Contractor and its Subcontractors with implementing the PLA and the CCP.

SP-04 PROSECUTION AND COMPLETION OF WORK

Contractor shall commence performance of the Work on the date specified in the written Notice to Proceed (NTP) issued to the Contractor. Contractor shall prosecute the Work to completion, in accordance with the WORK COMPLETION SCHEDULE, attached hereto as Appendix A, and as set forth in Contract GENERAL CONDITIONS entitled NOTICE TO PROCEED.

SP-05 NOTICE AND SERVICE THEREOF

THE REQUIRED INFORMATION WILL BE INCORPORATED AT THE TIME OF AWARD

- A. General

Any Notice (e.g., Preliminary Notice, Stop 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.

All Notices shall be enclosed in a sealed envelope and transmitted by personal delivery at the Worksite, registered mail, or a certifiable delivery service, and addressed as shown below.

- B. Notice Transmittals from Contractor to LACMTA shall be addressed as follows:

Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, California 90012-2952

Attention: Frederick Origel
Director, Procurement - Construction

- C. Notice Transmittals to Contractor from LACMTA shall be addressed as follows:

TO BE COMPLETED AT AWARD

D. Notice Transmittals to Surety and Others

TO BE COMPLETED AT AWARD

E. Change of Address Notices

Any notice of changes of address shall be given according to the provisions of this Article.

SP-06 INSURANCE REQUIREMENTS

Contractor Controlled Insurance Program

Contractor, on behalf of itself and its employees, agents, officers or Subcontractors or any other persons or entities for whom Contractor may be legally or contractually responsible ("Contractor-Related Entities"), shall develop a Contractor-Controlled Insurance Program (CCIP) with project-specific limits that shall include the insurance coverages set forth in this Section and which shall be a wrap-up policy, and therefore, California Civil Code Section 2782.05 shall not apply. Contractor shall continuously keep in force the CCIP from and after Contract execution through 90 days beyond Final Acceptance for the entire project, or such longer or shorter time as may be specifically provided herein.

The insurance provided hereunder shall be available for the benefit of LACMTA, all other Indemnified Parties (As identified in Articles SP-31 and GC-43), Contractor and Contractor-Related Entities with respect to covered claims, but shall not be interpreted to relieve Contractor of any obligations hereunder.

Contractor shall require all Subcontractors to be covered by the CCIP on the same terms as Contractor itself. Contractor may request that some subcontractors be excluded from the CCIP. Notwithstanding anything else to the contrary, LACMTA shall have the right to approve, in its sole discretion, which Subcontractors are not enrolled. LACMTA shall not unreasonably withhold such approval. LACMTA and other Indemnified Parties shall be Named Insureds on all policies excepting workers' compensation, professional liability, and automobile liability practice policies. All of the policies, except the professional liability, shall explicitly waive subrogation rights against the Indemnified Parties. LACMTA shall have the right to approve or reject all of the insurance policies provided under this Article including, but not limited to their terms, conditions, sub-limits and exclusions. Approval of these policies shall not be unreasonably withheld.

All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VII

or better or as otherwise approved by LACMTA and authorized or approved to do business in the State. Non-admitted carriers are acceptable. All limits of liability set forth below are in U.S. dollars and are specifically reserved for the Project.

If the Contractor or any Subcontractors are performing Work beyond the expiration of the CCIP, supplemental insurance requirements will be set that may have lower required limits, depending on the type of Work being performed. No allowance or reimbursement to the Contractor for this supplemental post-CCIP insurance will be made. Limits of insurance in excess of contract requirement requirements may be obtained at the discretion of the Contractor.

COMMERCIAL GENERAL LIABILITY INSURANCE

The CCIP shall include Commercial General Liability (CGL) coverage for the Contractor and all Contractor Related Entities and Indemnified Parties (except for Subcontractors not approved at LACMTA's sole discretion). The CCIP shall include a policy or policies of commercial general liability insurance for bodily injury, property damage, personal injury and advertising injury specifically and exclusively for the Project 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 with exclusions only as are typical for a construction project of this magnitude. Such insurance shall include, by its terms or appropriate endorsements, coverage for bodily injury, property damage, fire legal liability, 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" (collapse) and "u" (underground) exposures, and cross liability or severability of interests. The policy shall include an ISO CG 22 80 endorsement, or equivalent. The policy or policies shall be endorsed to state that any and all exclusion related to railroads (including but not limited to premises, operations, contractual obligations, etc.) shall be removed.

The commercial general liability insurance coverage shall have a minimum limit of \$2 million combined single limit of liability for bodily injury, property damage and personal injury per occurrence, \$4 million general annual aggregate and \$4 million products/completed operations aggregate. Contractor shall maintain such insurance for 90 days beyond the Final Acceptance. Contractor shall be the named insured and each of the Indemnified Parties shall also be named insureds at policy inception as to any insured loss or liability arising out of or in any way related to the Project, including with respect to liability arising out of the acts or omissions of any Contractor Related Entity. The required limits can be satisfied by a combination of a primary policy and excess policies. The products and completed operations coverage, only, shall be in effect for a minimum of 10 years following ROD.

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

The CCIP shall include, for Contractor and all Subcontractors (except for Subcontractors not approved at LACMTA's sole discretion), workers' compensation statutory limits policy in conformance with the laws of the State, and employer's liability insurance (for 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. LACMTA's approval of subcontract exclusions from the workers' compensation coverage shall not be unreasonably withheld. Contractor shall maintain such insurance for one year following Final Acceptance. Contractor and enrolled Subcontractors shall be named insureds on these policies. The workers' compensation policy shall contain the following endorsements:

- (a) A voluntary compensation endorsement.
- (b) An alternative employer endorsement.
- (c) An endorsement extending coverage to all states operations on an "if any" basis.

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

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; including loading and unloading, with limits of \$2 million combined single limit for bodily injury and property damage liability. The Contractor shall maintain such insurance through the end of the warranty period; 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 ISO form number CA 00 01 (Ed. 03/10) or equivalent. The required limits can be satisfied by a combination of a primary policy and an excess policy. The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90 and CA 99 48). The Contractor shall ensure that all Subcontractors shall maintain at least \$1 million of automobile liability insurance with all applicable terms as outlined herein.

CONTRACTOR'S POLLUTION LIABILITY INSURANCE

The CCIP shall include contractor's pollution liability (CPL) insurance with a total combined limit of liability of no less than \$5 million per occurrence and \$5 million in the aggregate dedicated to this Project for the Contractor, all Contractor Related Entities and Indemnified Parties (except for Subcontractors not approved at LACMTA's sole discretion). The CPL shall be obtained on an occurrence basis for a policy term inclusive of the entire period of construction. The policy shall have a total term of not less than 10-years including products and completed operations coverage unless a shorter period is approved at LACMTA's sole discretion. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage resulting from pollution conditions caused by

contracting operations. The CPL shall also provide coverage for transportation and off-site disposal of materials. The Indemnified Parties shall also be Named Insureds on the CPL policy. Coverage shall also be provided for transport of hazardous waste and non-owned disposal sites (NODS).

ENVIRONMENTAL IMPARIMENT LIABILITY

Coverage for unknown site contamination and/or in greater concentrations than identified in prior assessments shall be afforded coverage through Pollution Legal Liability Insurance coverage provided by LACMTA. Coverage is designed to afford protection against unknown pollution contamination and/or in unforeseen concentrations for the entire Crenshaw/LAX LRT, including the site of the proposed Southwest Maintenance Facility. If during the course of the Work, the Contractor encounters material quantities suspected to be Hazardous Materials, the Contractor shall:

- (A) Immediately notify the Authority telephonically or in person, to be followed within twenty-four (24) hours by notification to the Authority in writing, and shall advise the Authority 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 Materials.
- (C) Take all reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials and,
- (D) Notify the Authority regarding its proposed action to dispose, remove, remediate, or otherwise handle such Hazardous Materials. For purposes of these reporting requirements, the term "material quantities" means quantities that trigger any reporting, investigation, or remediation requirements under any Environmental Law.
- (E) Establish and maintain procedures to ensure all costs related to the remediation of Hazardous Materials are appropriately segregated in order to afford an accurate representation of expenses associated with the required activity.

UMBRELLA OR EXCESS LIABILITY INSURANCE

The CCIP shall include an umbrella or excess liability insurance policy ("Excess Policy") with limits of not less than \$25 million 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 in SP-06.A.1, SP-06.A.2 and SP-06.A.3. Such policy or policies shall include the following terms and conditions: (a) pay on behalf of wording as opposed to reimbursement; and (b) concurrency of effective dates with primaries. The Indemnified Parties shall be named insureds on the Umbrella or Excess Policy.

PROFESSIONAL LIABILITY INSURANCE

The CCIP shall include project-specific professional liability coverage with limits not less than \$10 million per claim and aggregate. The professional liability coverage shall be provided on a primary basis and shall protect against any negligent act, error or omission arising out of design, engineering, project/construction management, or oversight activities with respect to the Project, including coverage for the negligent acts or omissions of Contractor or any Contractor-Related Entity. The policy shall have a retroactive date consistent with the inception of design and/or project/construction management activities and no later than issuance of the Notice to Proceed (NTP). The policy shall have a 10-year extended reporting period (ERP) from the date of Substantial Completion with respect to events which occurred but were not reported during the term of the policy, if available, but the total term of the policy (policy term plus ERP) shall be no less than 10 years. The named insureds shall include all Contractor Related Entities performing professional services for the project, including Work provided via a separate contract if such contract is with the Contractor or an extant Contractor Related Entity. This policy shall also include an indemnified party endorsement, or vicarious liability endorsement for the Indemnified Parties which shall not limit the rights of any indemnified party to file a claim against and to recover under the professional liability policy.

BUILDER'S RISK

The CCIP shall include a policy of builder's risk insurance for the Project as specified below. The insureds shall be Contractor, Contractor Related Entities, and Indemnified Parties, as their interests may appear. The insurance shall be maintained until Final Acceptance. Indemnified Parties shall be named insureds on this policy along with the Contractor.

(a) Minimum Scope

A blanket builder's risk insurance policy on an "all risk" and flood basis for the Project including: (1) London Engineering Group (LEG) type 2 coverage for faulty workmanship; (2) coverage against damage or loss caused by any type of earth movement (except a bona fide earthquake), subsidence, sinkhole, flood, fire, theft, collapse, explosion, vandalism and malicious mischief, machinery accidents and operational testing; (3) coverage for removal of debris (with a sublimit not less than \$5,000,000 for debris removal), and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off of the Site.

(b) Minimum Coverage

Coverage shall be for the replacement value thereof for "all risks" of direct physical loss or damage, including earth movement (but not a bona fide earthquake), subsidence, sinkhole and flood coverage, with a minimum limit of liability equal to the full replacement costs for the project, plus "soft cost expense cover" (including attorneys' fees and fees and other costs associated with such damage or loss and with any Governmental Approvals). Coverage shall include a minimum sublimit on such soft cost/delay expenses of \$10 million, with a maximum delay deductible of 60 days. Landscaping shall have a minimum sub-limit of \$2 million. The soft cost/delay sub-limits shall not include any coverage for loss of rental income, or loss of gross earnings. Deductibles or self-insured retentions for all other perils and shall not exceed \$250,000 per insured unit. Flood coverage deductibles shall not exceed 5% of the value of the insured unit or \$250,000, whichever is greater. The coverage shall be written without risk of liability of Indemnified Parties for payment and without deduction for depreciation. There shall be no coinsurance penalty provision in any such policy.

(c) Earthquake Coverage

At its option, LACMTA may elect bona fide earthquake coverage in addition to the earth movement coverage to be provided above. A quote for earthquake coverage shall be provided to LACMTA within seven (7) days of issuance of a NTP, and the quote shall be valid for at least 60 days. This quote shall include earthquake insurance with limits not less than \$25 million per occurrence. Deductibles or self-insured retentions for earthquake shall be no greater than 5% of the total value of each insured unit, or \$250,000 whichever is greater, at the time of loss. Should LACMTA elect to purchase earthquake coverage, a change order will be issued to reflect the addition of this coverage to the basic contract price. If LACMTA elects earthquake coverage, LACMTA shall be fully responsible for payment of the premium and any earthquake related deductibles. The estimated cost of this earthquake premium shall not be included in your proposal.

PREMIUMS, DEDUCTIBLES AND SELF-INSURED RETENTIONS

Contractor shall be responsible for payment of premiums for all insurance required under this Article. Neither the earthquake insurance option nor the Environmental Impairment Liability Site Coverage should be a part of the Contract Price until Change Orders have been issued by LACMTA, as described above. Indemnified Parties shall have no obligation to pay any premium except reimbursing Contractor for the Earthquake Insurance Option, SP-06.A.8(c), if elected by LACMTA, LACMTA will reimburse the Contractor. The selection of an appropriate deductible is the Contractor's responsibility. Contractor further agrees that for each claim, suit or action made against insurance provided hereunder, Contractor shall be solely responsible for all deductibles, self insured retentions and amounts in excess of the coverage provided for all insured parties, including Contractor, Contractor Related Entities and Indemnified Parties except to the extent LACMTA is required to indemnify Contractor for such amounts in section GC-43.4.3 and for any deductibles related to the optional earthquake coverage in SP-06.A.8(c). Any deductibles or self-insured retentions over \$250,000 must be declared and approved by LACMTA,

except as set forth in SP-06.A.8(b) and SP-06.A.8(c). At LACMTA's option, the insurer shall either reduce or eliminate such deductibles or self-insured retentions with respect to LACMTA, and the other Insured Parties; or Contractor shall procure a bond acceptable to LACMTA guaranteeing payment of losses and related investigations, claims administration and defense expenses.

VERIFICATION OF COVERAGE

(a) Design-Builder Policies

Concurrently with Contractor's execution hereof or on such later date on which coverage is required to be provided hereunder, Contractor shall deliver to LACMTA, a certificate of insurance with respect to each policy required to be provided by Contractor under this Article. The required certificates must be either personally and manually signed by the authorized representative of the insurance company shown on the certificate with proof that he/she is an authorized representative thereof and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon or signed by electronic signature in accordance with industry standard electronic versions of the ACORD certificate. LACMTA shall have no duty to pay or perform under the Contract until such certificate(s), in compliance with all requirements of this Article, have been provided. Binders and policy forms including endorsements shall be provided to LACMTA and approved by LACMTA prior to issuance of a NTP.

Within 90 days following NTP certified, true and exact copies of each of the insurance policies (including renewal policies) required under this Article shall be provided to LACMTA.

(b) Renewal Policies

Contractor shall promptly deliver to LACMTA a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to LACMTA prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof. If requested by LACMTA from time to time, certified duplicate copies of the renewal policy shall also be provided.

ENDORSEMENTS AND WAIVERS

All insurance policies required to be provided by Contractor hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only provisions (d) and (g) shall be applicable, and provided that provision (f) applies only to the Commercial General Liability Policy and provided that provision (h) shall only apply to the Builder's Risk, General Liability and Excess/Umbrella Policies:

(a) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the named insureds,

additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that Contractor has left the Site. Any insurance or self insurance beyond that specified in the 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 with it.

(b) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents and consultants).

(c) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to LACMTA. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(e) All endorsements adding named insureds or additional insureds to the CGL Policy shall be on form CG 20 10 (2004 edition) and CG 20 37, or equivalent forms providing named insureds and additional insureds with coverage for "completed operations."

(f) The commercial General Liability insurance Policy shall be endorsed, or otherwise provide that coverage for Subcontractor employees shall not be excluded.

(g) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and pollution liability policies) and no policy issued on an occurrence basis shall have any sunset clause requiring reporting within a specified period of time.

(h) The insurance policies shall be endorsed to cover Terrorism risks under Terrorism Risk Insurance Act (TRIA).

WAIVERS OF SUBROGATION

LACMTA and Contractor waive all rights against each other, against each of their agents and employees and against Subcontractors and their respective members, directors, officers, employees, agents and consultants for any claims to the extent covered by insurance obtained pursuant to this Article, except such rights as they may have to the proceeds of such insurance. Contractor shall require all

Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, excluding the professional liability, but including workers' compensation, shall include a waiver of any right of subrogation against all insured and additional insureds (and their respective members, directors, officers, employees, agents and consultants).

CHANGES IN INSURANCE REQUIREMENTS

LACMTA shall notify Contractor in writing of any changes in the requirements applicable to insurance required to be provided by Contractor. Any additional cost from such change shall be paid by LACMTA upon demonstrated evidence such as insurance carrier provided invoice or similar acceptable instrument that authenticates such cost. Any reduction in cost shall reduce the Contract Price pursuant to a Change Order.

NO RECOURSE

There shall be no recourse against Indemnified Parties for payment of premiums or other amounts with respect to the insurance required to be provided by Contractor hereunder, except as specified herein.

SUPPORT OF INDEMNIFICATIONS

The insurance coverage provided hereunder by Contractor shall support but shall not limit Contractor's indemnification obligations under this Contract, nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status.

1. If Contractor's payment of the deductibles or its provision of the CCIP is held by a court of competent jurisdiction to be invalid, void or unenforceable, under California Civil Code sections 2782 et seq., then, such obligations shall be deemed to exclude the invalid, void or unenforceable part, and such obligations shall remain in effect with the exclusion of the part that is invalid, void, or unenforceable."

PROSECUTION OF CLAIMS

Unless otherwise directed by LACMTA in writing, Contractor shall be responsible for reporting and processing all potential claims by LACMTA or Contractor against the insurance required to be provided under this Article. Contractor agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of LACMTA, whether for defense or indemnity or both. LACMTA agrees to promptly notify Contractor of LACMTA's incidents, potential claims, and matters which may give rise to an insurance claim by LACMTA, to tender its defense or the claim to Contractor, and to cooperate with Contractor as necessary for Contractor to fulfill its duties hereunder.

COMMENCEMENT OF WORK

Contractor shall not commence work under the Contract until it has obtained the insurance required under this Article, has furnished original certificates of insurance evidencing the required coverage as required under SP-06.A.10 and such insurance has been approved by LACMTA, nor shall Contractor allow any Subcontractor to commence work under its Subcontract until the Subcontractor is covered by the CCIP, except for those Subcontractors permissibly excluded from the CCIP.

CONTRACTOR'S FAILURE TO COMPLY

If Contractor or any Subcontractor fails to provide and maintain insurance as required herein, then LACMTA shall have the right but not the obligation, to purchase such insurance or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by LACMTA shall, at LACMTA's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand, plus interest thereon from the date of payment by LACMTA to the reimbursement date, at the lesser of (1) 10% per annum or (2) the maximum rate allowable under applicable Governmental Rules. Nothing herein shall preclude LACMTA from exercising its rights and remedies under default as a result of the failure of Contractor or any Subcontractor to satisfy the obligations of this Article.

If on account of Contractor's failure to comply with the provisions of this Article, LACMTA is adjudged to be a co-insurer or otherwise held responsible for all or any portion of a judgment, loss or settlement (through admission or stipulation by Contractor or court decision) that would have been covered by insurance but for non-compliance with this Article, then any loss or damage it shall sustain by reason thereof shall be borne by Contractor, and Contractor shall immediately pay the same to LACMTA, upon receipt of written demand and evidence of such loss or damage.

DISCLAIMER

Contractor and each Subcontractor shall have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein. LACMTA makes no representation or warranty that the coverage, limits of liability or other terms specified for the Insurance Policies to be carried pursuant to this Article are adequate to protect Contractor against its undertakings under the Contract Documents or its liability to any third party or preclude LACMTA from taking any actions as are available to it under the Contract or otherwise at law. LACMTA shall not be limited to the amount of the insurance premium not paid in the proof of any damages it may claim against Contractor arising out of or by reason of failure of Contractor to provide and keep in force the insurance policies required by and on the terms of this Article, but LACMTA shall instead be entitled to recover the full amount of damages available.

OTHER INSURANCE REQUIREMENTS

1. MINIMUM SAFETY COMPLIANCE REQUIREMENTS

Contractor shall be solely responsible for safety on the worksite, and shall comply in all respects with Contractor's Construction Safety and Security Program. Each Subcontractor, before performing any Work, shall agree in writing to, and shall, when performing any Work, comply with the requirements of Contractor's Construction Safety and Security Program. Any suspension of Work by LACMTA related to safety concerns, including the failure of any individual to comply with Contractor's Construction Safety and Security Program, shall be considered a suspension for cause.

2. DUE CARE REQUIRED

Nothing contained in this Article shall relieve Contractor or any Subcontractors of its obligation to exercise due care in the performance of the Work and to complete the Work in strict compliance with the Contract.

SP-07 CONTRACT DOCUMENTS FURNISHED BY LACMTA

LACMTA will provide Contractor with one electronic set of all Contract Documents in PDF as listed in the following table. Contractor shall be responsible for supplying all Subcontractors and/or itself with any hard copies or additional electronic copies of these documents at Contractor's own expense. Contractor agrees and understands that certain documents shall not be released to Contractor until a Non-Disclosure Agreement has been executed and transmitted to LACMTA in proper form.

DOCUMENT	QUANTITY
<u>Contract Documents :</u>	1
1. Form of Contract (Conformed)	
2. Special Provisions (Conformed)	
3. General Conditions	
4. Compensation & Payment Provisions	

DOCUMENT	QUANTITY
<u>Project Definition Documents:</u> 1. Document 2-3 Metro Specifications, Division 01 General Requirements 2. Document 2-2 Metro Rail Design Criteria and Standard Drawings 3. Document 2-1 Design Build Requirements 4. The following documents are of equal precedence: a) Document 2-3 Metro Specifications Divisions 02 through 45 b) Document 2-5 Project Definition Drawings 5. Document 2-6 Threat and Vulnerability Analysis 6. Document 2-7 Safety and Security Management Plan Crenshaw	1
<u>Contract Documents (other):</u> 1. Labor Compliance Manual, Revision 1, (Dated 5/20/13) 2. Diversity & Economic Opportunity Department Contract Compliance Manual (Federal) (Pro Form 087, Dated 6/26/13) 3. Construction Safety and Security Manual (Revision 4.1, Dated 09/01/12)	1
<u>Contract Modifications:</u> 1. Change Notice 2. Modification/Change Order Contract (except drawings) 3. Documents (Drawings only)	1

SP-08 SUBCONTRACTORS AND SUPPLIERS*

The following table lists the Subcontractors and Suppliers listed in the Contractors proposal. Subcontractor and Suppliers added as a result of the performance of the Contract, or a Subcontractor Substitution approved by LACMTA will be added to this list by Contract Modification.

Sub-Contractor	Type of Work	License Type and No.	DBE/SBE
Name: Address: Phone: Contact Name:			
Name: Address: Phone: Contact Name:			

Sub-Contractor	Type of Work	License Type and No.	DBE/SBE
Name: Address: Phone: Contact Name:			
Name: Address: Phone: Contact Name:			

Supplier	Material Supplied	DBE/SBE
Name: Address: Phone: Contact Name:		
Name: Address: Phone: Contact Name:		

SP-09 PERFORMANCE AND PAYMENT BONDS

The Contractor shall provide the Payment and Performance Bonds as required under the Article entitled PERFORMANCE AND PAYMENT BONDS in the Contract Document GENERAL CONDITIONS. Bonds shall be in the form set forth in Appendices D and E hereto.

SP-10 ESCROW OF IFB DOCUMENTS

All references to Proposal, Proposer, and Invitation for Bid (IFB), respectively.

A. Contractor Representation

Contractor represents, as a condition of award of the Contract, that:

- Contractor submitted to LACMTA's Contract Administrator, within seventy-two (72) hours after the time designated by LACMTA for receipt of Proposals, one (1) copy of all documentary information generated in preparation of its Proposal prices for this Contract, and included the same information from all Subcontractors named in its Proposal. This material is hereinafter referred to as "Proprietary Bid

Documents”, and is further defined in the Section entitled FORMAT AND CONTENTS herein.

2. Contractor submitted its Proprietary Bid Documents in sealed containers, clearly marked on the outside with:
 - a) Label “Proprietary Bid Documents”;
 - b) Contractor’s full legal name and date of its submittal;
 - c) LACMTA’s project name; and
 - d) LACMTA’s Contract number and title.
3. Contractor’s Proprietary Bid Documents are in the sole custody of LACMTA, who will hold the documents in escrow for the duration of the Contract. The Proprietary Bid Documents are not public records but are, and shall always remain, the property of the Contractor, subject to review by LACMTA and the Contractor, and any local, state or Federal law enforcement or regulatory agencies requesting access to these documents. The Proprietary Bid Documents will be returned to the Contractor when LACMTA determines the Contract has been completed, has issued a Certificate of Final Acceptance, and has recorded a Notice of Completion (if required).
4. The Proprietary Bid Documents constitute all the information used in the preparation of Contractor’s Proposal, and that no other Proposal preparation information shall be considered in resolving changes or claims.
5. Nothing in the Proprietary Bid Documents shall change or modify the terms or conditions of the Contract. Further, the Proprietary Bid Documents are not part of the Contract Documents.
6. If needed, Proprietary Bid Documents will be used by LACMTA and Contractor to assist in the negotiation of Claims, and in the settlement of Claims, Disputes and other contractual matters. They will not be used for evaluation or Approval of Contractor’s anticipated methods of construction or, except for Claims and Disputes, for other matters related to the implementation of the Work.

B. Format and Contents

1. Contractor submitted its Proprietary Bid Documents in its usual cost-estimating format. Preparation and submittal of the Proprietary Bid Documents are at the sole expense of the Contractor.
2. Proprietary Bid Documents are in the English language. All dimensions and measurements are in the English Imperial (lb./foot/sec.) system. All costs have been identified.
3. The Proprietary Bid Documents include:

- a) All quantity takeoffs;
- b) Calculations or rates of production and progress;
- c) Copies of quotes from Subcontractors and Suppliers;
- d) Memoranda, narratives, and subcontractor scope letters;
- e) All add/deduct sheets;
- f) Copies, on CD or DVD (readable by Windows Explorer) of all computer diskettes or computer data files containing electronic schedules, cut/add sheets, material takeoff sheets, bid estimate sheets, bid proposals, recap sheets, vendor quotations, as-planned schedules, preliminary schedules, subcontractor scope letters, and computer printouts of the electronic schedule; and
- g) All other information used by Contractor to arrive at the prices contained in its Proposal.

C. Incorporation of Certification

The Certification submitted by Contractor (with the Proprietary Bid Documents) is incorporated herein as though fully set forth. This Certification shall state the following:

“I certify under penalty of perjury and pursuant to the laws of the State of California that all the Proprietary Bid Documents submitted in accordance with the instructions contained in the Instructions to Bidders 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 that no other Bid preparation information exists.”

D. Storage and Access

1. LACMTA has placed Contractor’s Proprietary Bid Documents in a secure location.
2. Access to the Proprietary Bid Documents shall be limited to LACMTA, the Contractor, and any local, state, or Federal law enforcement or regulatory agencies requesting access to these documents.

E. Examination After Award of Contract

1. The Proprietary Bid Documents may be examined at any time deemed necessary after award of the Contract:
 - a) By LACMTA and/or the Contractor, to assist in settlement of any Claims, Alternative Dispute Resolution (ADR) process (in accordance with the Article entitled DISPUTES in Contract Document GENERAL CONDITIONS), or other contractual matters; or

- b) By any local, state, or Federal law enforcement or regulatory agency, to assist in any agency investigation.
- F. Examination of the Proprietary Bid Documents, after award of the Contract, is subject to the following conditions:
- 1. LACMTA and Contractor shall each designate, in writing to the other, and a minimum of three (3) working days prior to examination, representative(s) who are authorized to examine the Proprietary Bid Documents.
 - 2. Access to the Proprietary Bid Documents will take place only by duly designated authorized representatives of either, LACMTA and Contractor, or both.
 - 3. LACMTA will not reproduce any of the Proprietary Bid Documents without the mutual agreement of the Contractor.

SP-11 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, LACMTA will suffer damages, and that it is and will be impracticable or extremely difficult to ascertain the actual damages that LACMTA will sustain in the event of and by the reason of such Delays. Therefore, the Contractor and LACMTA 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 specified herein ("Liquidated Damages/LD"), 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. Example 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 arise from or include:

- 1. Cost increases in the completion and subsequent operation of LACMTA's Transit System;
- 2. Failure to implement and monitor environmental mitigation requirements as set forth in the Contract Documents, including,

but not limited to the Environmental Impact Report and/or the Environmental Impact Statement;

3. Unreasonable inconvenience to the public and impacts to private property resulting in claims against LACMTA;
4. Loss of revenue;
5. Increased costs for Contract administration;
6. Failure to meet Contract Milestones; and
7. Delays and increased costs to other contractors, resulting in claims against LACMTA.

C. Application of LDs

1. Contractor shall pay LACMTA LDs as provided herein for each day of Delay (or fraction thereof) in completing the Work (or specified portions or elements thereof) in excess of the number of days specified in the Contract.
2. The amount of LDs for the Contract is set forth in the WORK COMPLETION SCHEDULE.
3. LACMTA may deduct the sum of LDs from any Progress Payments due or that may become due the Contractor, as well as from the Retention at the time it is payable to the Contractor; or if such Progress Payments and the Retention are insufficient, Contractor or its Surety shall pay to LACMTA any deficiency.
4. The accrual of LDs on an element of the Work will terminate upon the Contracting Officer's issuance of a Certificate of Substantial Completion for the element.
5. The amount of LDs set forth in the WORK COMPLETION SCHEDULE represents a good faith estimate as to the actual potential damages LACMTA would incur as a result of the delay in completion of the Work or elements thereof **that the maximum LDs that may accrue under this Contract shall not exceed four million dollars (\$4,000,000).**
6. 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 non-feasibility of otherwise obtaining an adequate remedy. The Contractor further acknowledges and agrees that Liquidated Damages may be owing to LACMTA even though no event of Default has occurred.

7. LACMTA will not assess or collect any Liquidated Damages as a result of any Modification for a Concurrent Delay.

D. Remedies Not Exclusive

1. The fact that LACMTA has agreed to accept LDs as compensation for its damages associated with a Delay in Contractor's meeting a Milestone, or Contractor's completion of any element(s) of the Work, shall not preclude LACMTA from exercising its other rights and remedies respecting the Delay set forth elsewhere in the Contract, including its termination rights under the GENERAL CONDITIONS. However, if LACMTA collects Liquidated Damages for a specific Delay or failure, LACMTA agrees that it will not seek or collect other damages due to that same Delay or failure, and LACMTA 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 LACMTA approved Recovery Schedule.

SP-12 PAYMENT OF PREVAILING WAGES

This Contract is subject to the provisions of California law regarding Public Works, including, but not limited to California Labor Code Sections 227, 1021, and 1720 through and including 1861, together with all applicable regulations (e.g. Title 8 California Code of Regulations, Section 16001 et. seq.). Similarly, this Contract, if federally funded, is also subject to payment of prevailing wages under federal law by the Davis Bacon Act, as determined by the US Department of Labor. 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.

In the event of a conflict between the prevailing wage under state law as determined by California authorities and the prevailing wage under federal law as determined by the U.S Department of Labor, the Contractor shall pay at minimum the higher of the two (2) wages and/or PLA standards.

SP-13 WEATHER DELAYS CAUSED BY RAIN

Refer to General Requirements 01 29 76

SP-14 IDENTIFICATION OF CONSULTANTS

Any consultant retained by LACMTA for this Project to provide services as a Construction Manager (CM) or to provide construction management support services (CMSS), or to provide design support services, will be identified in the Notice to Proceed, as well as any delegation of authority.

SP-15 ASSESSMENTS FOR SPECIAL CIRCUMSTANCES

A. General

There are certain requirements that LACMTA has identified as significant concerns. Therefore, Contractor's failure to meet these requirements will result in an assessment of Contract funds as described below.

B. Quality Assurance and Public Affairs

1. Failure of the Contractor to comply with the requirements described in the Paragraphs below entitled Quality Assurance and Public Affairs, will result in assessments to be deducted from progress payments 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 Specifications by the following terms:

- 1. Registered Surveyor
- 2. Registered Geotech
- 3. Certified Gas Tester
- 4. Safety Representatives (all positions)
- 5. Acoustical Engineer
- 6. Traffic Control Personnel
- 7. Qualified Welder
- 8. Certified NACE Corrosion Engineer
- 9. Qualified Shotcrete Nozzleman
- 10. HDPE Welder

Any occasion when Contractor supplies inadequately trained, improperly certified, uncertified or unqualified personnel, in the judgment of LACMTA, shall constitute a violation of this provision.

b) Contractor is required to complete the Work in conformance with the Project Definition Documents. Inspections performed by the LACMTA or its designee shall verify and document that materials

provided and Work performed by the Contractor, or its subcontractors, complies with the applicable specifications, codes, standards, drawings, and other Contract Documents. When the material and Work do not conform to specifications, code, standards, drawings and other Contract Documents, the LACMTA or its designee shall document this condition on Nonconformance Reports addressed to the Contractor as specified in Specification Section 01 43 10. The Contractor shall provide a response to the Nonconformance Report within the time designated that shall include a description of the investigative actions taken to resolve the nonconformance, a description of the cause of the nonconformance, the actions taken or planned to correct the nonconformance, and the actions taken to prevent recurrence of the nonconformance. When the cause of the nonconformance is determined to be within the control of the Contractor, it shall constitute a violation of this provision.

3. Public Affairs

1. Contractor must comply with Specification Section 01 56 26 regarding wood construction fencing, and Specification Section 01 56 28 regarding chain link construction fencing, inclusive of the requirements that repairs should be made upon notification by LACMTA's Authorized Representative. Failure to take immediate action to prevent injury to the public or the workers and provide a plan for repair within 24 hours will constitute a violation of this provision.
2. Contractor must comply with Specification Section 01 55 27 regarding the requirement to follow the traffic control plans based on local jurisdiction's approval. Any failure to comply with local jurisdiction's approved traffic control plan shall constitute a violation of this provision.
3. Contractor must comply with Specification Section 01 55 28 regarding maintaining pedestrian and vehicular access to affected properties. Contractor shall not close, block or prevent access to any driveway or street without coordinating the closure with the LACMTA. Closing, blocking or failure to maintain access to affected properties shall constitute a violation of this provision.
4. Contractor must comply with Specification Section 01 66 00 regarding storage of materials. Failure to correct a nonconforming condition within 24 hours of notification by the LACMTA shall constitute a violation of this provision.
5. Contractor must comply with Specification Sections 01 35 23, and 01 35 29 regarding maintenance of a clean, orderly and hazard-free Worksite. Failure to correct a nonconforming condition after notification by the LACMTA and by the end of

the current shift, or the end of the Regular Work Day, whichever is sooner, shall constitute a violation of this provision.

- C. Safety, Environmental, Construction Noise & Vibration Control, and Air Pollution Control
1. Failure of the Contractor to comply with the requirements described in the Paragraphs below entitled Safety, Environmental, and CONSTRUCTION NOISE & VIBRATION CONTROL will result in assessment to be deducted from progress payments 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 LACMTA. Failure to comply with the requirements of a Stop Work Notice is a violation of this provision.
 - b) Contractor is required to comply with the requirements of the Alternate Safety Coverage Policy, as described in Contract Document CONSTRUCTION SAFETY & SECURITY MANUAL. Failure to comply with this Policy is a violation of this provision.
 - c) Contractor shall remove from service and prevent the use of equipment tagged by LACMTA in compliance with the Red Tag Policy, as described in Contract Document CONSTRUCTION SAFETY & SECURITY MANUAL. Failure to comply with these requirements is a violation of this provision.
 - d) Contractor shall disclose and provide copies of any citation, enforcement or appeal correspondence from or to Cal/OSHA or any other regulatory agent to LACMTA, within 24 hours of receipt or mailing by the Contractor. Failure to disclose and provide copies within 24 hours is a violation of this provision.

3. Environmental

The Contractor is required to complete the Work in an environmentally prudent manner, in full compliance with the requirements of the Contract Documents and the 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 its permits. Any noncompliant discharge shall constitute a violation of this provision. Contractor shall bear any fines incurred as a result of failure to meet permit requirements.
- b) Contractor is required to sample waste and water discharges and record results to demonstrate compliance with the permits obtained. Failure to sample, record and maintain the required documentation 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 Specification Section 01 56 19. 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 equipment which does not meet the appropriate daytime noise emission limits, as described in General Requirements Specification Sections 01 56 19. 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 equipment which does not meet the appropriate nighttime noise emission limits, as described in General Requirements Specification Sections 01 56 19. 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 Specification Sections 01 56 19. Each occurrence of vibration which 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 Specification Section 01 56

19. 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 Specification Section 01 56 19. 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 results 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. Code of Conduct for LACMTA Contractors & Consultants, Sanctions

Failure of the Contractor/Consultant to comply with the requirements of the Code of Conduct for MTA Contractors and Consultants may result in an assessment from \$1,000 to \$5,000 for a first violation up to a maximum amount of one percent (1%) of the Contract value commensurate with the gravity of the violation.

In addition to the assessments defined above, whenever Work is halted and the work stoppage is unauthorized by the LACMTA and caused by the action or inaction of the Contractor, the LACMTA's costs associated with the work stoppage shall be determined and will be charged to and recovered from the Contractor.

SP-16

SITE ACCESS DATES

A. Right of Way (ROW) Availability Schedule and Acquisition Timing

LACMTA has developed a ROW Availability Schedule, set forth in Appendix B hereto, which identifies the ROW parcels to be acquired and the estimated acquisition dates. LACMTA shall be responsible for acquiring ROW, and for providing the Contractor with access to each parcel listed in this ROW Availability Schedule. The access dates shown in the Schedule are for planning purposes; actual access dates will not exceed ninety (90) calendar days from the time periods shown in the Schedule, unless otherwise specifically noted by the LACMTA. The Contractor shall determine which parcels on the ROW Availability Schedule are on a Critical Path, and establish late dates to be included in the Critical Path Schedule for activities associated with provision of access, which shall in all events allow the latest feasible time for provision

of access. The Critical Path Schedule must be structured to provide reasonable work-around and re-sequencing to progress the Project to reasonably minimize dependence on the acquisition process.

B. Delays in Access to Parcels

1. Notice of Delay. -- If LACMTA determines that it will be unable to provide access to a particular parcel or parcels within the time period provided in the ROW Availability Schedule, LACMTA shall notify the Contractor regarding the revised projected date for delivery of access. The Contractor shall cooperate with LACMTA 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.
2. Notice of Schedule Impact. -- As a necessary condition for obtaining any increase in the Contract Price or extension of time based upon LACMTA'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 LACMTA with a written notice specifying the Critical Path Schedule activity number associated with the parcel in question, and advising LACMTA of any potential impacts to the Critical Path and potential costs that may be incurred as the result of a delay.
3. Eligibility for Change. -- An unavoidable delay to the Critical Path that is directly attributable to the delay in providing access to a parcel will be considered an LACMTA 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 in the Contract Document GENERAL CONDITIONS.

C. Temporary Easements and Access

Except for any temporary easements or access provided by LACMTA as set forth in the Article entitled TEMPORARY EASEMENTS AND STORAGE AND STAGING AREAS herein, the Contractor shall pay the costs of all such temporary easements and access directly. If LACMTA acquires any such temporary property interest at the request of the Contractor, the Contractor shall reimburse LACMTA for all costs incurred.

D. Additional Properties and Work on Private Property

- a) If the Contractor determines that additional property is necessary to carry out the Project, and LACMTA acquires such property, the Contractor shall reimburse LACMTA for the acquisition costs

(including attorneys', accountants' and expert witness fees and costs).

- b) LACMTA 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. LACMTA will not be a party to nor assume any liability for or arising under those separate agreements. 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-17 TEMPORARY EASEMENTS AND STORAGE AND STAGING AREAS

a. Temporary Easements

The following table shows the temporary parcels and easement availability during construction provided by LACMTA to Contractor:

PARCEL NUMBER	AVAILABLE DATE
N/A	N/A

SP-18 SPECIAL COMMUNITY EVENTS

LACMTA is aware there are community events, including but not limited to the following, that will occur during the Contract term for which Contractor shall account in its schedule for performing and completing the Work. There is one event day reserved annually for CicLAvia; the date, duration and location will be provided once the information becomes available.

SP-19 TRACK ALLOCATION MEETINGS

See General Requirements 01 35 14

SP-20 COOPERATION WITH LACMTA DURING LACMTA RAIL OPERATIONS

A. Contractor Interface with Operational LACMTA Rail Segments:

1. 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 LACMTA and the traffic moving on such tracks, as well as wires, signals and other property of LACMTA, their tenants or licensees, at or in the vicinity of the Work.
2. Any proposed plan by Contractor that may cause infringement on the above clearances due to Contractor's operations shall be submitted to LACMTA's Authorized Representative in writing and such Work shall not begin until notified by LACMTA's Authorized Representative that such a plan has been approved. Contractor shall provide a minimum of thirty (30) Days for LACMTA approval prior to the scheduled date to start the Work.
3. Contractor shall give forty-eight (48) hours written notice to LACMTA before commencing any Work in connection with construction upon or over the Right-of-Way. LACMTA 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 LACMTA in relation to the proper manner of protecting the tracks, property and personnel of LACMTA and the traffic moving on such track, as well as, wires, signals and other property of LACMTA.
4. If Contractor desires to move its equipment or materials across LACMTA tracks at locations other than public crossings, it shall obtain prior permission from LACMTA. Contractor shall furnish flagmen and/or watchmen to control equipment within the Worksite.

SP-21 HAZARDOUS SUBSTANCE MANAGEMENT *

All Hazardous Substances shall be managed in accordance with applicable Laws, Government Approvals, and the approved injury and Illness Prevention Program.

A. Discovery of Hazardous Substances

1. Contractor may encounter Hazardous Substances, Asbestos, Gas Casings or USTs, lead or lead-based paint surfaces in structures, demolition materials and soils requiring hazardous waste operations as defined by CAL/OSHA. All hazardous waste operations, are excluded from the Work except those hazardous waste operations expressly identified or included in the Contract Documents to be performed by Contractor. LACMTA will furnish a specialty contractor to perform hazardous waste operations not identified in the Contract Documents to be the responsibility of the Contractor.
2. If during the course of the Work, the Contractor encounters material quantities suspected to be Hazardous Substances, the Contractor shall (a) immediately notify LACMTA telephonically or in person, to be followed within twenty-four (24) hours by notification to LACMTA in writing, and shall advise LACMTA 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.
3. Notwithstanding the provisions set forth in the Article entitled DIFFERING SITE CONDITIONS (DSC) in Contract Document GENERAL CONDITIONS, in the event of a discovery of a condition requiring hazardous waste operations, except those hazardous waste operations identified or included in the Contract Documents to be performed by Contractor, Contractor shall cease operations in the affected areas and continue Work in unaffected areas until LACMTA has remedied the hazard. Measurement of delay time, if any, will be defined in a Change, in accordance with the Article entitled CHANGES in Contract Document GENERAL CONDITIONS.

B. Hazardous Substances Brought to Site or Hazardous Waste Generated by Contractor

The Contractor shall be solely responsible for (1) compliance with all laws applicable to Hazardous Substances brought onto the Worksite and hazardous waste generated by the Contractor or any of its Subcontractors; (2) the use, containment, storage, management,

transport and disposal of all such Hazardous Substances or hazardous waste in accordance with this Contract and all applicable laws and environmental approvals, including obtaining an EPA Identification Number and signing of waste manifests; 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.

C. Removal of Stored Hazardous Substances Upon Completion or Termination

Upon Substantial Completion, or the earlier termination of this Contract for any reason, the Contractor shall coordinate removal of Hazardous Substances from the Worksite. The Contractor shall demonstrate such removal and any remediation necessary for protection of human health and the environment to the reasonable satisfaction of LACMTA, and shall provide LACMTA with copies of all records relating to such remediation and disposal.

D. 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 LACMTA or another Person designated by LACMTA.
2. Status as Generator -- The Contractor (and not LACMTA) 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.

E. Contractor Submittal of Material Safety Data Sheets

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 as defined in the Article entitled GLOSSARY OF TERMS in Contract Documents GENERAL CONDITIONS, five (5) Days before delivery of the substance, whether or not listed in Appendix A of Federal Standard No. 313B. This obligation applies to all substances delivered under the Contract that involves

possible exposure to Hazardous Substances, or items containing these substances.

F. LACMTA's Rights in Hazardous Substance Data

1. LACMTA 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 LACMTA for these same purposes.
2. LACMTA shall not be precluded from using similar or identical data acquired from other sources.
3. The data shall not be duplicated, disclosed, or released outside LACMTA, in whole or in part for any acquisition or manufacturing purpose.
4. LACMTA 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.

G. Contractor Liability

Neither the requirements of this Article, nor any act or failure to act by LACMTA, shall relieve Contractor of any responsibility or liability for the safety of the personnel and/or property of LACMTA, LACMTA's Authorized Representatives, Contractor, Contractor's Subcontractors, and other contractors at the Worksite.

H Compliance with Laws

Nothing contained in this Article shall relieve Contractor from complying with all applicable Laws (including Environmental Laws and the obtaining of licenses and permits), Government Approvals, and the Contractor's approved Injury and Illness Prevention Program, in connection with Hazardous Substances.

SP-22 AVAILABILITY OF FUNDS

- A. General Principles and Procedures. The implementation of this Contract by LACMTA is subject to its receipt of local, State, and Federal funds adequate to carry out the provisions of this Contract in full. LACMTA anticipates that sufficient funds will be made available to carry out the full scope of Work and allow LACMTA to make all payments owing to the

Contractor hereunder. However, if LACMTA determines that there will be a lack of adequate funding available for the Work, or delay in availability or receipt of such funding, LACMTA reserves the right to cancel, reduce, or phase the Work. In such event, LACMTA will notify the Contractor in writing of the date that such cancellation, reduction, or phasing is to be effective. If LACMTA cancels the Work under this Section, such cancellation shall be treated as a termination for convenience and shall be subject to the provisions of the Article entitled TERMINATION FOR CONVENIENCE in the Contract Document GENERAL CONDITIONS. If the LACMTA reduces or phases the Work to accommodate available funding, the Contractor shall, within thirty (30) days after LACMTA's notice, submit to LACMTA a written plan to reduce or phase the Work, in compliance with any direction included in LACMTA's notice. The Contractor and LACMTA agree to negotiate a reasonable plan to carry out the reduction or phasing of the Work, which plan and negotiations should address any cost and/or schedule impacts that result from the amount of available funding.

- B. Specific Conditions and Requirements. In the event LACMTA makes the determination and provides the notice described in Section A above, the following conditions and requirements shall apply:
- (1) No legal liability on the part of LACMTA for any payment may arise for performance under this Contract until funds are made available for such performance and until the Contractor receives a written notice of availability from the LACMTA Contracting Officer.
 - (2) No notice, communication, or representation in any form other than a written notice by the Contracting Officer shall affect the available funds amount allotted to this Contract. In the absence of such a written notice, the LACMTA is not obligated to make payment or reimburse the Contractor for any costs in excess of the total funds allotted by the LACMTA to this Contract, whether incurred during the course of the Contract or as a result of termination.
 - (3) The Contractor is not obligated to continue performance under this Contract (including actions under the termination clauses of this Contract) or otherwise to incur costs in excess of the available funds amount allotted to this Contract by the LACMTA, until the Contracting Officer notifies the Contractor in writing that the available funds amount allotted by the LACMTA has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the LACMTA to this Contract.
 - (4) Any suspension, delay, or interruption of the Work arising from exhaustion of available funds or the reasonable anticipated exhaustion of available funds allotted to this Contract, or from a delay on the availability of funds or receipt of funds, shall not constitute a breach of this Contract and shall not entitle the Contractor to any price adjustment under the Articles entitled

SUSPENSION or EXTENSION OF TIME in the Contract Document General Conditions, or similar clauses in this Contract that would exceed the amount of allotted funds.

- (5) An equitable adjustment in Contract Time may be made for any increase in the time required for performance of any part of the Work arising from exhaustion of available funds or the reasonable anticipation of exhaustion of funds, or from a delay in the availability or receipt of funds.

- C. Impact on Incentives and Liquidated Damages. –LACMTA and Contractor understand and agree that, in the event of any cancellation, reduction, or phasing of the Work under this Article that impacts the Substantial Completion deadline, the Liquidated Damages relating to Substantial Completion or any incentive relating to Substantial Completion shall no longer apply. However, LACMTA reserves the right to negotiate a new Substantial Completion Date to which LDs may be applied.

SP-23 BID SUBMITTALS

Upon award, the following information that is provided with Contractor’s proposal shall be considered the initial Contractor submittals for these items under this Contract, and are subject to LACMTA’s review and approval. The Contractor’s submittals due after award, shall not substantially differ from the information provided in these documents submitted by the Contractor and evaluated by LACMTA as part of the Bid Submittal.

Technical Bid Document
Key Personnel

SP-24 SAFETY’S FIRST INCENTIVE PROGRAM

This Program, as described in the Safety specification(s) as described in the Safety & Security Manual/Specification(s), will be funded under the designated item listed in the SCHEDULE OF QUANTITIES AND PRICES. The amount listed therein is a Provisional Sum as described in the Article PROVISIONAL SUMS in this Contract Document. The Total Program Amount (Provisional Sum) available to the Contractor is \$180,000. This is divided into Annual Caps according to the following table:

- First Year of Construction: \$59,400 (33% of the Provisional Sum)
- Second Year of Construction: \$59,400 (33% of the Provisional Sum)
- Third Year of Construction: \$61,200 (34% of the Provisional Sum)

- A. 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 a

copy of the Contractor's payment of the invoice and a roster of those employees who received the Award Item in question. Reimbursement requests shall be approved by the LACMTA Director of Construction Safety or his designee.

- B. Audit. -- All costs for which the Contractor seeks reimbursement shall be subject to financial audit by LACMTA.

SP-25 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-26 LACMTA FURNISHED PERMITS

- A. Furnished Permits. NOT USED See General Requirements Specification 01 71 43 – PERMITS, LICENSES AND AGREEMENTS provides listing.
- B. Nighttime and Sunday Construction.

LACMTA obtained a variance to §41.40 of the Los Angeles Municipal Code from the Board of Police Commissioners for night-time and Sunday construction under the Contract. The variance was in effect from July 2, 2012 through to December 2, 2012. The Contractor may schedule and perform night-time and Sunday work within the guidelines and under the requirements of this variance. If contractor elects to conduct work outside of normal work hours, the Contractor is responsible to apply for; and renew the noise variance every six (6) months from the date of approval of the noise variance. A copy of the variance is available upon request.

SP-27 PROVISIONAL SUMS

A Provisional Sum is an amount established by LACMTA for certain items identified in the SCHEDULE OF QUANTITIES AND PRICES, which are subject to the following terms ("Provisional Sum".)

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 LACMTA'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 LACMTA, 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 Contract Time.

B. Authorization and Notifications

LACMTA 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). LACMTA's, at its discretion, will limit T&M authorizations to the singular efforts necessary to define the work sufficiently to issue a lump sum authorization. In the event the written authorization identifies a Not-to-Exceed (NTE) amount, the Contractor shall notify LACMTA 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. LACMTA is not obligated to compensate 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, unless and until LACMTA 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 LACMTA in writing.
3. Under no circumstances shall LACMTA be obligated to compensate Contractor for any work performed by Contractor prior to receiving from LACMTA'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 LACMTA 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. LACMTA 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 LACMTA 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 LACMTA representative and submitted/transmitted to LACMTA within 24 hours and with Contractors Request for Payment. The time sheets must contain a clear narrative as to the work performed. Any cost associated with preparing and submitting such records shall be included in the 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
3. All T&M records (time sheets, etc.) shall be certified by the signature of the Contractor's representative.
4. Records submitted that are not properly signed and certified shall not be eligible for payment.

D. Audit

Contractor's and its subcontractor's records pertaining to any Provisional Sum work performed on a T&M basis shall be subject to audit in accordance with the audit provisions of this contract.

SP-28 PUBLIC PARTICIPATION AND PUBLIC INFORMATION SUPPORT

All community outreach and public participation activities will be developed and implemented by LACMTA 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 LACMTA 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 LACMTA, Contractor may also be required to attend public meetings and other stakeholder meetings held in connection with the public participation program.

SP-29 LACMTA MARKETING GUIDELINES

LACMTA has strict design and nomenclature guidelines that are applicable to all communications materials for LACMTA 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 coordinate with LACMTA, reviewed and approved by LACMTA's Chief Communications Officer or designee prior to distribution.

SP-30 PARTNERING

A. Intent of Partnering Process

LACMTA encourages partnering among LACMTA, the Contractor, its Subcontractors, and other Third Party stakeholders ("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 participants, as discussed and agreed upon during the partnering sessions.

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 LACMTA.

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 LACMTA and the Contractor.
3. Partnering Costs. -- LACMTA 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, LACMTA 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 LACMTA 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 are 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 LACMTA will mutually select a third party facilitator to conduct the team building workshop(s) for Contractor and LACMTA 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 IPMO offices. The Contractor's and the Major Subcontractor's key staff as well as LACMTA's key staff responsible for the management and administration of the Contract shall attend the workshop. Caltrans, City of LA, and other major 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 LACMTA. 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, LACMTA, other major 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.

SP-31 ADDITIONAL INDEMNIFIED PARTIES

Contractor agrees that the following Entities shall be considered Indemnified Parties for the sole purpose set forth in the General Conditions Article entitled INDEMNIFICATION:

- The City of Los Angeles
- County of Los Angeles
- TFIA Lender
- Hatch Mott MacDonald
- Stantec
- City of Inglewood

SP-32 PROJECT SCHEDULE

A. Preparation and Submittal

Contractor shall prepare and submit to LACMTA a detailed Critical Path Schedule, along with a general narrative of the Work, for Acceptance by LACMTA's Authorized Representative, and shall prepare and submit all updates to the Critical Path Schedule, 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 design and construction and shall keep LACMTA informed of any Delays. The Schedule shall include projected delivery dates for all required Contract deliverables and dates for all required LACMTA inspections and Approvals.

C. Subcontractor Schedules and Schedule Commitments

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

D. Use of Critical Path Schedule

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 and shall include completion of all Work by the Scheduled Completion Date.

E. Coordination with Schedule of Values

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

F. Float

All Float in the Critical Path Schedule and the Impacted Schedule, is not for the exclusive use or benefit of either LACMTA or Contractor, but is an expiring resource available to both parties on a nondiscriminatory basis.

G. Coordination with Other Contractors and LACMTA Operations

The Contractor shall schedule performance of its Work in such a manner as to minimize interference with other Contractors and with LACMTA's Operations.

H. Approved Baseline Schedule

Contractor recognizes and agrees that without first having an Approved baseline Schedule, Contractor shall not be entitled, nor will LACMTA be obligated to allow any extension of time from whatever cause.

SP-33 ADMINISTRATIVE CODES AND REGULATIONS *

A. LACMTA Administrative Code

Contractor warrants and represents that it has read and understands Title 4, Procurement, and Title 5, Ethics, of the [LACMTA 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 LACMTA. 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 MTA; and
 - c) Chapter 5-35, MTA Conflict of Interest Code, and
2. Not induce, attempt to induce, or solicit:
 - a) Board members to violate Chapter 5-10;
 - b) LACMTA employees to violate Chapter 5-15;
 - c) LACMTA Financial Employees to violate Chapter 5-30: or
 - d) Either Board members, LACMTA employees or LACMTA Financial Employees to violate any other provision of the Administrative Code.

B. 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 LACMTA 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 LACMTA;

3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of LACMTA 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 LACMTA.

C. Campaign Contributions

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of LACMTA'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.

D. Environmental Management System (EMS) Policy

Contractor represents that during the performance of the Contract it will assist LACMTA in achieving the principles of LACMTA's EMS Policy, available at <http://www.metro.net/aboutus/sustainability/images/Environmental.pdf>

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.

E. Alcohol and Drug-Free Workplace

This Contract is subject to LACMTA's Alcohol and Drug-Free Workplace Requirements set forth in the LACMTA ALCOHOL AND DRUG-FREE WORKPLACE MANUAL.

SP-34 DISCRIMINATION *

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.

SP-35 AUDIT AND ACCESS TO RECORDS

A. Applicability

This Article applies to all federally funded contracts.

- B.** Contractor agrees to provide LACMTA, 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 conducting audits, examinations, preparing 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 LACMTA, 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 entities 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 LACMTA, 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.

SP-36 FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES*

A. Applicability

This Article applies to all federally funded contracts.

- B.** This Contract includes, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA

Circular 4220.1F, dated November 1, 2008 (including any changes, revisions or successor circulars) is automatically hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any LACMTA requests which would cause LACMTA to be in violation of the FTA terms and conditions.

This Contract is subject to a financial assistance agreement between LACMTA and the Federal Transit Administration of the US Department of Transportation and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to this Contract and are incorporated by reference as if fully set forth herein.

- C. Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between LACMTA and FTA, as they may be amended or promulgated from time to time during the term of this Contract collectively "Federal Requirements". These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

SP-37 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 U.S.C § 6201, et seq.

SP-38 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

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, 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), 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.
2. 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.
3. 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.

SP-39 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 LACMTA, 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.

SP-40 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 all actions pertaining to this Contract. Upon execution of this Contract, Contractor certifies and 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.

SP-41 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 2 CFR Part 1200 and 2 CFR Part 180. As such, Contractor shall verify that neither the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified, as described in 2 CFR 180.940 and 2 CFR 180.935, respectively.

Contractor shall comply with 2 CFR Part 1200 and 2 CFR Part 180 and shall include the requirement to comply with 2 CFR Part 1200 and 2 CFR Part 180, 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 2 CFR Part 1200 and 2 CFR Part 180 throughout the period of this Contract.

This certification is a material representation of fact relied upon by LACMTA. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to LACMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

SP-42 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.

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 LACMTA. LACMTA 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 LACMTA. LACMTA will, in turn, report each violation as required to FTA/FHWA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

SP-43 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 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, the appropriate EPA Regional Office and all other agencies having jurisdiction.

SP-44 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, 45 CFR 2543.87, require 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 LACMTA.

SP-45 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.

LACMTA 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.

SP-46 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, in compliance with 46 CFR 381.7, 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 loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the LACMTA (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.

SP-47 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 as defined in the Fly America Act 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.

SP-48 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 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 requirements set forth in 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 requirements set forth in 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 this Section.
- 3. Withholding for unpaid wages and liquidated damages** – LACMTA 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 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 requirements 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 LACMTA 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.

SP-49 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.

SP-50 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 disabilities;
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 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 Persons with Disabilities," 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.

SP-51 ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

B. FTA Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations Regulations

Contractor and its Subcontractors shall comply with the FTA anti-drug and alcohol misuse regulations (49 CFR Part 655) and the U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) to the full extent that they are, by their terms, applicable to Contractor and its Subcontractors. The regulations apply to all "contractors" that have "covered employees" that perform "safety sensitive functions" as those terms are defined in the regulations.

C. Certificate of Compliance

The CERTIFICATE OF COMPLIANCE WITH 49 CFR PARTS 655, PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT, submitted by Contractor prior to award, is incorporated as part of the Contract Documents.

D. Drug and Alcohol Testing Program

In the event that any part of the Work under this Contract falls within the scope of 49 CFR Part 655, Contractor, and its Subcontractors (as applicable), shall implement all programs required under Part 655, including without limitation, a Drug and Alcohol Testing Program and an

anti-drug use and alcohol misuse program, in full compliance with the regulations.

E. Alcohol and Drug Free Workplace Program

In addition to the above, for Work performed on LACMTA property, Contractor shall provide an Alcohol and Drug-free Workplace Program in accordance with FTA requirements found at <http://transit-safety.volpe.dot.gov/Safety/DATesting.asp>.

SP-52 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS * - NOT USED

SP-53 CHARTER SERVICE OPERATIONS - NOT USED

SP-54 SCHOOL BUS REQUIREMENTS – NOT USED

SP-55 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, LACMTA or Contractor may not publish or reproduce Subject Data in whole or in part, or in any manner or form, nor may LACMTA 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 LACMTA 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, LACMTA 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 LACMTA'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, LACMTA 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 LACMTA 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 LACMTA 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 LACMTA 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 LACMTA 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, LACMTA 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), LACMTA 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.

SP-56 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.

SP-57 PARENT GUARANTY

- A. LACMTA may require the Contractor (if a joint venture, each member of the joint venture) to provide for the execution of a Parent Guaranty by a Guarantor of the Contractor, in the form set forth in Appendix F hereto, if LACMTA determines, in its discretion, that the execution of such a Parent Guaranty is necessary to adequately protect the interests of LACMTA and the Project.
- B. Guarantor is the entity, normally the parent company of the Contractor or joint venture member, guaranteeing performance of the Contract in accordance with its Parent Guaranty.

SP - 58 DISPUTES REVIEW BOARD

The provisions of this Article shall apply to all Disputes arising out of the Work, subject to certain exclusions as provided herein, that cannot be resolved through the procedures set forth in the Article entitled DISPUTES in Contract Document GENERAL CONDITIONS or that the Parties elect to resolve through the procedures herein. If the Parties agree to use a DRB process to resolve a Dispute; the results of the DRB shall not be binding on ~~w~~either LACMTA or the Contractor unless the Parties have separately and mutually agreed in writing, prior to DRB, that the DBRB will be binding, or thereafter agree by a separate settlement or other agreement that it will be binding. Nothing in this Article shall prevent the parties from agreeing, at any time, to submit a Dispute to mediation or arbitration as an alternative to the procedures provided herein, subject to the requirements of California Public Contract Code.

A. Introduction

The form of the DRB Agreement which will formalize the creation of the DRB is attached hereto as Appendix G, the executed DRB Agreement shall not substantially differ.

The amounts on the Schedule of Quantities ~~tiese~~ and Prices ~~rep~~resents MTA's monies to reimburse the Contractor for MTA's portion (50%) of the DRB invoices. All unused amounts of these line items belong to the MTA.

SP - 59 LIMITATION OF LIABILITY ARISING FROM CONTRACTOR'S PERFORMANCE (NOT USED)

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 Milestones.

Milestone	Description	Schedule	Liquidated Damages Amount per Calendar Day *
No. 1	Complete All Division 16: Southwestern Yard Design (excludes design support during construction).	485 calendar days after the commencement date in the Notice to Proceed (approximately 16 months).	\$5,600
No. 2	Complete the Main Shop Communication Room designated for installation of the SONET FO CTS Node (ADM) and FO conduits as described within Doc 2-1, Section 5.13.6.5.	166 calendar days after the last identified right of way site access date to all parcels (approximately 5.5 months). The parcel availability is identified in Special Provisions, Appendix B, Right of Way Availability Schedule.	\$3,700
No. 3	Substantial Completion of Main Shop.	875 calendar days after the right of way site access to parcels SW-0101, SW-0102, SW-0103 and Bellanca Ave (approximately 28.8 months). The parcel availability is identified in Special Provisions, Appendix B, Right of Way Availability Schedule.	\$10,800
No. 4	Substantial Completion of Division 16; Southwestern Yard	455 calendar days after the last identified right of way site access date to all parcels. (approximately 15 months). The parcel availability is identified in Special Provisions, Appendix B, Right of Way Availability Schedule.	\$13,200

* The maximum amount of liquidated damages for which the Contractor shall be liable is \$13,200 per calendar day for failure to meet any or all Milestones 1, 2, 3 and 4.

Milestone	Description (Design-Build Requirements, Volume 2 of 3, Document 2-1, Section 3.3 Bid Options)	Schedule	Liquidated Damages Amount per Calendar Day *
Option 3.3.1	Optional Test Track.	Complete same date as required under Milestone No. 4	No additional Liquidated Damages assigned.
Option 3.3.2	Optional Wheel Truing Machine.	Complete same date as Milestone No. 3	No additional Liquidated Damages assigned.
Option 3.3.3	Optional Cleaning Platform Canopy.	Complete same date as Milestone No. 4	No additional Liquidated Damages assigned.
Option 3.3.4	Optional Cleaning Platform – Full Length.	Complete same date as Milestone No. 4	No additional Liquidated Damages assigned.
Option 3.3.5	Optional Full Build-Out of Storage Tracks.	Complete same date as Milestone No. 4	No additional Liquidated Damages assigned.
Option 3.3.6	Deductive Option, Paint and Body Shop.	N/A	N/A

* The maximum amount of liquidated damages for which the Contractor shall be liable is \$13,200 per calendar day for failure to meet any or all Milestones 1, 2, 3 and 4.

SPECIAL PROVISIONS

APPENDIX B – RIGHT OF WAY (ROW) AVAILABILITY SCHEDULE

SITE	ACCESS DATE
SW-0001	08/02/2017
SW-0002	08/02/2017
SW-0003	08/02/2017
SW-0004	08/02/2017
SW-0101	12/07/2015
SW-0102	12/07/2015
SW-0103	12/07/2015
SW-0104	08/02/2017
Bellanca Ave*	12/07/2015

* Note: Temporary roadway shall be complete and handed over to the mainline D-B prior to the closure or taking of Bellanca Avenue. Reference DESIGN-BUILD REQUIREMENTS, VOLUME 2 OF 3, Document 2-1, Appendix I Exhibit: Southwestern Yard Site Property Phasing.

SPECIAL PROVISIONS
APPENDIX C - LACMTA-FURNISHED GOODS

SEE STATEMENT OF WORK

APPENDIX D - PERFORMANCE BOND

Contract No. C0991 Division 16: Southwestern Yard

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("LACMTA") has awarded to _____ ("Principal"), Contract No.C0991, Southwestern Yard Project Design-Build, and

WHEREAS Principal is required under the terms of the Contract to furnish a Bond for the faithful performance of the Contract;

NOW, THEREFORE, we _____, as Principal, and _____, ("Surety"), as Surety, are held and firmly bound unto LACMTA in the sum of _____ Dollars (\$ _____), 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 shall pay reasonable attorneys' fees to LACMTA in an amount to be fixed by the court.

The condition of this obligation is such that, if the hereby-bonded Principal or its heirs, executors, administrators, successors, assigns, or Subcontractors shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the Contract and any alteration thereof, made as therein provided, all within the time and in the manner therein designated and in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Further, Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of the Work to be performed there under, shall in any way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or modification of the contract documents or of the Work to be performed there under.

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the _____ day of _____ 201__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: _____
(Principal)

By: _____
(Surety)

By: _____

APPENDIX E - PAYMENT (MATERIAL AND LABOR) BOND

**Contract No. C0991
Division 16: Southwestern Yard**

PAYMENT (MATERIAL AND LABOR) BOND

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("LACMTA") has awarded to _____ ("Principal"), Contract No. C0991, Southwestern Yard Project Design-Build, and

WHEREAS Principal is required under the terms of the Contract to furnish a Bond to secure the payment of claims of laborers, mechanics, material men, and other persons as provided by law;

NOW, THEREFORE, in accordance with California Civil Code 3247 et. seq., we _____, as Principal, and _____, ("Surety"), as Surety, are held and firmly bound unto LACMTA in the sum of _____ Dollars (\$ _____), 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 LACMTA and the plaintiff(s) in an amount to be fixed by the court.

The condition of this obligation is such that, if the hereby-bonded Principal, or its heirs, executors, administrators, successors, or assigns, or Subcontractors shall fail to pay any of the persons named in Civil Code § 3181 or to pay 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.

This Bond shall inure to the benefit of any of the persons named in Civil Code § 3181 as to give a right of action to such persons or their heirs, executor's, administrators, successors, or assigns in any suit brought upon this Bond.

Further, Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of the Work to be performed there under, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such change, extension of time, alteration, or modification of the contract documents, or of the Work to be performed there under.

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the _____ day of _____, 201__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: _____
(Principal)

By: _____
(Surety)

By: _____

APPENDIX F – PARENT GUARANTY

This **GUARANTY**, dated _____, 201__ (Parent Guaranty) is made by [NAME OF PARENT CORPORATION], a [NAME OF STATE] corporation, in favor of the Los Angeles County Metropolitan Transportation Authority (LACMTA) for the benefit of [NAME OF JV MEMBER](JV Member or Contractor), a California corporation.

WITNESSETH

WHEREAS, [NAME OF JV MEMBER], a subsidiary of [NAME OF PARENT], as a member of [NAME OF JOINT VENTURE] (the JV), participated in the development of a proposal submitted by the JV to LACMTA, as Owner, for Contract No. C0991 (Contract), and if the JV is the successful proposer, it intends to enter into the Contract to design and build the Southwestern Yard Project (the Project); and

WHEREAS, [NAME OF PARENT] will derive substantial direct and indirect benefit from the JV's execution and performance of the Contract; and

WHEREAS, LACMTA has requested this Parent Guaranty in connection with its evaluation of JV Member's financial standing and qualifications, as a member of the JV, to successfully complete the Project;

NOW, THEREFORE, in order to induce LACMTA to evaluate the financial standing of the JV Member and its qualifications to successfully undertake and complete the obligations and transactions contemplated under the Contract and to enter into the Contract, and to guaranty those obligations and transactions, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, [NAME OF PARENT] hereby agrees as follows:

1. **Guaranty to LACMTA.** [NAME OF PARENT] hereby guarantees to LACMTA, and its successors and assigns, the full and prompt payment and performance by the JV Member of all its covenants, agreements and other obligations under the Contract, and under all documents and instruments contemplated to be executed by Contractor pursuant to the Contract (all such covenants, agreements and other obligations arising out of or under the Contract or such other documents or instruments are hereinafter collectively referred to as the "**Guaranteed Obligations**"). [NAME OF PARENT]'s OBLIGATIONS UNDER THIS GUARANTY ARE ABSOLUTE, UNCONDITIONAL AND IRREVOCABLE AND WILL BE DEEMED TO HAVE BEGUN ON THE DATE OF EXECUTION OF THE CONTRACT. This Guaranty is a guarantee of payment and of performance and not merely of collection. If Contractor defaults in the performance of any of the Guaranteed Obligations, or any other event of default set forth in the Contract occurs, and LACMTA gives [NAME OF PARENT] and the JV written notice thereof, [NAME OF PARENT] shall, within thirty (30) calendar days after receipt of such notice, pay (including any interest accrued thereon in accordance with the terms of the Contract from the date due by the JV) or perform (or cause another qualified entity selected by [NAME OF PARENT], and approved by LACMTA, to perform) the unperformed Guaranteed Obligations or otherwise cure the default in accordance with the terms of the Contract.

Without limiting the generality of the foregoing, [NAME OF PARENT]'s obligations hereunder will not be released, discharged, or otherwise affected by (a) any authorized or permissible change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy, or similar proceeding affecting the Contractor, [NAME OF PARENT], or their

respective assets, or (b) the existence of any claim or set-off which the Contractor has or [NAME OF PARENT] may have against LACMTA, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by [NAME OF PARENT] of any claim or prevent the assertion of any claim by separate suit.

2. Independent Obligation. [NAME OF PARENT] agrees that the Guaranteed Obligations are independent of the obligations of the JV Member and the JV, and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against [NAME OF PARENT] as Guarantor whether or not the JV Member or the JV are joined therein. LACMTA may maintain successive actions for other defaults of [NAME OF PARENT] as Guarantor. [NAME OF PARENT] further agrees that LACMTA may enforce this Parent Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the JV or the JV Member. LACMTA's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

3. Cumulative Rights. All rights, powers, and remedies of LACMTA hereunder will be in addition to and not in lieu of all other rights, powers, and remedies given to LACMTA, whether at law, in equity or otherwise.

4. Exclusion of Consequential Damages. [NAME OF PARENT] shall be excluded from responsibility for consequential damages in the same manner and to the same extent as the JV and the JV Member are excluded from such damages under the Contract; provided that the exceptions to the exclusion of consequential damages that are applicable to the JV and the JV Member under the Contract shall be equally applicable to [NAME OF PARENT] as Guarantor.

5. Rights of Third Parties. Except for rights and benefits conferred by the Contract upon LACMTA and the Indemnified Parties (as defined therein), this Parent Guaranty shall not be construed to create any right or to confer any benefit on any persons other than LACMTA and the JV Member.

6. Representations and Warranties. [NAME OF PARENT] hereby represents and warrants that:

(a) It is a corporation, duly formed, validly existing, and in good standing under the laws of [STATE OF INCORPORATION] and has full power and authority to own its property and to carry on its business as now conducted.

(b) This Parent Guaranty is made in furtherance of the purposes for which [NAME OF PARENT] has been organized. [NAME OF PARENT] has full legal right, power and authority to execute this Parent Guaranty and to carry out its obligations hereunder, and this Parent Guaranty has been duly authorized by all requisite corporate action on its part. This Parent Guaranty has been duly authorized and executed by [NAME OF PARENT]. This Guaranty constitutes a valid and legally binding obligation of [NAME OF PARENT], enforceable against it in accordance with its terms. No consent, authorization, order or approval of or filing or registration with of any person or entity, including any governmental entity, is required in connection with the execution and performance of this Parent Guaranty.

(c) [NAME OF PARENT]'s execution and performance of this Parent Guaranty and the transactions contemplated hereby do not (1) constitute a breach of any term or provision of, or a default under (A) any contract or agreement to which it or any of its affiliates is a party or by which it or any of its affiliates or its or their property is bound, (B) its organizational documents, or (C) any laws, regulation, or judicial orders having applicability to it, which breach would have a material adverse effect on its ability to perform its obligations hereunder, or (2) result in the creation of any lien, charge, claim, or other encumbrance on its property or the property of its subsidiaries.

(d) There is no action, suit or similar proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of [NAME OF PARENT]'s knowledge, threatened against [NAME OF PARENT] wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Parent Guaranty or any other agreement or instrument entered into by [NAME OF PARENT] in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by [NAME OF PARENT] of its obligations hereunder.

7. Continuing Guaranty.

(a) The obligations of [NAME OF PARENT] under this Parent Guaranty are absolute, present, irrevocable and unconditional and shall remain in full force and effect until Contractor shall have fully performed all of its obligations under the Contract in accordance with its respective terms and shall not be released or discharged by: (1) any failure, omission or delay by LACMTA in the exercise of any right, power or remedy conferred on it with respect to this Parent Guaranty, or any exercise by LACMTA of any right, power or remedy conferred on it with respect to this Guaranty, (2) any assignment of the Contract by the JV or LACMTA or any change in the ownership, direct or indirect, of JV Member; (3) any permitted assignment for the purpose of creating a security interest in all or any part of the respective interests of the JV or LACMTA in the Contract or in the Project and any consent to such assignment executed by Contractor or [NAME OF PARENT]; (4) unenforceability, for any reason, of the Contract (except that [NAME OF PARENT] shall not be obligated to perform any work or make any payment to the extent that any applicable law, order or regulation prohibits the performance or payment thereof); (5) the insolvency, bankruptcy, liquidation or dissolution of the JV Member, or (6) any other similar circumstance which might constitute a legal or equitable discharge or defense under applicable principles of suretyship law.

(b) Notwithstanding anything in this Parent Guaranty to the contrary, if any of the Guaranteed Obligations are waived, amended or modified by [NAME OF PARENT] and LACMTA, then [NAME OF PARENT] shall guaranty such amended or modified Guaranteed Obligations as so amended or modified. In the event of any enforcement of this Parent Guaranty, [NAME OF PARENT] and LACMTA shall be bound by such waived, amended or modified Guaranteed Obligations.

(c) Notwithstanding the other provisions of this Section, nothing in this Section shall limit the rights expressly given to [NAME OF PARENT] as Guarantor under Section 1 hereof.

8. Waivers by [NAME OF PARENT].

(a) The obligations of [NAME OF PARENT] hereunder shall not be subject to any counterclaim, set off, deduction or defense based on any claim that [NAME OF PARENT]

may have against the JV Member, the JV, LACMTA, or any other person, provided however, that [NAME OF PARENT] expressly reserves the right to pursue any claims against any of the foregoing in a separate proceeding.

(b) [NAME OF PARENT] hereby unconditionally and irrevocably waives as a condition to the performance or payment by [NAME OF PARENT] of the Guaranteed Obligations (1) all notices which may be required by statute or otherwise, including notices of acceptance, default, presentment or demand, (2) all suretyship defense of every nature available under the laws of the State of California and the law of any other state, and (3) any defense based on an election of remedies by LACMTA. [NAME OF PARENT] also waives any right to require LACMTA to first proceed against any other guarantor or person liable on the Guaranteed Obligations or exhaust any other remedies available.

(c) Notwithstanding anything in this Parent Guaranty to the contrary, this Guaranty shall not be construed as (1) expanding any agreement on the part of the JV under the Contract or any consent to assignment of the Contract executed by the JV, or (2) imposing on [NAME OF PARENT] any obligation to perform or observe any agreement on the part of JV contained in the Contract that the JV is not then obligated to perform unless the JV is not then obligated to perform or observe such agreement due to its bankruptcy, insolvency or dissolution.

(d) Notwithstanding the other provisions of this Section, nothing in this Section shall limit the rights expressly given to [NAME OF PARENT] as Guarantor under Section 1 hereof.

9. Reinstatement of Obligations. If LACMTA is required to refund (as a result of Contractor's bankruptcy or insolvency) any amount previously paid in connection with a Guaranteed Obligation, the obligation of [NAME OF PARENT] under this Parent Guaranty with respect to such amount shall be deemed to be reinstated and shall constitute a Guaranteed Obligation.

10. Remedies. This Guaranty may be enforced as to one or more breaches either separately or cumulatively. No failure or delay on the part of LACMTA to exercise any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the exercise of any other right. The remedies and rights provided herein to LACMTA are in addition to any remedies LACMTA may otherwise have under law or at equity. This Guaranty constitutes the entire agreement between LACMTA and [NAME OF PARENT] concerning the subject matter hereof.

11. Limitation of Liability. [NAME OF PARENT]'s liability under this Parent Guaranty shall not exceed the limitation of liability applicable to the JV under the Contract; provided that the exclusions from such limitation that are applicable to the JV under the Contract shall be equally applicable to [NAME OF PARENT] as Guarantor.

12. Defenses. Notwithstanding anything to the contrary set forth in this Parent Guaranty and except for defenses arising from the bankruptcy, insolvency or dissolution of the JV, all defenses, claims, set-offs, deductions, limitations on liability, rights to receive notice, opportunities to cure defaults and other rights available to JV under the Contract shall be available to [NAME OF PARENT] (collectively "Defenses"). However, in determining the extent to which [NAME OF PARENT] must perform the obligations of JV or pursuant to this Parent Guaranty (a) in no event shall [NAME OF PARENT] be permitted to assert any Defense greater than those provided the JV under the Contract and (b) to the extent that it is determined by a

court of competent jurisdiction that any Defense is unavailable to the JV, has been waived by it or is limited in its scope or nature, [NAME OF PARENT] shall be prohibited from raising such Defense to the extent same is so determined by such court to be unavailable, waived or limited.

13. Governing Law. THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN THE INTERPRETATION, CONSTRUCTION, ENFORCEABILITY, LEGALITY AND VALIDITY OF THIS GUARANTY, AND ALL DISPUTES ARISING HEREUNDER OR IN ANY MANNER RELATED HERETO.

14. Consent to Jurisdiction. [NAME OF PARENT] AND LACMTA AGREE THAT ANY ACTION OR PROCEEDING TO RESOLVE A DISPUTE BETWEEN [NAME OF PARENT] AND LACMTA CONCERNING THE INTERPRETATION, APPLICATION OR ENFORCEMENT OF THE TERMS OF THIS GUARANTY MAY ONLY BE BROUGHT IN THE COURTS OF CALIFORNIA. [NAME OF PARENT] AND LACMTA EACH ACCEPT FOR THEMSELVES AND IN CONNECTION WITH THEIR RESPECTIVE PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS AND WAIVE ANY DEFENSE OF FORUM NON CONVENIENS. IF NOT A RESIDENT OF THE STATE OF CALIFORNIA, [NAME OF PARENT] MUST APPOINT AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN THE STATE OF CALIFORNIA.

15. Attorneys' Fees. [NAME OF PARENT] agrees to pay to LACMTA without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration, and bankruptcy, and including appeals) incurred by LACMTA in enforcing, collecting, or compromising any Guaranteed Obligation or enforcing or collecting this Parent Guaranty against [NAME OF PARENT] or in attempting to do any or all of the foregoing.

16. Notices. All notices and other communications required or permitted to be given hereunder (a) shall be in writing; (b) shall be delivered in person, by express courier, or by facsimile transmission; (c) shall be deemed delivered (1) in the case of delivery in person or by courier, when actually received by the recipient party and (2) by facsimile transmission when such transmission is sent to the proper party and is completed; and (d) shall be delivered (1) to LACMTA at its address specified below, (2) to [NAME OF PARENT] at its address specified below, and (3) to the JV Member at its address specified below, or at such other addresses as either such party shall have designated to the other party on ten (10) days prior notice.

To LACMTA: Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012-2952

To [NAME OF PARENT]
[ADDRESS]

To JV Member: [NAME OF JV MEMBER]
[ADDRESS]

17. Term of the Guaranty. This Parent Guaranty shall take effect upon date of the execution of the Contract by LACMTA and the JV and shall remain in full force and effect from that date until all of the obligations of the JV under the Contract have been fully performed, or are discharged, released or otherwise excused; provided, that in the case of a discharge resulting from the bankruptcy, insolvency or dissolution of the JV, this Guaranty shall continue and remain in full force and effect. If no Contract is entered into by LACMTA and the JV, this

Guaranty will be null and void, of no force or effect and shall not confer any rights on LACMTA or impose any obligations upon [NAME OF PARENT].

18. Amendments. Neither this Parent Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally.

19. Severability. If any provision of this Parent Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties, and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

Executed as of the date first above written.

[NAME OF PARENT].

BY:

Chief Financial Officer

Formatted: Normal

APPENDIX G -DISPUTES REVIEW BOARD THREE PARTY AGREEMENT
LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
CONTRACT NO. XXXX
DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE PARTY AGREEMENT is made and entered into this day of [insert month], 20 , between:

The Los Angeles County Metropolitan Transportation Authority (LACMTA), hereinafter called the LACMTA, and XXXX, hereinafter called the Design-Builder, and the Disputes Review Board, hereinafter called the DRB, consisting of three members, XXX, XXX and XXX.

RECITALS

WHEREAS, the LACMTA is now engaged in the construction of the XXXXX Project (Project);
WHEREAS, General Condition 35 of Contract CXXX XXXX Design Build (Contract) for the Project permits the establishment and operation of a DRB to assist in resolving Disputes; and
WHEREAS, LACMTA and the Design-Builder have agreed to establish a DRB to assist in resolving the certain Disputes provided for herein;

WHEREAS, the DRB is composed of three members, one selected by the LACMTA, one selected by the Design-Builder, and the third member selected by the other two members, as Chairperson;

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, or attached hereto and incorporated and made a part herein, the Parties hereby agree as follows:

1. PURPOSE OF THE DRB

The purpose of the DRB is to fairly and impartially hear and consider Disputes that are placed before it within the terms of this Agreement, and to provide written recommendations to both the LACMTA and the Design-Builder for settlement of Disputes. The members of the DRB shall perform services in accordance with the scope of services describe below:

2. RESPONSIBILITIES OF THE DRB

A. Scope of the DRB's Jurisdiction

The DRB shall hear, consider and make recommendations concerning a Dispute upon the LACMTA's and Design-Builder's submission of a mutual written request defining the issues for the DRB's consideration.

B. Exclusions from the DRB's Responsibilities

Notwithstanding the foregoing, the DRB shall not hear, consider or make recommendations with respect to the following types of Disputes:

1. Interest (monetary) on Progress Payments or Final Payment.
2. Wage and hour Disputes.
3. Claims under the jurisdiction of the:
 - a. LACMTA's Controlled Insurance Program (OCIP) or any insurance maintained by LACMTA; or
 - B. Design-Builder's Contractor Controlled Insurance Program (CCIP);
4. Delegated signature authority of LACMTA'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 the LACMTA 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 LACMTA to issue unilateral Changes (i.e., Change Orders) or written authorizations to utilize Provisional Sums set forth in the Contract.

10. Issues related to subcontractor Substitutions governed by California Public Contracts Code §4100 et seq.

11. The right of LACMTA to assess or the stated dollar value of Liquidated Damages as established in the Article entitled LIQUIDATED DAMAGES in Contract Document SPECIAL PROVISIONS.

12. Disputes involving Claims described in subsection 2.C. below.

C. Compliance with and Exhaustion of Claim Procedures

1. The DRB shall not hear, consider or make recommendations regarding any Dispute unless and until the Design-Builder has fully complied with section GC-34 of the General Conditions (Claims), and LACMTA has expressly rejected a Claim in writing. The Design-Builder shall, within thirty (30) calendar days of receipt of LACMTA's written decision of rejection, engage LACMTA in making a mutual written request to the DRB; failure to do so shall constitute acceptance of, and a waiver of all its rights to challenge the LACMTA decision.

2. If any Dispute is based in whole or in part on a Subcontractor Claim, the DRB shall not hear, consider or make recommendations regarding the Dispute unless and until the Design-Builder has fully complied with section GC-34.2.3 of the General Conditions and provided a certification that it has reviewed all items and issues that constitute the basis of the Subcontractor's Claim, determined that the Subcontractor's position on each issue is justified, and that Design-Builder is justified in making the requested relief or contract adjustment. It is expressly understood that a Subcontractor is not a party to the contract or this agreement and in the event any Claim or Dispute arises under a Subcontract, the Subcontractor shall look only to the Design-Builder for any payment, redress, relief, or other satisfaction.

3. Any Dispute submitted for review by the DRB shall be submitted without any reservation of rights for money or time under a separate Dispute or other remedial action under the terms of the Contract.

D. Site Visits

The DRB members may visit the Worksite during the scheduled meetings described in this Agreement to keep abreast of design and construction activities and to develop a familiarity with the work in progress. The exact time and duration of these visits shall be mutually agreed upon between the DRB, the LACMTA and the Design-Builder. In the case of Disputes based on alleged differing site conditions or construction problems, it may be advantageous but not absolutely necessary for the DRB to view such conditions. If viewing by the DRB would negatively impact the Project Schedule, photographs, videos and descriptions of these conditions provided by both parties will suffice.

3. SELECTION AND QUALIFICATIONS OF THE DRB MEMBERS

A. Selection of the DRB

The DRB shall consist of one (1) member selected by LACMTA; one (1) member selected by the Contractor; and a third member selected by the first two (2) members, subject to the approval of both LACMTA and Design-Builder. The third member shall be the chairperson of the DRB. The goal in selecting the chairperson is to have someone with the proven ability to lead all DRB activities and complement the experience of the first two, which will facilitate the DRB's operations.

B. Qualifications of DRB Members

All the DRB members shall be experienced in the type of work involved in the Contract. DRB Members should have at least fifteen years of hands-on management level

experience on major transportation, rail transit or public works projects valued at \$100 million or more, including experience in the design-build method of project delivery.

C. No Conflicts of Interest

DRB members shall be free from any conflict of interest, and shall avoid even the appearance of any such conflict.

1. No member shall have a financial interest in the Contract or in the outcome of any Dispute decided hereunder, except for the right to receive payment for serving on the DRB.
2. No member shall currently be or have been, an officer, director or employee of, or have any past, current, or future financial ties to: (a) the Design-Builder, any Affiliate or any Subcontractor or affiliate of a Subcontractor, (b) the LACMTA or any agency represented on the LACMTA Board, or (c) any firm under contract to the Design-Builder, any Affiliate, any Subcontractor or affiliate of a Subcontractor, the LACMTA or any agency represented on the LACMTA Board; provided that eligibility shall not be affected by past fee-based consulting services on other projects which are disclosed to, and permission to serve obtained from both LACMTA and Design-Builder.
3. No member shall have had substantial prior involvement in the Project or a close personal or professional relationship with LACMTA, Design-Builder, Affiliate, or subcontractor of a nature which could compromise his or her ability, or that could give rise to the perception of bias, to impartially resolve Disputes.
4. No member shall accept employment with LACMTA, any agency represented on the LACMTA Board, Design-Builder, any Affiliate or any Subcontractor or affiliate of a Subcontractor during the term hereof, and for so long thereafter as any obligations remain outstanding under the Contract Documents, except as a member of other DRBs.
5. No member shall discuss employment with MTA, any agency represented on the MTA Board, Design-Builder, any Affiliate or any Subcontractor or affiliate of a Subcontractor or any consultants working on the Project during the term hereof and for so long thereafter as any obligations remain outstanding under the Contract Documents.
6. Before the members' appointments are final, the first two prospective members shall submit complete disclosure statements for the approval of both MTA and Design-Builder. Each statement shall include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships to the Project and with all parties involved in the Contract, including disclosure of past or current professional or close personal relationships with Design-Builder, any Affiliate, MTA or its consultants working on the Project, or with any key member of any such Person. The third DRB member shall supply such a statement to the first two DRB members and to MTA and Design-Builder prior to approval of his or her appointment.

4. SCOPE OF SERVICES

The DRB shall perform the following services in accordance with the standards provided below.

A. Duty of Impartiality

It is essential to the effective functioning of the DRB that all members of the DRB be, and appear to be, impartial and independent. Members of the DRB shall at all times act impartially and independently in the consideration of facts and conditions surrounding any Dispute considered by the DRB. Each member of the DRB shall at the time of executing this Agreement also execute a Certificate of Impartiality (see Attachment 1). Neither LACMTA nor the Design-Builder shall solicit, and neither the DRB nor any of its members shall provide, advice or consultation on matters dealing with the conduct of the Work or settlement of problems other than the Disputes referred to the DRB as herein provided. Neither the DRB nor any of its members shall engage in any ex parte communications with LACMTA or the Design-Builder.

B. Scheduling of Hearings

Upon receipt by the DRB of a mutual written request to hear a Dispute, the DRB shall first decide in consultation with LACMTA and the Design-Builder when to conduct the hearing. The DRB shall determine the dates and times for hearings regarding Disputes. The location for the hearing shall be near the Worksite, as determined by LACMTA and Design-Builder. Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required by LACMTA and the Design-Builder to prepare documentation regarding the Dispute. For an urgent matter that would negatively impact the Project Schedule, the DRB shall schedule hearings at the earliest time reasonably possible.

C. Submission of Position Statements and Documentation

In general, the DRB shall have the right to establish operating procedures and time limits for hearing within the guidelines of this Agreement, including the right to establish or to waive evidentiary rules and procedures, except for evidentiary rules pertaining to privilege. LACMTA and the Design-Builder shall each have the right to request and receive from the other substantiation for their respective contentions relating to Disputes, to submit statements of their positions and supporting documentation, to present arguments, witnesses and evidence in support of their positions, and to have counsel present at hearings. LACMTA and the Design-Builder shall exchange all information on which they intend to rely prior to a scheduled hearing, and failure to do so shall provide cause for the DRB to reschedule the hearing. If either LACMTA or the Design-Builder substantially change their contentions in a Dispute, or the evidence on which the Dispute is based, the DRB shall reschedule the hearing to provide the other party with sufficient time to consider and respond to the new contention and/or evidence. In all events, the DRB shall not consider over the objection of either LACMTA or the Design-Builder information not provided prior to the scheduled hearing, or new contentions or evidence in a Dispute.

C. Recommendations of the DRB

1. The DRB shall provide written recommendations concerning the Dispute in sufficient detail to enable LACMTA and the Design-Builder to understand the DRB's reasoning with respect to each substantial issue presented at the hearing and position papers submitted by the parties in connection with the Dispute. The recommendations shall not be binding unless LACMTA and the Design-Builder subsequently agree to resolve a Dispute based upon the recommendations.
2. The recommendations shall be based on the pertinent Contract provisions, and the facts and circumstances involved in the Dispute. The DRB shall not in any way disregard any Contract provisions to reach a recommendation.

3. The DRB shall provide its written recommendations within two weeks of the conclusion of the hearing, and shall attempt to do so with unanimous consent where reasonably possible. Any DRB member who disagrees with the recommendations of other members may provide a separate recommendation within the time required. The DRB's recommendations shall be signed by the Chair of the DRB, and any separate recommendations by the dissenting DRB member.

D. No Recommendations Outside the Scope of the Dispute

The DRB shall not hear, consider or make recommendations outside of the scope of the Dispute as defined by LACMTA and the Design-Builder in their mutual written consent for the DRB to hear the Dispute; provided that, the DRB may hear, consider and make recommendation with respect to all contentions reasonably related to scope of the Dispute.

E. Retention of Experts and Consultants

With the approval of LACMTA and the Design-Builder, including the cost for such services, the DRB may retain experts and consultants to assist in the DRB's consideration of issues presented in a Dispute.

F. Admissibility

The provisions of section 1115 *et seq.* of the California Evidence Code shall apply to protect from discovery or admissibility in any subsequent proceeding (i) anything said or any admission made for the purpose of, in the course of, or pursuant to, any Dispute submitted to the DRB, (ii) any writing, as defined in Section 250 of the Evidence Code, that is prepared for the purpose of, in the course of, or pursuant to, any Dispute submitted to the DRB, (iii) all communications, negotiations, or settlement discussions by and between participants, in any Dispute submitted to the DRB, and (iv) any report, assessment, evaluation, recommendation, or finding of any kind by the DRB in any Dispute.

G. Disputes of \$375,000 or Less

1. Notwithstanding anything to the contrary in this Agreement except for section 2.C. above, as permitted by Public Contract Code Section 20104(a)(2), each Dispute where the amount in controversy is equal to or less than \$375,000, shall be heard and determined by an arbitrator or arbitrators selected pursuant to Public Contract Code Sections 10240 *et seq.* (the "State Arbitration Act"), and in accordance with the procedures set forth in California Code of Regulations, Title 1, Chapter 4, Sections 1300 *et seq.* (the "Regulations").
2. LACMTA and the Design Builder agree to select the DRB to act as arbitrators under the State Arbitration Act for all such Disputes, as permitted by Public Contract Code Section 10240.3 and Section 1321(a) of the Regulations. The Parties intend to comply with the State Arbitration Act, and agree that the State Arbitration Act and Regulations shall be applicable with respect to Disputes up to \$375,000, except as otherwise provided herein. For Disputes up to \$375,000, the Parties agree that the final decision of the DRB shall not be subject to the requirements of Public Contract Code section 10240.8, and that such decision shall be binding on the Parties, subject only to being vacated on any of the grounds set forth in Code of Civil Procedure Section 1286.2.
3. The parties intend for this Agreement to be complementary with the terms of the State Arbitration Act and Regulations. In the event of any conflict between this Agreement and the terms of the State Arbitration Act and Regulations, this Agreement shall control to the extent that the requirements of the State Arbitration Act and Regulations are waivable; otherwise the State Arbitration Act and Regulations shall control.

5. RESPONSIBILITIES OF LACMTA AND THE DESIGN-BUILDER

A. Mutual Obligations

The Design-Builder and LACMTA shall, at least fourteen (14) days prior to the hearing, furnish to each DRB member and the other party all information and one copy of all documents it deems relevant to the issue in dispute on which they intend to rely, for the DRB member's review and use. The DRB may share Design-Builder/LACMTA furnished documents with its experts and consultants, otherwise, the DRB members shall not release any documents they possess to any party unless they have sought and obtained written approval from the LACMTA and the Design-Builder. The Design-Builder, LACMTA, or their officers and employees shall not seek to engage the DRB, or any member of the DRB, in any ex parte communications.

B. LACMTA's Obligations

LACMTA shall furnish the following:

1. Contract Related Documents

The LACMTA shall furnish each DRB member with one copy of all Contract Documents, including, but not limited to, the Technical Specifications, Drawings, all revisions to the Technical Specifications and Drawings, Geotechnical Design Summary Report, approved project and progress schedule including schedule updates, progress reports, and other available documents pertinent to the performance of the Contract and reasonably related to the DRB's services. The DRB may share LACMTA furnished documents with its experts and consultants.

2. Coordination

The LACMTA, with assistance and cooperation of the Design-Builder, will coordinate the operations of the DRB

3. Services

The LACMTA will arrange for, or provide administrative services, such as conference facilities at or near the Worksite and provide reasonable routine secretarial services not including a court reporter and copying services for the DRB meetings, and will have the right to require Design-Builder to pay for half of the cost of these services. If the Design-Builder requires use of a court reporter, it shall bear the entire cost and shall have no recourse for payment of these costs against the LACMTA unless LACMTA agrees to share in the cost.

6. TERM AND TERMINATION

A. Term

Subject to the other provisions of this Article 6, the DRB will be and remain constituted and available to hear, consider and make recommendations concerning Disputes from the time this Agreement is executed by all Parties until Final Acceptance. With the exception of choosing a third member by the first two members, the DRB members shall not perform any services under the terms of this Agreement until this Agreement is fully executed.

B. Resignation or Removal

Individual members of the DRB may withdraw from the DRB by providing a thirty (30) day notice to their original appointer. Any of the individual DRB members may be terminated for convenience by the mutual consent of the LACMTA and the Design-Builder, or removed for cause if the member has been found to have violated any portion of the Code of Ethics for Arbitrators, the Dispute Resolution Board Foundation Code of Ethics, any criminal law, or LACMTA Ethics or Lobbying Policies. Should the need arise to appoint a replacement DRB member; the replacement member shall be selected in the same manner as the original member, either by the initial appointer, or if appointed by the other DRB members, by them. The selection of a replacement DRB member shall begin promptly upon notification of the necessity for a replacement and shall be completed within four (4) weeks of the notification. This Agreement will be amended in writing to indicate a change in the DRB membership.

C. Reconstitution of the DRB

LACMTA and Design-Builder shall each have the right at any time to require appointment of a new DRB, which right may be exercised at any time by delivery of notice to such effect to the other party and to the DRB. In such event a new DRB Agreement, in the same form as this Agreement, shall be executed establishing a new DRB. Except as otherwise mutually agreed by MTA and Design-Builder, the prior DRB shall cease providing services, including conducting any hearings, considering any Dispute, and preparation of any recommendations, upon delivery of the notice of reconstitution by LACMTA or the Design-Builder, as the case may be.

D. Termination for Convenience

This Agreement may be terminated at any time for convenience by either party to the Contract upon not less than four (4) weeks written notice to the other party. In the event of termination of this Agreement for convenience, the DRB members shall be reimbursed for expenses incurred up to the effective date of the notice of termination in accordance with the Article entitled COMPENSATION AND PAYMENT herein.

7. COMPENSATION AND PAYMENT

The total value of this Agreement is One Hundred Sixty Thousand Dollars (\$160,000) for all three DRB Members. This amount may be increased by mutual agreement of LACMTA and Design-Builder with a written modification to this Agreement. Fees and expenses invoiced by the DRB members shall be paid by the Design-Builder. Payments shall be full compensation for the work performed, services rendered, and for all material, supplies, and incidentals necessary to serve on the DRB but not provided by the LACMTA or the Design-Builder. Invoices for payment must be approved by the LACMTA and the Design-Builder.

A. Payment for Services and Expenses

Payment for the services of members of the DRB will be at the individual rates mutually agreed upon by the LACMTA and the Design-Builder for each DRB Member (attached hereto in Attachment 2). Any changes in the billing rate(s) is subject to agreement between the LACMTA and the Design-Builder. Direct, non-salary expenses will be reimbursed per the LACMTA's travel and expense guidelines (attached hereto in Attachment 2), which are hereby incorporated into this Three Party Agreement.

B. Payment for Experts

Payments for the services of the DRB's experts agreed to by LACMTA and the Design-Builder shall be at the billing rates agreed by the DRB and approved by the LACMTA and the Design-Builder prior to the time of the expert's engagement. Change in the billing rates is subject to the agreement of the DRB and subject to the approval of the LACMTA and the Design-Builder.

C. Invoicing

Each DRB member and approved experts may submit an invoice to the Design-Builder with a copy to LACMTA for payment for services performed and completed no more than once per month during the Contract term. Such invoices shall be in a format approved by the LACMTA and Design-Builder, and accompanied by a general description of activities performed during the billing period. The price of the services performed for payment shall be established from the billing rate and hours expended by the DRB member and approved experts together with direct, non-salary expenses. Design-Builder shall pay the invoices of all DRB members after approval by both parties. Design-Builder will then bill LACMTA for 50% of such invoices in its next request for progress payment under the designated Contract line item. Design-Builder shall pay the DRB members within fifteen (15) calendar days from receipt of the approved invoices.

D. Inspection and Audit of Cost Record

The DRB members and experts shall permit authorized representatives of the LACMTA, Design-Builder or any other government agency to inspect and audit all records and accounts relating to their performance under this Agreement for a period of three (3) years after final payment or final termination of this Agreement.

8. INTERACTION WITH THE MEDIA AND THE PUBLIC

No information presented or statements made to the DRB by LACMTA or the Design-Builder, or material, data or recommendations prepared by the DRB under this Agreement is to be released by the DRB or any of its members to any other person or agency, except in connection with an audit as provided above. The DRB shall not prepare any press releases or information to be published in newspapers, magazines, or electronic media.

9. ASSIGNMENT

The DRB members shall not assign, sublet, transfer or otherwise substitute their interest in this Agreement or their obligation hereunder.

10. INTERPRETATION OF AGREEMENT

A. Definitions

Capitalized terms used but not defined herein shall have the meanings set forth in the Contract Documents.

B. Contract Provisions

The parties intend for the Contract terms and conditions relating to Claims and Disputes and the other terms of this Agreement to be complementary. Except as otherwise specifically provided herein, in the event of any conflict between this Agreement and the Contract provisions, the Contract terms and conditions shall control.

11. LEGAL RELATIONS

The Parties hereto mutually understand and agree that all the DRB members, in the performance of their duties on the DRB, are acting in the capacity of independent contractors and not as employees of the LACMTA, or the Design-Builder.

The DRB members shall have no personal or professional liability arising from the services provided under this agreement.

12. DISPUTES REGARDING THIS THREE PARTY AGREEMENT

Any dispute among the Parties hereto arising out of this Agreement shall be submitted upon Agreement between the Parties for either mediation or arbitration. If the Parties cannot agree to mediation or arbitration, the dispute may be referred to a court of competent jurisdiction of the State of California in Los Angeles County.

13. GOVERNING LAW

The validity, construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of California without regard to its rules of conflict of laws.

By entering into this agreement, the DRB members consent and submit to the jurisdiction of the Courts of the State of California over any action at law, suit in equity, and/or other proceeding that may arise out of the agreement.

14. ENTIRE AGREEMENT

The Agreement, and any attachments or documents, incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between the LACMTA, the Design-Builder and the DRB members and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, either oral or written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DRB MEMBER

DRB MEMBER

DRB MEMBER

XXX

XXX

XXX

By: _____

By: _____

By: _____

DESIGN-BUILDER

LACMTA

By: _____

By: _____

Title: _____

Title: Director of Contract Administration

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY**

ATTACHMENT 1 - CERTIFICATE OF IMPARTIALITY

I _____ as a member of the DRB for Contract No. C0980 will remain impartial to both the LACMTA and the Design-Builder in making my decisions and that I shall adhere to the following:

1. Shall uphold the integrity and fairness of the DRB process;
2. Shall disclose any past, current, or future interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias;
3. Shall avoid impropriety or the appearance of impropriety in communicating with the LACMTA or the Design-Builder;
4. Shall conduct the proceedings fairly and diligently;
5. Shall make decisions in a just, independent and deliberate manner; and
6. Shall be faithful to the relationship of trust and confidentiality inherent as a member of the DRB.

In accordance with the provisions of the Agreement I hereby state:

- I have had no previous involvement with this project.

- I do not have any financial ties to any party directly or indirectly involved in the Contract, nor any financial interest in the Contract.
- Except for previous fee-based consulting services or services as a DRB Board Member/Arbitrator/Mediator on other projects, I have never been employed by any party directly involved in the Contract.
- I do not have or have not in the past had a close professional or personal relationship any key member of any party directly or indirectly involved in the Contract.

By attesting to the above _____ day of _____ 19____, I hereby acknowledge that I have read and will abide by the “Code of Conduct for LACMTA Contractors and LACMTA Consultants” and the “Disputes Review Board Foundation Code of Ethics.”

(Signature)

Attachment 2
DRB and Expert Rates / Travel and Expense Guidelines

APPENDIX G -DISPUTES REVIEW BOARD THREE PARTY AGREEMENT
LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
CONTRACT NO. XXXX
DISPUTES REVIEW BOARD THREE PARTY AGREEMENT

THIS THREE PARTY AGREEMENT is made and entered into this day of [insert month], 20 , between:

The Los Angeles County Metropolitan Transportation Authority (LACMTA), hereinafter called the LACMTA, and XXXX, hereinafter called the Design-Builder, and the Disputes Review Board, hereinafter called the DRB, consisting of three members, XXX, XXX and XXX.

RECITALS

WHEREAS, the LACMTA is now engaged in the construction of the XXXXX Project (Project);
WHEREAS, General Condition 35 of Contract CXXX XXXX Design Build (Contract) for the Project permits the establishment and operation of a DRB to assist in resolving Disputes; and
WHEREAS, LACMTA and the Design-Builder have agreed to establish a DRB to assist in resolving the certain Disputes provided for herein;

WHEREAS, the DRB is composed of three members, one selected by the LACMTA, one selected by the Design-Builder, and the third member selected by the other two members, as Chairperson;

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, or attached hereto and incorporated and made a part herein, the Parties hereby agree as follows:

1. PURPOSE OF THE DRB

The purpose of the DRB is to fairly and impartially hear and consider Disputes that are placed before it within the terms of this Agreement, and to provide written recommendations to both the LACMTA and the Design-Builder for settlement of Disputes. The members of the DRB shall perform services in accordance with the scope of services describe below:

2. RESPONSIBILITIES OF THE DRB

A. Scope of the DRB's Jurisdiction

The DRB shall hear, consider and make recommendations concerning a Dispute upon the LACMTA's and Design-Builder's submission of a mutual written request defining the issues for the DRB's consideration.

B. Exclusions from the DRB's Responsibilities

Notwithstanding the foregoing, the DRB shall not hear, consider or make recommendations with respect to the following types of Disputes:

1. Interest (monetary) on Progress Payments or Final Payment.
2. Wage and hour Disputes.
3. Claims under the jurisdiction of the:
 - a. LACMTA's Controlled Insurance Program (OCIP) or any insurance maintained by LACMTA; or
 - B. Design-Builder's Contractor Controlled Insurance Program (CCIP);
4. Delegated signature authority of LACMTA'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 the LACMTA 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 LACMTA to issue unilateral Changes (i.e., Change Orders) or written authorizations to utilize Provisional Sums set forth in the Contract.

10. Issues related to subcontractor Substitutions governed by California Public Contracts Code §4100 et seq.

11. The right of LACMTA to assess or the stated dollar value of Liquidated Damages as established in the Article entitled LIQUIDATED DAMAGES in Contract Document SPECIAL PROVISIONS.

12. Disputes involving Claims described in subsection 2.C. below.

C. Compliance with and Exhaustion of Claim Procedures

1. The DRB shall not hear, consider or make recommendations regarding any Dispute unless and until the Design-Builder has fully complied with section GC-34 of the General Conditions (Claims), and LACMTA has expressly rejected a Claim in writing. The Design-Builder shall, within thirty (30) calendar days of receipt of LACMTA's written decision of rejection, engage LACMTA in making a mutual written request to the DRB; failure to do so shall constitute acceptance of, and a waiver of all its rights to challenge the LACMTA decision.

2. If any Dispute is based in whole or in part on a Subcontractor Claim, the DRB shall not hear, consider or make recommendations regarding the Dispute unless and until the Design-Builder has fully complied with section GC-34.2.3 of the General Conditions and provided a certification that it has reviewed all items and issues that constitute the basis of the Subcontractor's Claim, determined that the Subcontractor's position on each issue is justified, and that Design-Builder is justified in making the requested relief or contract adjustment. It is expressly understood that a Subcontractor is not a party to the contract or this agreement and in the event any Claim or Dispute arises under a Subcontract, the Subcontractor shall look only to the Design-Builder for any payment, redress, relief, or other satisfaction.

3. Any Dispute submitted for review by the DRB shall be submitted without any reservation of rights for money or time under a separate Dispute or other remedial action under the terms of the Contract.

D. Site Visits

The DRB members may visit the Worksite during the scheduled meetings described in this Agreement to keep abreast of design and construction activities and to develop a familiarity with the work in progress. The exact time and duration of these visits shall be mutually agreed upon between the DRB, the LACMTA and the Design-Builder. In the case of Disputes based on alleged differing site conditions or construction problems, it may be advantageous but not absolutely necessary for the DRB to view such conditions. If viewing by the DRB would negatively impact the Project Schedule, photographs, videos and descriptions of these conditions provided by both parties will suffice.

3. SELECTION AND QUALIFICATIONS OF THE DRB MEMBERS

A. Selection of the DRB

The DRB shall consist of one (1) member selected by LACMTA; one (1) member selected by the Contractor; and a third member selected by the first two (2) members, subject to the approval of both LACMTA and Design-Builder. The third member shall be the chairperson of the DRB. The goal in selecting the chairperson is to have someone with the proven ability to lead all DRB activities and complement the experience of the first two, which will facilitate the DRB's operations.

B. Qualifications of DRB Members

All the DRB members shall be experienced in the type of work involved in the Contract. DRB Members should have at least fifteen years of hands-on management level

experience on major transportation, rail transit or public works projects valued at \$100 million or more, including experience in the design-build method of project delivery.

C. No Conflicts of Interest

DRB members shall be free from any conflict of interest, and shall avoid even the appearance of any such conflict.

1. No member shall have a financial interest in the Contract or in the outcome of any Dispute decided hereunder, except for the right to receive payment for serving on the DRB.
2. No member shall currently be or have been, an officer, director or employee of, or have any past, current, or future financial ties to: (a) the Design-Builder, any Affiliate or any Subcontractor or affiliate of a Subcontractor, (b) the LACMTA or any agency represented on the LACMTA Board, or (c) any firm under contract to the Design-Builder, any Affiliate, any Subcontractor or affiliate of a Subcontractor, the LACMTA or any agency represented on the LACMTA Board; provided that eligibility shall not be affected by past fee-based consulting services on other projects which are disclosed to, and permission to serve obtained from both LACMTA and Design-Builder.
3. No member shall have had substantial prior involvement in the Project or a close personal or professional relationship with LACMTA, Design-Builder, Affiliate, or subcontractor of a nature which could compromise his or her ability, or that could give rise to the perception of bias, to impartially resolve Disputes.
4. No member shall accept employment with LACMTA, any agency represented on the LACMTA Board, Design-Builder, any Affiliate or any Subcontractor or affiliate of a Subcontractor during the term hereof, and for so long thereafter as any obligations remain outstanding under the Contract Documents, except as a member of other DRBs.
5. No member shall discuss employment with MTA, any agency represented on the MTA Board, Design-Builder, any Affiliate or any Subcontractor or affiliate of a Subcontractor or any consultants working on the Project during the term hereof and for so long thereafter as any obligations remain outstanding under the Contract Documents.
6. Before the members' appointments are final, the first two prospective members shall submit complete disclosure statements for the approval of both MTA and Design-Builder. Each statement shall include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships to the Project and with all parties involved in the Contract, including disclosure of past or current professional or close personal relationships with Design-Builder, any Affiliate, MTA or its consultants working on the Project, or with any key member of any such Person. The third DRB member shall supply such a statement to the first two DRB members and to MTA and Design-Builder prior to approval of his or her appointment.

4. SCOPE OF SERVICES

The DRB shall perform the following services in accordance with the standards provided below.

A. Duty of Impartiality

It is essential to the effective functioning of the DRB that all members of the DRB be, and appear to be, impartial and independent. Members of the DRB shall at all times act impartially and independently in the consideration of facts and conditions surrounding any Dispute considered by the DRB. Each member of the DRB shall at the time of executing this Agreement also execute a Certificate of Impartiality (see Attachment 1). Neither LACMTA nor the Design-Builder shall solicit, and neither the DRB nor any of its members shall provide, advice or consultation on matters dealing with the conduct of the Work or settlement of problems other than the Disputes referred to the DRB as herein provided. Neither the DRB nor any of its members shall engage in any ex parte communications with LACMTA or the Design-Builder.

B. Scheduling of Hearings

Upon receipt by the DRB of a mutual written request to hear a Dispute, the DRB shall first decide in consultation with LACMTA and the Design-Builder when to conduct the hearing. The DRB shall determine the dates and times for hearings regarding Disputes. The location for the hearing shall be near the Worksite, as determined by LACMTA and Design-Builder. Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required by LACMTA and the Design-Builder to prepare documentation regarding the Dispute. For an urgent matter that would negatively impact the Project Schedule, the DRB shall schedule hearings at the earliest time reasonably possible.

C. Submission of Position Statements and Documentation

In general, the DRB shall have the right to establish operating procedures and time limits for hearing within the guidelines of this Agreement, including the right to establish or to waive evidentiary rules and procedures, except for evidentiary rules pertaining to privilege. LACMTA and the Design-Builder shall each have the right to request and receive from the other substantiation for their respective contentions relating to Disputes, to submit statements of their positions and supporting documentation, to present arguments, witnesses and evidence in support of their positions, and to have counsel present at hearings. LACMTA and the Design-Builder shall exchange all information on which they intend to rely prior to a scheduled hearing, and failure to do so shall provide cause for the DRB to reschedule the hearing. If either LACMTA or the Design-Builder substantially change their contentions in a Dispute, or the evidence on which the Dispute is based, the DRB shall reschedule the hearing to provide the other party with sufficient time to consider and respond to the new contention and/or evidence. In all events, the DRB shall not consider over the objection of either LACMTA or the Design-Builder information not provided prior to the scheduled hearing, or new contentions or evidence in a Dispute.

C. Recommendations of the DRB

1. The DRB shall provide written recommendations concerning the Dispute in sufficient detail to enable LACMTA and the Design-Builder to understand the DRB's reasoning with respect to each substantial issue presented at the hearing and position papers submitted by the parties in connection with the Dispute. The recommendations shall not be binding unless LACMTA and the Design-Builder subsequently agree to resolve a Dispute based upon the recommendations.
2. The recommendations shall be based on the pertinent Contract provisions, and the facts and circumstances involved in the Dispute. The DRB shall not in any way disregard any Contract provisions to reach a recommendation.

3. The DRB shall provide its written recommendations within two weeks of the conclusion of the hearing, and shall attempt to do so with unanimous consent where reasonably possible. Any DRB member who disagrees with the recommendations of other members may provide a separate recommendation within the time required. The DRB's recommendations shall be signed by the Chair of the DRB, and any separate recommendations by the dissenting DRB member.

D. No Recommendations Outside the Scope of the Dispute

The DRB shall not hear, consider or make recommendations outside of the scope of the Dispute as defined by LACMTA and the Design-Builder in their mutual written consent for the DRB to hear the Dispute; provided that, the DRB may hear, consider and make recommendation with respect to all contentions reasonably related to scope of the Dispute.

E. Retention of Experts and Consultants

With the approval of LACMTA and the Design-Builder, including the cost for such services, the DRB may retain experts and consultants to assist in the DRB's consideration of issues presented in a Dispute.

F. Admissibility

The provisions of section 1115 *et seq.* of the California Evidence Code shall apply to protect from discovery or admissibility in any subsequent proceeding (i) anything said or any admission made for the purpose of, in the course of, or pursuant to, any Dispute submitted to the DRB, (ii) any writing, as defined in Section 250 of the Evidence Code, that is prepared for the purpose of, in the course of, or pursuant to, any Dispute submitted to the DRB, (iii) all communications, negotiations, or settlement discussions by and between participants, in any Dispute submitted to the DRB, and (iv) any report, assessment, evaluation, recommendation, or finding of any kind by the DRB in any Dispute.

G. Disputes of \$375,000 or Less

1. Notwithstanding anything to the contrary in this Agreement except for section 2.C. above, as permitted by Public Contract Code Section 20104(a)(2), each Dispute where the amount in controversy is equal to or less than \$375,000, shall be heard and determined by an arbitrator or arbitrators selected pursuant to Public Contract Code Sections 10240 *et seq.* (the "State Arbitration Act"), and in accordance with the procedures set forth in California Code of Regulations, Title 1, Chapter 4, Sections 1300 *et seq.* (the "Regulations").
2. LACMTA and the Design Builder agree to select the DRB to act as arbitrators under the State Arbitration Act for all such Disputes, as permitted by Public Contract Code Section 10240.3 and Section 1321(a) of the Regulations. The Parties intend to comply with the State Arbitration Act, and agree that the State Arbitration Act and Regulations shall be applicable with respect to Disputes up to \$375,000, except as otherwise provided herein. For Disputes up to \$375,000, the Parties agree that the final decision of the DRB shall not be subject to the requirements of Public Contract Code section 10240.8, and that such decision shall be binding on the Parties, subject only to being vacated on any of the grounds set forth in Code of Civil Procedure Section 1286.2.
3. The parties intend for this Agreement to be complementary with the terms of the State Arbitration Act and Regulations. In the event of any conflict between this Agreement and the terms of the State Arbitration Act and Regulations, this Agreement shall control to the extent that the requirements of the State Arbitration Act and Regulations are waivable; otherwise the State Arbitration Act and Regulations shall control.

5. RESPONSIBILITIES OF LACMTA AND THE DESIGN-BUILDER

A. Mutual Obligations

The Design-Builder and LACMTA shall, at least fourteen (14) days prior to the hearing, furnish to each DRB member and the other party all information and one copy of all documents it deems relevant to the issue in dispute on which they intend to rely, for the DRB member's review and use. The DRB may share Design-Builder/LACMTA furnished documents with its experts and consultants, otherwise, the DRB members shall not release any documents they possess to any party unless they have sought and obtained written approval from the LACMTA and the Design-Builder. The Design-Builder, LACMTA, or their officers and employees shall not seek to engage the DRB, or any member of the DRB, in any ex parte communications.

B. LACMTA's Obligations

LACMTA shall furnish the following:

1. Contract Related Documents

The LACMTA shall furnish each DRB member with one copy of all Contract Documents, including, but not limited to, the Technical Specifications, Drawings, all revisions to the Technical Specifications and Drawings, Geotechnical Design Summary Report, approved project and progress schedule including schedule updates, progress reports, and other available documents pertinent to the performance of the Contract and reasonably related to the DRB's services. The DRB may share LACMTA furnished documents with its experts and consultants.

2. Coordination

The LACMTA, with assistance and cooperation of the Design-Builder, will coordinate the operations of the DRB

3. Services

The LACMTA will arrange for, or provide administrative services, such as conference facilities at or near the Worksite and provide reasonable routine secretarial services not including a court reporter and copying services for the DRB meetings, and will have the right to require Design-Builder to pay for half of the cost of these services. If the Design-Builder requires use of a court reporter, it shall bear the entire cost and shall have no recourse for payment of these costs against the LACMTA unless LACMTA agrees to share in the cost.

6. TERM AND TERMINATION

A. Term

Subject to the other provisions of this Article 6, the DRB will be and remain constituted and available to hear, consider and make recommendations concerning Disputes from the time this Agreement is executed by all Parties until Final Acceptance. With the exception of choosing a third member by the first two members, the DRB members shall not perform any services under the terms of this Agreement until this Agreement is fully executed.

B. Resignation or Removal

Individual members of the DRB may withdraw from the DRB by providing a thirty (30) day notice to their original appointer. Any of the individual DRB members may be terminated for convenience by the mutual consent of the LACMTA and the Design-Builder, or removed for cause if the member has been found to have violated any portion of the Code of Ethics for Arbitrators, the Dispute Resolution Board Foundation Code of Ethics, any criminal law, or LACMTA Ethics or Lobbying Policies. Should the need arise to appoint a replacement DRB member; the replacement member shall be selected in the same manner as the original member, either by the initial appointer, or if appointed by the other DRB members, by them. The selection of a replacement DRB member shall begin promptly upon notification of the necessity for a replacement and shall be completed within four (4) weeks of the notification. This Agreement will be amended in writing to indicate a change in the DRB membership.

C. Reconstitution of the DRB

LACMTA and Design-Builder shall each have the right at any time to require appointment of a new DRB, which right may be exercised at any time by delivery of notice to such effect to the other party and to the DRB. In such event a new DRB Agreement, in the same form as this Agreement, shall be executed establishing a new DRB. Except as otherwise mutually agreed by MTA and Design-Builder, the prior DRB shall cease providing services, including conducting any hearings, considering any Dispute, and preparation of any recommendations, upon delivery of the notice of reconstitution by LACMTA or the Design-Builder, as the case may be.

D. Termination for Convenience

This Agreement may be terminated at any time for convenience by either party to the Contract upon not less than four (4) weeks written notice to the other party. In the event of termination of this Agreement for convenience, the DRB members shall be reimbursed for expenses incurred up to the effective date of the notice of termination in accordance with the Article entitled COMPENSATION AND PAYMENT herein.

7. COMPENSATION AND PAYMENT

The total value of this Agreement is One Hundred Sixty Thousand Dollars (\$160,000) for all three DRB Members. This amount may be increased by mutual agreement of LACMTA and Design-Builder with a written modification to this Agreement. Fees and expenses invoiced by the DRB members shall be paid by the Design-Builder. Payments shall be full compensation for the work performed, services rendered, and for all material, supplies, and incidentals necessary to serve on the DRB but not provided by the LACMTA or the Design-Builder. Invoices for payment must be approved by the LACMTA and the Design-Builder.

A. Payment for Services and Expenses

Payment for the services of members of the DRB will be at the individual rates mutually agreed upon by the LACMTA and the Design-Builder for each DRB Member (attached hereto in Attachment 2). Any changes in the billing rate(s) is subject to agreement between the LACMTA and the Design-Builder. Direct, non-salary expenses will be reimbursed per the LACMTA's travel and expense guidelines (attached hereto in Attachment 2), which are hereby incorporated into this Three Party Agreement.

B. Payment for Experts

Payments for the services of the DRB's experts agreed to by LACMTA and the Design-Builder shall be at the billing rates agreed by the DRB and approved by the LACMTA and the Design-Builder prior to the time of the expert's engagement. Change in the billing rates is subject to the agreement of the DRB and subject to the approval of the LACMTA and the Design-Builder.

C. Invoicing

Each DRB member and approved experts may submit an invoice to the Design-Builder with a copy to LACMTA for payment for services performed and completed no more than once per month during the Contract term. Such invoices shall be in a format approved by the LACMTA and Design-Builder, and accompanied by a general description of activities performed during the billing period. The price of the services performed for payment shall be established from the billing rate and hours expended by the DRB member and approved experts together with direct, non-salary expenses. Design-Builder shall pay the invoices of all DRB members after approval by both parties. Design-Builder will then bill LACMTA for 50% of such invoices in its next request for progress payment under the designated Contract line item. Design-Builder shall pay the DRB members within fifteen (15) calendar days from receipt of the approved invoices.

D. Inspection and Audit of Cost Record

The DRB members and experts shall permit authorized representatives of the LACMTA, Design-Builder or any other government agency to inspect and audit all records and accounts relating to their performance under this Agreement for a period of three (3) years after final payment or final termination of this Agreement.

8. INTERACTION WITH THE MEDIA AND THE PUBLIC

No information presented or statements made to the DRB by LACMTA or the Design-Builder, or material, data or recommendations prepared by the DRB under this Agreement is to be released by the DRB or any of its members to any other person or agency, except in connection with an audit as provided above. The DRB shall not prepare any press releases or information to be published in newspapers, magazines, or electronic media.

9. ASSIGNMENT

The DRB members shall not assign, sublet, transfer or otherwise substitute their interest in this Agreement or their obligation hereunder.

10. INTERPRETATION OF AGREEMENT

A. Definitions

Capitalized terms used but not defined herein shall have the meanings set forth in the Contract Documents.

B. Contract Provisions

The parties intend for the Contract terms and conditions relating to Claims and Disputes and the other terms of this Agreement to be complementary. Except as otherwise specifically provided herein, in the event of any conflict between this Agreement and the Contract provisions, the Contract terms and conditions shall control.

11. LEGAL RELATIONS

The Parties hereto mutually understand and agree that all the DRB members, in the performance of their duties on the DRB, are acting in the capacity of independent contractors and not as employees of the LACMTA, or the Design-Builder.

The DRB members shall have no personal or professional liability arising from the services provided under this agreement.

12. DISPUTES REGARDING THIS THREE PARTY AGREEMENT

Any dispute among the Parties hereto arising out of this Agreement shall be submitted upon Agreement between the Parties for either mediation or arbitration. If the Parties cannot agree to mediation or arbitration, the dispute may be referred to a court of competent jurisdiction of the State of California in Los Angeles County.

13. GOVERNING LAW

The validity, construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of California without regard to its rules of conflict of laws.

By entering into this agreement, the DRB members consent and submit to the jurisdiction of the Courts of the State of California over any action at law, suit in equity, and/or other proceeding that may arise out of the agreement.

14. ENTIRE AGREEMENT

The Agreement, and any attachments or documents, incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between the LACMTA, the Design-Builder and the DRB members and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, either oral or written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DRB MEMBER

DRB MEMBER

DRB MEMBER

XXX

XXX

XXX

By: _____

By: _____

By: _____

DESIGN-BUILDER

LACMTA

By: _____

By: _____

Title: _____

Title: Director of Contract Administration

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY**

ATTACHMENT 1 - CERTIFICATE OF IMPARTIALITY

I _____ as a member of the DRB for Contract No. C0980 will remain impartial to both the LACMTA and the Design-Builder in making my decisions and that I shall adhere to the following:

1. _____ Shall uphold the integrity and fairness of the DRB process;
2. _____ Shall disclose any past, current, or future interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias;
3. _____ Shall avoid impropriety or the appearance of impropriety in communicating with the LACMTA or the Design-Builder;
4. _____ Shall conduct the proceedings fairly and diligently;
5. _____ Shall make decisions in a just, independent and deliberate manner; and
6. _____ Shall be faithful to the relationship of trust and confidentiality inherent as a member of the DRB.

In accordance with the provisions of the Agreement I hereby state:

- I have had no previous involvement with this project.

- I do not have any financial ties to any party directly or indirectly involved in the Contract, nor any financial interest in the Contract.
- Except for previous fee-based consulting services or services as a DRB Board Member/Arbitrator/Mediator on other projects, I have never been employed by any party directly involved in the Contract.
- I do not have or have not in the past had a close professional or personal relationship any key member of any party directly or indirectly involved in the Contract.

By attesting to the above _____ day of _____ 19____, I hereby acknowledge that I have read and will abide by the “Code of Conduct for LACMTA Contractors and LACMTA Consultants” and the “Disputes Review Board Foundation Code of Ethics.”

(Signature)

Attachment 2
DRB and Expert Rates / Travel and Expense Guidelines

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**SUB-SECTION 2.4 – COMPENSATION AND PAYMENT
PROVISIONS**

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COMPENSATION & PAYMENT PROVISIONS (CONSTRUCTION)

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 Payment Schedule Quantities and Prices (Attachment 2 herein), and all other applicable terms and conditions of the Contract.

CP-2 PROGRESS PAYMENTS

- A. 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.
- B. 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, the Contractor shall submit a detailed PAYMENT SCHEDULE to LACMTA, 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 LACMTA prior to any Progress Payment being made. LACMTA 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.
- C. General Invoicing Instructions: Contractor's Invoice shall include, at a minimum:
1. Clear reference to LACMTA Contract Number, as well as LACMTA 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 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, less the amount of all contractual retention and deductions applicable for the invoiced amount, and the resulting total net payment due (all in U.S. dollars).
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.

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, superseded by the terms of Contract, and may subject the Invoice to being rejected by LACMTA.

D. Application for Progress Payment

Contractor's Application (hereinafter referred to as "Application") shall contain:

1. Contractor's original invoice, and two (2) copies;
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;
4. Release of Stop Notice from Subcontractors;
5. Any other documentation LACMTA requires to process the Progress Payment;
6. A Certification as set forth in Attachment 1, and;
7. Signature of LACMTA's Authorized Representative acknowledging that the Work described in the Application has been done in accordance with the Contract.

E. Terms of Payment:

1. Contractor shall submit the Application to LACMTA as set forth in Article INVOICES in the FORM OF CONTRACT, based upon the PAYMENT SCHEDULE, no later than the 25th day of each month.
2. LACMTA will make Progress Payments within thirty (30) days after its receipt of an undisputed and properly submitted Application. If LACMTA fails to make any approved Progress Payment within such time, it shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of §685.010 of the California Code of Civil Procedure. Upon receipt of an Application, LACMTA 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 LACMTA. LACMTA shall set forth in writing the reason(s) why the Application does not meet Contractual requirements.
3. The number of days available to LACMTA 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 Progress Payments 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).

F. Payment for Goods Not Incorporated into the Work:

LACMTA, at its discretion, may authorize payment for Goods not yet incorporated into the Work, subject to the following conditions:

1. Goods 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 LACMTA.
2. Prior to inclusion of such Goods in any Application, the Contractor shall submit certified invoices for such Goods to LACMTA. LACMTA 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 are stored outside Los Angeles County, the Contractor shall pay all personal and property taxes that are levied against LACMTA by any state or subdivision thereof on account of such storage of said Goods.

4. LACMTA will permit the Contractor to contest, at its own expense, the validity of any such tax levied against LACMTA in appropriate legal proceedings.
 5. In the event of any judgment or decree by the court against the Contractor and/or LACMTA, the Contractor shall pay it together with any penalty and any other costs relating thereto. All such Goods so accepted shall become the property of LACMTA.
 6. Payments made for Goods included in an Application that are subsequently lost, damaged, or unsatisfactory shall be deducted from succeeding Applications.
- G. Title: Title to portions of the Work for which Progress Payments or other payments are made shall pass to LACMTA as set forth in the General Conditions.
- H. Special Payment Terms for Certain Pay Items:
- i. Monthly Progress Payments are contingent upon Contractor's submittal, and LACMTA's subsequent Approval of the monthly update of the Baseline Schedule. Contractor's entire Progress Payment or any portion thereof, as determined by LACMTA, may be suspended for non-submittal, late submittal or rejection of the required Schedule submittals. Suspension of the Progress Payments, or any portion thereof, will continue until LACMTA approves the Schedule submittals. In accordance with this Article, a suspended invoice is a rejected invoice, and therefore shall not be subject to accrual and receipt of interest rate specified in California Code of Civil Procedure Subdivision (a) of §685.010
 - ii. Mobilization for Design and Construction will be made in the following manner:
 1. Ninety percent (90%) of the lump sum price for Mobilization – Design will be paid in three (3) equal amounts, as part of the first three (3) Progress Payments.
 2. The final ten percent (10%) of the lump sum price for Mobilization – Design will be paid as part of the fourth Progress Payment.
 3. Ninety percent (90%) of the lump sum price for Mobilization – Construction will be paid in six (6) equal amounts, as part of the monthly Progress Payments following the commencement of mobilization for the construction Work.
 4. The final ten percent (10%) of the lump sum price for Mobilization – Construction will be paid for as part of the seventh Progress Payment following commencement of the commencement of mobilization for the construction Work.

- iii. Payment of the lump sum pay item "General Requirements" will be made in the following manner:
 - 1. Fifteen percent (15%) of the lump sum price will be paid in three (3) equal amounts, as part of the first three (3) progress payments.
 - 2. Eighty-five percent (85%) of the lump sum price will be paid for in equal amounts over the remaining duration of the Contract, beginning with the fourth Progress Payment.

CP-3 RETENTION AND ESCROW ACCOUNTS*

A. Retention:

LACMTA will retain from each Progress Payment five percent (5%) of the Progress Payment as part security for the fulfillment of the Contract by the Contractor. The total retention withheld shall not at any time exceed five percent (5%) of the Contract Price, as amended, or as adjusted by Change Orders. However, if LACMTA has determined following a public hearing and prior to the receipt of proposals for this Contract that the project is substantially complex and therefore requires a higher retention amount than five percent, and LACMTA included in the solicitation both it's finding and the actual retention amount in the solicitation documents, then LACMTA may retain the higher retention amount of N/A (___%) from the first Progress Payment or if LACMTA determines that the Work or progress of the Work is unsatisfactory, LACMTA may increase the retentions amount from the five percent to that higher retention amount of the Contract Price, as amended, or as adjusted by Change Orders. 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 Article entitled PAYMENT TO SUBCONTRACTORS, herein, LACMTA shall withhold retention from each Progress Payment, consistent with the amounts allowed above, whereas LACMTA shall withhold not less than 5% of the Contract price until final completion and acceptance of the Contract.

Under no circumstances shall any provision herein be construed to limit the ability of LACMTA to withhold one hundred fifty percent (150%) of the value of any disputed amount of Work from the final payment, as provided for in subdivision (c) of Public Contract Code Section 7107. In the event of a good faith dispute, nothing in herein shall be construed to require LACMTA to pay for Work that is not approved or accepted in accordance with the Contract Documents.

B. Subcontractor Retention

The retention proceeds withheld by the Contractor from any subcontractor, and by a Subcontractor from any Subcontractor hereunder shall not exceed five percent (5%) of the payment and in no event shall the total retention proceeds withheld exceed five percent (5%) of the subcontract price or the higher percentage specified above actually being withheld by LACMTA. This

requirement shall not apply if the Contractor provides written notice to the Subcontractor, pursuant to subdivision (c) of California Public Contract Code 4108, prior to, or at, the time the bid is requested, that bonds shall be required, and the Subcontractor subsequently is unable or refuses to furnish to the Contractor a performance and payment bonds issued by an admitted surety.

C. Substitution of Securities:

To ensure performance under the Contract, the Contractor may, at its sole expense, substitute securities equivalent to the retention withheld by LACMTA. Such securities shall be deposited with an escrow agent approved by LACMTA, 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 LACMTA. 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 LACMTA. 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 "PAYMENT TO SUBCONTRACTORS, when Contractor certifies to LACMTA that all tasks called for in the subcontract have been satisfactorily accomplished and LACMTA has inspected the Work, Contractor shall release the Subcontractor's securities within ten (10) days after receipt of LACMTA 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 the Subcontractor the amount of retention allowable under the Section herein entitled Subcontractor Retention, yet when, in accordance with the Article herein entitled PAYMENT TO SUBCONTRACTORS, Contractor certifies to LACMTA that all tasks called for in the subcontract have been satisfactorily accomplished and LACMTA has inspected the Work, Contractor shall release the subcontractor's retention within ten (10) days after receipt of the LACMTA 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.

D. Payment of Escrow Agent:

In lieu of substitution of securities as provided above, the Contractor may request and LACMTA 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 LACMTA, 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.

E. Release of Retention withheld from Contractor:

Upon Final Acceptance of the Contract, the Contractor shall submit an invoice for release of retention in accordance with the terms of the Contract.

F. Additional Deductibles:

In addition to the Retentions described above, LACMTA 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 LACMTA's discovery of deficiencies in the Work or non-compliance with the Specifications or any other requirement of the Contract;
3. Sums expended by LACMTA in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform, and;
4. Other sums that LACMTA is entitled to recover from the Contractor under the terms of the Contract, including without limitation insurance deductibles and assessments.

The failure of LACMTA to deduct any of the above-identified sums from a Progress Payment shall not constitute a waiver of LACMTA's right to such sums or to deduct them from a later Progress Payment or Final Payment.

CP-4 STOP NOTICE*

In addition to other amounts properly withheld under this Article or under other provisions of the Contract, LACMTA 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 §9000 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 §9358 LACMTA 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, LACMTA 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 LACMTA that the Contractor has resolved such claim by settlement.

CP-5 PAYMENT TO SUBCONTRACTORS*

A. Requirements

The Contractor shall pay all Subcontractors for and on account of Work performed by such Subcontractors, not later than seven (7) 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.

The Contractor shall pay to each Subcontractor all amounts it has retained from payments under the Subcontract within seven (7) days after the Subcontractor's work is satisfactorily completed. Any delay of payment beyond the seven (7) day time limit shall be only for good cause, and only upon the prior written approval of LACMTA.

B. Waiver and Release Forms

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.

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.

These forms 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 submit the required Waiver and Release form then any monies 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.

C. Failure to Comply

If LACMTA determines that the Contractor has failed to comply with this Article, LACMTA 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 proposal was opened. 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, customs, business, and special taxes. The Contractor shall ascertain and pay the taxes when due. The Contractor will maintain auditable records, subject to LACMTA reviews, confirming that tax payments are current at all times.

CP-7 FINAL PAYMENT

A. After Final Acceptance of the Work, a Final Payment, as provided herein, will be made as follows:

1. Prior to Final Acceptance, the Contractor shall prepare and submit an Application for Final Payment to LACMTA, 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 Upon Progress Payment/Final Payment, attached hereto as Exhibit SA-2, 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 LACMTA, arising out of or filed in connection with the Work. Prior Progress Payments shall be subject to correction in LACMTA'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, LACMTA 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 LACMTA, 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 LACMTA, 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 LACMTA, and agreements are reached on all issues regarding the Application for Final Payment, LACMTA, in exchange for an executed release, satisfactory in form and substance to LACMTA, 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 LACMTA are specifically reserved, and shall release and waive all unreserved claims against LACMTA 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 LACMTA which has not been communicated in writing by the Contractor to LACMTA 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, LACMTA may make Final Payment subject to resolution of those Claims. LACMTA may withhold from the Final Payment, including retention, 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

- A. Notwithstanding LACMTA's acceptance of the Application for Final Payment and irrespective of whether it is before or after Final Payment has been made, LACMTA shall not be precluded from subsequently showing that:
1. The true and correct amount payable for the Work is different from that previously accepted;
 2. The previously-accepted Work did not in fact conform to the Contract requirements, or;
 3. A previous payment or portion thereof for Work was improperly made.

LACMTA also shall not be stopped from demanding and recovering damages from the Contractor, as appropriate, under any of the foregoing circumstances as permitted under the Contract or applicable Law.

CP-9 AUDIT REQUIREMENTS *

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:

- a. Any Costs proposed for a Modification, or
- b. Defective Cost or pricing on the Contract including any Modification.

B. Defined Terms

Audit: audit, examine, verify, review, excerpt, vouch or transcribe Contractor's, Subcontractors' or Suppliers' Records.

Authorized Auditors: See Contract Document GENERAL CONDITIONS, Article entitled GLOSSARY OF TERMS, Section – Definitions.

Costs: Amounts (both direct and indirect) claimed to be due and payable, or anticipated to be incurred in performing the proposed Modification.

Records: All of the Contractor's, Subcontractors' or Suppliers' Cost or pricing data supporting the Modification 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 on a proposed Modification. 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

i. 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 for the purpose of Auditing.

ii. Worksites

For any federally funded capital project, the Authorized Auditors shall include the FTA 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 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, Subcontractor and Suppliers shall maintain all Records related to this Contract until LACMTA or any Governmental Agency or their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

a. 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.

b. Modifications

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.

c. 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 LACMTA 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.

CP-10

DELAY COMPENSATION

Calculation of Amount of Delay Compensation

Delay Compensation shall be payable only in connection with an extension of the Contract Time based on a Compensable Delay, and shall be an amount equal to the product of the specified Delay Compensation rate and the number of days of Compensable Delay allowed. The daily rate is set forth in the Article entitled COMPENSATION in Contract Document FORM OF CONTRACT, and is the rate proposed by the Contractor in the SCHEDULE OF QUANTITIES AND PRICES in the Proposal Forms submitted by the Contractor.

In order to avoid duplicative compensation for delay expense for Change Orders during the period of any Compensable Delay, the overhead mark-ups payable under GENERAL CONDITIONS article entitled BASIS FOR ESTABLISHING COSTS on direct costs for Changed Work performed during any such period shall be reduced by the 5% **END OF COMPENSATION AND PAYMENT PROVISIONS**

CONTRACT NO. C0991

DIVISION 16: SOUTHWESTERN YARD PROJECT DESIGN-BUILD

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 LACMTA 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 LACMTA 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 LACMTA 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)

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)

_____ to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to _____
(Job Description) (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)

**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 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 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.

ATTACHMENT 2 – PAYMENT SCHEDULE & PRICES

To be inserted at the time of contract award

SECTION 3 – BID/PROPOSAL DOCUMENTS

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INSTRUCTIONS TO BIDDERS (TWO-STEP DESIGN/BUILD)

~~01 – SUBMITTAL REQUIREMENTS DESIGN/BUILD (STEP-ONE) (IB-01)~~

~~1.0 SUBMITTAL REQUIREMENTS (STEP-ONE DESIGN/BUILD)~~

~~1.1 GENERAL FORMAT~~

~~Step One Technical Bid Proposal shall contain concise written materials that enable the reviewer to clearly understand the bidder's capabilities. Prepare your proposal on 8-1/2 x 11" paper, preferably with 1" margins, single spaced typing, with a minimum font size of ten. Each page is to be numbered consecutively. The original shall be bound in a three ring binder. Limit the use of 11" x 17" fold outs. Elaborate format is not necessary. Do not provide promotional or advertising information.~~

~~One (1) original and 5 copies of the Step One Technical Bid Proposal, including all submittal forms, are required. The response shall:~~

- ~~A. Contain concise written response that addresses the questions herein and will enable the reviewer to clearly understand the Bidder's capabilities related to work required;~~
- ~~B. Specifically describe the proposed subcontractors and suppliers selected for this project and how each will interface in accomplishing the Contract requirements;~~
- ~~C. List each Metro question/heading first followed with your firm's direct response.~~

~~1.2 BID CONTENT~~

~~The Step One Technical Bid shall have the following components in their response and shall be laid out in the format as shown below. Each question related to the work delineated in the performance specifications, drawings and work site conditions shall be addressed to assure Metro's technical acceptance.~~

~~1.2-A EXECUTIVE SUMMARY~~

~~Bidder's standard executive letter outlining your company size, over-all capabilities, project controls, history and related project information. (Maximum of four (4) pages)~~

~~1.2-C PRIME CONTRACTOR'S EXPERTISE AND EXPERIENCE~~

~~This section should focus on the type of work your company is known for throughout the construction industry. Additionally, complete and attach~~

~~Metro forms, List of Current (Backlog) (Pro Form 054) and Completed Project for the last three years (Pro Form 055). The provided reference information such as owner's names, address, phone numbers and contact person must be correct.~~

~~1.2-C1 Bidder shall demonstrate successful completion of at least one (1) major design/build project of \$100M or more in the last ten years. Clearly identify any project that it has jointly completed with its design/build team. Bidder shall have a past performance questionnaire (provided in Section 5 of this IFB) completed by the owner(s) for such project.~~

~~1.2-C2 Bidder shall demonstrate recently successful construction within the last fifteen years of at least \$25M one of the following types of projects: 1) a light rail transit maintenance facility project or 2) a heavy rail electrified maintenance facility project and built 20 miles of light rail transit mainline including; track, signal system, overhead catenary system and traction power. Bidder shall detail the general character, scope, cost and date of completion of the light rail transit maintenance facility and explain what aspects of the referenced project/s it deems similar in size and complexity to the proposed effort. Bidders shall also have a past performance questionnaire (provided in Section 5 of this IFB) completed by the owner(s) for such project(s).~~

~~1.2-C3 Bidder's shall submit evidence that it or its subcontractor(s), have experience with designing a light rail transit maintenance facility of at least \$25M within the last fifteen years with similar complexity to that described in this solicitation document. Bidder shall detail the general character, scope, cost and date of completion of the rail transit maintenance facility and explain what aspects of the referenced project/s it deems similar in size and complexity to the proposed effort. Bidders shall also have a past performance questionnaire (provided in Section 5 of this IFB) completed by the owner(s) or responsible prime contractor(s) for such project(s).~~

~~1.2-C4 Bidder shall demonstrate experience on designing and constructing LEED Silver-certified buildings and/or projects.~~

~~1.2-C5 Bidder shall submit evidence that it or its subcontractor(s), has experience designing and installing: (a) trackwork/rail; (b) train control; (c) traction power; (d) communications; (e) overhead catenary system; (f) major equipment supply and installation/testing for a rail maintenance facility.~~

~~1.2-C6 Bidder shall provide a discussion of its technical approach to execute the project and Level 1 schedule outlining the proposed primary phases of the design/build work and the major design~~

~~and construction components in each phase of the work to meet contract milestone/s. The technical approach shall include a discussion of the interface requirements of a new rail maintenance facility with an existing mainline system.~~

~~1.2-C7 Bidder shall complete and attach LACMTA forms, List of Current (Backlog) (Pro Form 054) and Completed Project for the last three years (Pro Form 055). The provided reference information such as owner's names, address, phone numbers and contact person must be correct. In addition to the reference project named in item 1.2-C1 and 1.2-C2 above, Bidders shall also have past performance questionnaires (provided in Section 5 of this IFB) completed by the owner(s) or responsible prime contractor(s) for two (2) completed project(s) in the last five years.~~

~~1.2-C8 The requirement on item 1.2-C7 above also applies to Joint Venture Partners and major subcontractors with subcontract amount equal to or more than 10% of the Total Bid Price.~~

~~1.3 KEY PERSONNEL EXPERIENCE~~

~~Provide resumes of key personnel showing relevant work experience, education (including degrees, years and technical discipline), licenses or active registrations and other credentials appropriate to performing the services. Resumes may not exceed two pages per resume. Include a discussion of current and future commitments of key personnel and how these commitments will affect their availability for Metro's assignments.~~

~~1.3-A Project Manager shall have at least fifteen (15) years experience in engineering and construction and significant responsibility on at least one (1) light rail maintenance facility project within the last (10) years of similar complexity to this project.~~

~~Describe the specific role/responsibilities of the proposed Project Manager on each of the reference projects listed in their resume highlighting similarities in size and complexity to this project~~

~~1.3-B Construction Manager shall have at least ten (10) years experience and technical competence in construction and significant construction management responsibility on at least one (1) rail maintenance facility within the last (10) years of similar complexity to this project.~~

~~Describe the specific role/responsibilities of the proposed Construction Manager on each of the reference projects listed in their resume highlighting similarities in complexity to this project.~~

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~~1.3 C Design Manager shall have at least fifteen (15) years experience and technical competence in transit projects and primary design responsibility on at least one (1) light rail maintenance facility within the last ten (10) years of similar complexity to this project.~~

~~Describe the specific role/responsibilities of the proposed Design Manager on each of the reference projects listed in their resume highlighting similarities in complexity to this project.~~

~~1.3 D Systems Manager shall have at least ten (10) years systems design experience and technical competence including experience designing (a) trackwork/rail; (b) train control; (c) traction power; (d) communications; (e) overhead catenary system; (f) major equipment supply and installation/testing for a light rail transit project.~~

~~1.3 E Project Quality Manager shall have a Bachelors degree from an accredited four-year educational institution in engineering, engineering technology, management, business administration or related field or a combination of education and experience acceptable to Metro Quality Management. The Project Quality Manager shall have a minimum of ten years Quality experience and at least five years in a Quality management position.~~

~~Describe the specific role/responsibilities of the proposed Project Quality Manager on each of the reference projects listed in their resume highlighting quality experience and quality management positions held. Disclose related educational attainment and trainings attended (if applicable).~~

~~1.3.2 BIDDER'S PAST PERFORMANCE~~

~~Bidder shall submit a minimum of three (3) completed Experience/Performance Questionnaires (Form V1.0) demonstrating satisfactory or above ratings from current and past clients. At least 1 of the 3 questionnaires must be from a Design/Build project of at least \$100 million dollars (\$100,000,000) completed within the last 10 years. At least 1 of 3 questionnaires must be from recent successful construction of a light rail transit maintenance facility project of at least \$25M within the last fifteen (15) years with similar complexity to that described in this solicitation document. At least 1 of 3 questionnaires must be from Bidder or its subcontractor(s) having experience with designing a light rail transit maintenance facility of at least \$25M within the last fifteen (15) years with similar complexity to that described in this solicitation document. Please note: Bidder can submit the same questionnaire for the 3 types of projects referenced above and noted in 1.2 C1, 1.2 C2 & 1.2 C3. The bidder is also required to submit two additional questionnaires for two different projects to fulfill the requirements in 1.2 C7. Major subconsultants and subcontractors shall each submit one (1) completed Experience/Performance Questionnaires (Form V1.0) demonstrating satisfactory or above ratings from current or past clients Metro will validate the information.~~

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~~1.4 PROJECT MANAGEMENT PLAN~~

~~Present an organization structure showing the key personnel of the Bidder's design/build team for the project. The organization structure should show lines of responsibility (e.g. management, design, engineering, construction, quality control,~~

~~safety etc.). Clearly show how all members (including major subcontractors and sub-consultants) form an integrated team. The organization chart shall depict the reporting relationship of the Quality Control Manager to executive/project management.~~

~~Prime or subcontractor should have sound knowledge, professional licenses, and previous design or construction experience in commercial and institutional building and general civil related work.~~

~~1.5 — RESERVED~~

~~1.6 — QUALITY ASSURANCE/QUALITY RECORD~~

~~Quality Assurance/Quality Record that consists of specific and detailed procedures that ensure compliance with all specified requirements (Pro Form 061), submit as noted below in section 1.8.~~

~~1.7 — SAFETY~~

~~Submit Pro Forms 062 and 063. Submit as noted in section 1.8.~~

~~1.8 — OTHER SUBMITTALS & CERIFICATIONS~~

~~Each Bidder must sign and submit the following Pro Forms found in Sections 5 and 6:~~

Pro Form No.	Description
132	Bidders List Form
061	Quality Assurance/Quality Control
062	Safety
063	Bidder's Industrial Safety Record
119	Ethics Declaration
026	General Certifications
024	Certificate of Compliance with 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations
015	Buy America Certificate
025	Certification Of Compliance with Federal Lobbying Requirements (49 CFR Part 20)
022	Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
021	Certification of Prospective Lower Tier Participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
043	Noncollusion Affidavit to be Executed by Bidder and Submitted with Bid

~~Each Bidder should review insurance requirements specified in the Exhibit to the Form of Contract entitled Insurance, as the successful proposer will be required to submit proof of insurances specified.~~

~~2.0 - SUBMITTAL REQUIREMENTS DESIGN/BUILD (STEP TWO)~~

~~2.1 - BID LETTER~~

~~BID LETTER (Step Two Price Bid Letter); is located at the beginning of Section 5 and must be completed and executed by an authorized representative of the Bidder. It must be returned with your technical response to Metro in accordance with the "Instruction to Bidders". No other letter may replace or be included in addition to the Bid Letter~~

~~2.2 - BID BOND~~

~~Bid Bond~~

~~2.3 - DBE GOAL/PARTICIPATION~~

~~List of Proposed Subcontractors/Suppliers (Pro Form 068)~~

~~2.4 - PRICE BID~~

~~Bidder's Schedule of Quantities & Prices~~

~~****See Section 5 for Step Two Bid Forms****~~

INSTRUCTIONS TO BIDDERS (DESIGN/BUILD)

IB-01 STEP-ONE TECHNICAL BID REQUIREMENTS

- A. The Step-One Technical Bid shall consist of:
- Executive Summary
 - Bidders Expertise and Past Performance
 - Key Personnel Experience
 - Project Management Experience
 - Other Submittals & Certifications
- B. One (1) original of the Technical Bid prepared with the completed forms entitled "Technical Bid", all other information required by the IFB at the time Technical Bid submittal, must be addressed and delivered per the requirements in the Invitation for Bids Letter. The Step-One Technical Bids will not be publicly opened.
- C. The Step-One Technical Bid shall be enclosed in a sealed envelope clearly marked with the Name and Address of Bidder, the IFB Number and Title; and labeled "Step-One Technical Bid".
- D. All blank spaces on the Technical Bid forms must be filled in and no changes shall be made in the wording. Failure of the Bidder to submit each and every Step-One Technical Bid form required by this IFB, completed in full, and duly executed by the authorized officer as listed in the Technical Bid Form entitled "01-Step One Technical Bid Letter" may render the Technical Bid incomplete and unresponsive and may be cause for rejection or determination of unacceptability.

Firms whose Step-One Technical Bids are determined "Acceptable" by LACMTA shall be notified that their Step-Two Price Bid will be publicly opened and read out loud. Metro shall notify all bidders of the schedule of the "Step-Two Price Bid" opening.

1.1 GENERAL FORMAT

Step-One Technical Bid Proposal shall contain concise written materials that enable the reviewer to clearly understand the bidder's capabilities. Prepare your proposal on 8-1/2 x 11" paper, preferably with 1" margins, single spaced typing, with a minimum font size of ten. Each page is to be numbered consecutively. The original shall be bound in a three ring binder. Limit the use of 11" x 17" fold outs. Elaborate format is not necessary. Do not provide promotional or advertising information.

One (1) original and 5 copies of the Step-One Technical Bid Proposal, including all submittal forms, are required. The response shall:

- A. Contain concise written response that addresses the questions herein and will enable the reviewer to clearly understand the Bidder's capabilities related to work required;
- B. Specifically describe the proposed subcontractors and suppliers selected for this project and how each will interface in accomplishing the Contract requirements;
- C. List each Metro question/heading first followed with your firm's direct response.

1.2 BID CONTENT

The Step-One Technical Bid shall have the following components in their response and shall be laid out in the format as shown below. Each question related to the work delineated in the performance specifications, drawings and work site conditions shall be addressed to assure Metro's technical acceptance.

1.2-A EXECUTIVE SUMMARY

Bidder's standard executive letter outlining your company size, over-all capabilities, project controls, history and related project information. (Maximum of four (4) pages)

1.2-C PRIME CONTRACTOR'S EXPERTISE AND EXPERIENCE

This section should focus on the type of work your company is known for throughout the construction industry. Additionally, complete and attach Metro forms, List of Current (Backlog) (Pro Form 054) and Completed Project for the last three years (Pro Form 055). The provided reference information such as owner's names, address, phone numbers and contact person must be correct.

1.2-C1 Bidder shall describe completion of any design/build project of \$100M or more or any project(s) it has completed that the Bidder deems similar in size and complexity to the proposed effort in the last ten years. Bidder shall have a past performance questionnaire (provided in Section 5 of this IFB) completed by the owner(s) for such project.

1.2-C2 Bidder shall describe construction of one of the following types of projects valued at \$25M or more: 1) a light rail transit maintenance facility project; or 2) a heavy rail electrified maintenance facility project and built 20 miles of light rail transit mainline including; track, signal system, overhead catenary system and traction power; or 3) any other project(s) it has completed that the Bidder deems are similar in size and complexity to the proposed effort. Bidders shall also have a past performance questionnaire (provided in Section 5 of this IFB) completed by the owner(s) for such project(s).

~~1.2-C3 Bidder shall submit evidence that it or its subcontractor(s), have experience with designing a light rail transit maintenance facility of at least \$25M within the last fifteen years with similar complexity to that described in this solicitation document. Bidder shall detail the general character, scope, cost and date what aspects of the tendered project/s it deems similar in size and complexity to the proposed effort. Bidders shall also have a past performance questionnaire (provided in Section 5 of this IFB) completed by the owner(s) or responsible prime contractor(s) for such project(s).~~

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1.2-C4 Bidder shall describe its experience on designing and constructing LEED Silver certified buildings and/or projects.

~~1.2-C5 Bidder shall submit evidence that it or its subcontractor(s), has experience designing and installing: (a) trackwork/rail; (b) train control; (c) traction power; (d) communications; (e) overhead catenary system; (f) major equipment supply and installation/testing for a rail maintenance facility. Bidder shall describe its teams experience designing and installing: a) rail track work, b) train control system, c) traction power system, d) communications system, e) overhead catenary system; and has experience handling major equipment supply and installation, as well as testing of the readiness of a light rail maintenance facility.~~

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1.2-C6 Bidder shall describe its technical approach to execute the project and Level 1 schedule outlining the proposed primary phases of the design/build work and the major design and construction components in each phase of the work to meet contract milestone/s. The technical approach shall include a discussion of the interface requirements of a new rail maintenance facility with an existing mainline system.

1.2-C7 Bidder shall complete and attach LACMTA forms, List of Current (Backlog) (Pro Form 054) and Completed Project for the last three years (Pro Form 055). The provided reference information such as owner's names, address, phone numbers and contact person must be correct. In addition to the reference project named in item 1.2-C1 and 1.2-C2 above, Bidders shall also have past performance questionnaires (provided in Section 5 of this IFB) completed by the owner(s) or responsible prime contractor(s) for two (2) completed project(s) in the last five years.

1.2-C8 The requirement on item 1.2-C7 above also applies to Joint Venture Partners and major subcontractors with subcontract amount equal to or more than 10% of the Total Bid Price.

1.3 KEY PERSONNEL EXPERIENCE

Provide resumes of key personnel showing relevant work experience, education (including degrees, years and technical discipline), licenses or active registrations and other credentials appropriate to performing the services. Resumes may not exceed two pages per resume. Include a discussion of current and future commitments of key personnel and how these commitments will affect their availability for Metro's assignments.

1.3-A Project Manager: Describe the individual's experience in engineering and construction over the past 15 years and describe that the individual has held a position of significant responsibility on at least one (1) light rail maintenance facility project or a project of similar complexity to this project within the last (10) years.

Describe the specific role/responsibilities of the proposed Project Manager on each of the reference projects listed in their resume highlighting similarities in size and complexity to this project

1.3-B Construction Manager: Describe the individual's experience in construction and construction management over the past ten (10) years on at least one (1) rail maintenance facility or a project of similar complexity to this project within the last (10) years.

Describe the specific role/responsibilities of the proposed Construction Manager on each of the reference projects listed in their resume highlighting similarities in complexity to this project.

1.3-C Design Manager: describe the individual's design experience in transit projects over the past fifteen (15) years with primary design responsibility on at least one (1) light rail maintenance facility or a project of similar complexity to this project within the last ten (10) years of similar complexity to this project.

Describe the specific role/responsibilities of the proposed Design Manager on each of the reference projects listed in their resume highlighting similarities in complexity to this project.

1.3-D Systems Manager: describe the individual's systems design experience during the past ten (10) years, including experience designing (a) trackwork/rail; (b) train control; (c) traction power; (d) communications; (e) overhead catenary system; (f) major equipment supply and installation/testing for a light rail transit project or a project of similar complexity to this project.

1.3-E Project Quality Manager: describe individual's Quality experience during the past ten (10) years as well as Quality Management related experience during the past five (5) years, and the experience may be fulfilled through a combination of education and field experience in the following areas of engineering, engineering technology, management, business administration or related field acceptable to Metro Quality Management.

Describe the specific role/responsibilities of the proposed Project Quality Manager on each of the reference projects listed in their resume highlighting quality experience and quality management positions held. Disclose related educational attainment and trainings attended (if applicable).

1.3.2 BIDDER'S PAST PERFORMANCE

Bidder shall submit a minimum of three (3) completed Experience/Performance Questionnaires (Form V1.0) demonstrating satisfactory or above ratings from current and past clients. At least 1 of the 3 questionnaires must be from a Design/Build project of at least \$100 million dollars (\$100,000,000) completed within the last 10 years. At least 1 of 3 questionnaires must be from a successfully completed construction project within the past fifteen (15) years of one of the following types of projects valued at \$25M or more: 1) a light rail transit maintenance facility project; or 2) a heavy rail electrified maintenance facility project and built 20 miles of light rail transit mainline including: track, signal system, overhead catenary system and traction power; or 3) describe and explain any other project(s) it has completed that the bidder deems similar in size and complexity. Please note: Bidder can submit the same questionnaire for the projects referenced above and noted in 1.2-C1 & 1.2-C2. The bidder is also required to submit two additional questionnaires for two different projects to fulfill the requirements in 1.2-C7. Major subconsultants and subcontractors shall each submit one (1) completed Experience/Performance Questionnaires (Form V1.0) demonstrating satisfactory or above ratings from current or past clients Metro will validate the information.

1.4 PROJECT MANAGEMENT PLAN

Present an organization structure showing the key personnel of the Bidder's design/build team for the project. The organization structure should show lines of responsibility (e.g. management, design, engineering, construction, quality control, safety etc.). Clearly show how all members (including major subcontractors and sub-consultants) form an integrated team. The organization chart shall depict the reporting relationship of the Quality Control Manager to executive/project management.

Prime or subcontractor should have sound knowledge, professional licenses, and previous design or construction experience in commercial and institutional building and general civil related work.

1.5 RESERVED

1.6 QUALITY ASSURANCE/QUALITY RECORD

Quality Assurance/Quality Record that consists of specific and detailed procedures that ensure compliance with all specified requirements (Pro Form 061), submit as noted below in section 1.8.

1.7 SAFETY

Submit Pro Forms 062 and 063. Submit as noted in section 1.8.

1.8 OTHER SUBMITTALS & CERIFICATIONS

Each Bidder **must** sign and submit the following Pro Forms found in Sections 5 and 6:

<u>Pro Form No.</u>	<u>Description</u>
<u>132</u>	<u>Bidders List Form</u>
<u>061</u>	<u>Quality Assurance/Quality Control</u>
<u>062</u>	<u>Safety</u>
<u>063</u>	<u>Bidder's Industrial Safety Record</u>
<u>119</u>	<u>Ethics Declaration</u>
<u>026</u>	<u>General Certifications</u>
<u>024</u>	<u>Certificate of Compliance with 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations</u>
<u>015</u>	<u>Buy America Certificate</u>
<u>025</u>	<u>Certification Of Compliance with Federal Lobbying Requirements (49 CFR Part 20)</u>
<u>022</u>	<u>Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion</u>
<u>021</u>	<u>Certification of Prospective Lower Tier Participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion</u>
<u>043</u>	<u>Noncollusion Affidavit to be Executed by Bidder and Submitted with Bid</u>

Each Bidder should review insurance requirements specified in the Exhibit to the Form of Contract entitled Insurance, as the successful proposer will be required to submit proof of insurances specified.

IB-02 BIDDERS LIST FORM

- A. In accordance with 49 CFR 26.11 (c), the Los Angeles County Metropolitan Transportation Authority (Metro) is required to maintain a Bidders List, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts, who seek an award or participation on Metro contracts funded in whole or in part with Federal funds. Each Bidders List is a compilation of Bidders, Proposers, Quoters, subcontractors, manufacturers, and suppliers of materials who have submitted bids during the advertising period of a specific project.
- B. If the Letter of Invitation identifies this IFB as federally funded, all businesses are required to complete and submit a Bidders List Form**

(PRO FORM 132) when submitting a Bid, Proposal, or Quote directly to Metro.

- C. All businesses that submit a Bid, Proposal, or Quote directly to Metro must also ensure that all of its quoting subcontractors, suppliers, manufacturers and suppliers that the Bidder included in its response to Metro, are required to complete and submit a Bidders List Form (PRO FORM 132).

D. Bidders List Forms (PRO FORM 132) are due at time of Bid due date as provided in the Letter of Invitation. Failure to submit the Bidders List Form(s) may deem the Bidder non-responsive.

- E. LACMTA will use the Bidders List to identify the universe of DBE and non-DBE contractors and subcontractors who seek to work on Metro contracts for use in establishing Metro overall goals.

IB-03

STEP TWO PRICE BID REQUIREMENTS

- A. The Step-Two Price Bid shall consist of:

- 02 Step-Two Price Bid Letter
- Bid Bond Executed from Section 5
- List of Subcontractors and Suppliers (Pro Form 68)
- Schedule of Quantities & Prices
- DBE Goal/Participation-

- B. Each Step-Two Price Bid package shall contain **one (1) original** of the required Bid documents.

- C. The Step-Two Price Bid shall be enclosed in a sealed envelope clearly marked with the Name and Address of Bidder, the IFB Number and Title; and labeled "Step-Two Price Bid."

- D. The Step-Two Price Bid must be addressed and delivered per the requirements in the Invitation for Bids Letter. Bidders whose Step-One Technical Bids that are determined to be "Technically Acceptable" shall be notified that their Step-Two Price Bid will be publicly opened and read out loud. Metro shall notify all bidders of the schedule of the "Step-Two Price Bid" opening.

- E. All blank spaces on the Price Bid forms must be filled in and no changes shall be made in the wording. Failure of the Bidder to submit, in a correctly-labeled sealed envelope, the Step-Two Price Bid form required by this IFB, completed in full and duly executed by the authorized officer as listed in the Price Bid Form entitled 02-Step Two Price Bid Letter; and other Step-Two Price Bid Requirements, may render the Price Bid incomplete and unresponsive and may be cause for rejection or determination of unacceptability.

IB-04 PREPARATION OF SUBMITTAL

- A. The outside of each envelope shall be clearly marked with the Name and Address of Bidder, Bid Number and Title; and a description of the contents e.g., "Step-One Technical Bid" or "Step-Two Price Bid".
- B. Bids shall be prepared using the Bid Forms provided with the IFB Documents, or on legible photocopies of the forms. Unless otherwise specified, Bid Forms requiring signature(s) must be executed by the person who signs the Bid Letter.
- C. Bidders shall complete the Bid Forms in accordance with the directions specified in these Instructions to Bidders and the Bid Forms, and shall identify the Bidder's name on the top right of each page. All required explanatory narratives and the supplementary data are to be included with the Bid Forms as indicated. Initial all modifications made to Bidder's entries. Liquid or dry correction materials shall not be used. Use of black ink and/or typewritten entries is preferred on Bid Forms and for all additionally requested information.
- D. Failure to comply may render the bid(s) incomplete and non-responsive and may cause their rejection. This IFB does not commit LACMTA to enter into a contract nor does it obligate LACMTA to pay for any costs incurred in the preparation and submission of Bids or in anticipation of a contract.

IB-05 RESERVED

IB-06 BID EVALUATION PROCESS

- A. Step-One Technical Bid

The following are the Step-One Technical Bid Evaluation Factors, which ~~are equal importance~~ will be used by LACMTA to assess whether the Bidder is technically capable of performing the Work. This assessment will be based on the totality of information provided by the Bidder in response to submittal requirements 1.2-1.8, and, in part will form the basis of LACMTA's determination of the Bidder's responsibility.

TECHNICAL EVALUATION CRITERIA

FACTORS	CRITERIA	Formatted: Left
–Executive Summary	Pass/Fail	Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted Table
Minimum Qualification Requirements		Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li
A) Bidder has demonstrated successful completion of at least one (1) major design/build project of \$100M or more in the last ten years. Has clearly identified any project that has been jointly completed with its design/build team. Bidder has provided past performance questionnaire (provided in Section 5 of this IFB) completed by the owner(s) for such project.	Pass/Fail	Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li
Bidder has demonstrated successful construction within the last fifteen (15) years of at least \$25M one of the following types of projects: 1) a light rail transit maintenance facility project, or 2) a heavy rail electrified maintenance facility project and built 20 miles of light rail transit mainline including: track, signal system, overhead catenary system and traction power. Bidder has detailed the general character, scope, cost and date of completion of the light rail transit maintenance facility and explain what aspects of the referenced project(s) it deems similar in size and complexity to the proposed effort.	Pass/Fail	Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li, No bullets or numbering Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li
Bidder has submitted evidence that it or its subcontractor(s) have experience with designing a light rail transit maintenance facility of at least \$25M within the last fifteen (15) years with similar complexity to that described in this solicitation document. Bidder has detailed the general character, scope, cost and date of completion of the rail transit maintenance facility and explained what aspects of the referenced project(s) it deems similar in size and complexity to the proposed effort.	Pass/Fail	Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li
Bidder shall demonstrate experience on designing and constructing LEED Silver-certified buildings and/or projects.	Pass/Fail	Formatted: Indent: Left: 1.05", Right: 0", Space Before: 0 pt, Line spacing: Multiple 0.87 li
5. Bidder has submitted evidence that it or its subcontractor(s), has experience designing and installing: (a) trackwork/rail; (b) train control; (c) traction power; (d) communications; (e) overhead catenary system; (f) major equipment supply and installation/testing for a rail maintenance facility.	Pass/Fail	Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Right: 0", Space Before: 0 pt, Line spacing: Multiple 0.87 li, No bullets or numbering
6. Bidder has provided a discussion of its technical approach to executing the project and level 1 schedule outlining the proposed primary phases of the design/build work and the major design and construction components in each phase of the work to meet contract milestones. The technical approach included a discussion of the interface requirements of a new rail maintenance facility with an existing mainline system.	Pass/Fail	Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Right: 0", Space Before: 0 pt, Line spacing: Multiple 0.87 li, No bullets or numbering Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li

Key Personnel		Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li
a) Project Manager —has at least fifteen (15) years experience in engineering and construction and significant responsibility on at least one (1) light rail maintenance facility project within the last ten (10) years of similar complexity to this project.	Pass/Fail	Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Space Before: 0 pt, Line spacing: Multiple 0.87 li, Widow/Orphan control
Construction Manager —has at least ten (10) years experience and technical competence in construction and significant construction management responsibility on at least one (1) rail maintenance facility within the last (10) years of similar complexity to this project.	Pass/Fail	Formatted: Indent: Left: 1.05", Right: 0", Space Before: 0 pt, Line spacing: Multiple 0.87 li, No bullets or numbering, Widow/Orphan control
Design Manager —has at least fifteen (15) years experience and technical competence in transit projects and primary design responsibility on at least one (1) light rail maintenance facility within the last ten (10) years of similar complexity to this project.	Pass/Fail	Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Right: 0", Space Before: 0 pt, Line spacing: Multiple 0.87 li, Widow/Orphan control
Systems Manager —has at least ten (10) years systems design experience and technical competence including experience designing (a) trackwork/rail; (b) train control; (c) traction power; (d) communications; (e) overhead catenary system; (f) major equipment supply and installation/testing for a light rail transit project.	Pass/Fail	Formatted: Left, Indent: Left: 1.05", Space Before: 0 pt, Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Right: 0", Space Before: 0 pt, Line spacing: Multiple 0.87 li, Widow/Orphan control
Project Quality Manager —has a Bachelors degree from accredited four-year educational institution in engineering, engineering technology, management, business administration or related field or a combination of education and experience acceptable to Metro Quality Management. The Project Quality Manager shall have a minimum of ten (10) years Quality experience and at least five (5) years in Quality Management position.	Pass/Fail	Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li
Past Performance Bidder —has submitted a minimum of three (3) completed Experience/Performance Questionnaires (Form V1.0) demonstration satisfactory or above ratings from current and past clients. At least 1 of 3 questionnaires must be from a Design/Build project of at least \$100 million dollars completed in the last ten (10) years. At least 1 of 3 questionnaires must be from recent successful construction of a light rail transit maintenance facility project of at least \$25M within the last fifteen (15) years with similar complexity to that described in this solicitation document. At least 1 of 3 questionnaires must be from Bidder or its subcontractor(s) has experience with designing a light rail transit maintenance facility of at least \$25M within the last fifteen (15) years with similar complexity to that described in this solicitation document. Please note: Bidder can submit the same questionnaire for the 3 types of projects referenced above and noted in 1.2-C1, 1.2-C2 & 1.2-C3. The bidder is also required to submit two additional questionnaires for two different projects to fulfill the requirements in 1.2-C7. Subconsultants and Subcontractors shall each submit one (1) completed Experience/Performance Questionnaire (Form V1.0) demonstrating satisfactory or above ratings from current or past clients. Metro will validate the information.	Pass/Fail	Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li
Pre-Qualification (IB-07 & Pro Form 130)	Pass/Fail	Formatted: Left, Indent: Left: 1.05", Line spacing: Multiple 0.87 li Formatted: Indent: Left: 1.05", Line spacing: Multiple 0.87 li

Other Submittals & Certifications (Section 5 & 6)	Pass/Fail
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B. Step-Two – Price Bid

B1. Bidders who are determined to be technically capable to perform the work whose Step-One Technical Bids that are determined to be "Technically Acceptable" shall be notified that their Step-Two Price Bid will be publicly opened and read out loud. Metro shall send a notification to all bidders of the schedule of the "Step-Two Price Bid" opening.

B2. The contract shall be awarded to the lowest responsible bidder.

B3. Step 2 required submittals:

- Step 2 Bid Price Letter
- Bid Bond
- List of Subs
- Schedule of Quantities and Values

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The following are the Step-Two Sealed Price Bid Evaluation Factors:

FACTORS	CRITERIA
<u>02-Step Two Price Bid Letter (Section 5)</u>	Pass/Fail
<u>Bid Bond (Pro Form 056)</u>	Pass/Fail
<u>List of Subcontractors and Suppliers (Pro Form 66)</u>	Pass/Fail
<u>Schedule of Quantities and Prices – Total Bid Price (Pro Form 036)</u>	Lowest Price

- C. If LACMTA requires clarification, verification, and/or support of technical data submitted by a Bidder in its Step-One Technical Bid, LACMTA will request the needed information in writing. Such data shall be furnished by the Bidder and received by LACMTA as identified in the Amendment No. 6, within 24 hours (excluding weekends and holidays) following request by LACMTA.
- D. Bidders shall not submit any unsolicited information to LACMTA after the Step-One Technical Bid receipt by LACMTA nor shall the Bidder submit any unsolicited information after the Step Two Bid receipt and opening. Such information will not be accepted by LACMTA and will not be used in the Bid evaluation process.
- E. During the bid evaluation period, staff shall determine if bids are responsive and bidders are responsible. Bids submitted in strict accordance with the solicitation documents will be deemed responsive. Responsibility is defined as the apparent ability of the Bidder to meet and successfully complete the requirements of the Contract. Responsibility includes consideration of a Bidder's trustworthiness, the quality of past performance, financial ability, and the fitness and capacity to do the proposed work in a satisfactory manner. Bidder may be required to present further evidence that it has successfully performed similar work of comparable magnitude or provide other proof satisfactory to LACMTA that it is competent and

capable -to successfully perform this contract.

- F. The bid evaluation period will close upon LACMTA's completion of its review and evaluation of IFB Documents, including any Good Faith Efforts documents submitted. LACMTA shall not give notice, to the Bidders, of the close of the bid evaluation.
- G. Following the evaluation period, the recommendation for award will be sent to all Bidders and will be posted on LACMTA's website.

IB-07 PRE-QUALIFICATION REQUIREMENTS

- A. All contractors, subcontractors, material suppliers (supplying directly to Metro), and any other firm competing for award of contracts or subcontracts of \$100,000 or more will be required to complete and submit a Contractor Pre-Qualification Application. Failure to do so may cause your Bid to be rejected as non-responsive.
- B. Contractor Pre-qualification Applications are due to the pre-qualification office no later than the Bid due date. Do not put copies of pre-qualification documents in your Bid.
- C. For contact information, please refer to the Letter of Invitation. For detailed instructions, refer to the Pre-Qualification Application which can be downloaded from Metro website (<http://www.metro.net/EBB/PQA/vprequal.htm>), or provided by the Pre-Qualification Office.

IB-08 RESERVED

IB-09 EXAMINATION OF IFB DOCUMENTS

All Step-One Technical Bids and Step-Two Sealed Price Bids shall be in strict accordance with the Invitation For Bids (IFB) Documents.

Copies of the IFB and responses to all written questions and requests for interpretation and clarification will be available for examination and/or purchase at the location and times listed in the Letter of Invitation. The Bidder shall be solely responsible for examining the IFB Documents, including any amendments issued during the bidding period, and for informing itself with respect to local labor availability, means of transportation, necessity for security, laws and codes, local permit requirements, wage scales, local tax structure, Contractors' licensing requirements, availability of required insurance, bonding requirements, and any other factors that could affect the Work. Bidders shall be responsible for consulting the standards referenced in the IFB Documents. Failure of the Bidder to so examine and inform itself shall be at its sole risk; no relief for error or omission is required to be given.

IB-10 INTERPRETATION OF BID DOCUMENTS

Any request for interpretation or clarification of the IFB Documents shall be submitted in writing by potential Bidders to Metro’s Contract Administrator, identified in the Letter of Invitation. Although faxed requests will be accepted, the signed original shall be mailed within three (3) working days. Metro responses to requests for interpretation or clarification will be in writing and made available only to the listed Planholders of the IFB Documents.

To ensure that responses are provided to all Planholders, inquiries shall be received at least fifteen (15) working days prior to the scheduled bid opening date. Where such interpretation or clarification requires a change in the IFB Documents, Metro will issue an amendment to the IFB Documents. Metro will not be bound by, and the Planholders shall not rely on, any oral interpretation or clarification of the IFB Documents.

IB-11 COMMUNICATION WITH METRO

Request for information on the Lobbying Policy are to be directed to the Office of Ethics at One Gateway Plaza, Mail Stop 99-7-22, Los Angeles, CA 90012-2952. All other communications regarding this IFB between potential Bidders and the staff of Metro and Contractors engaged by Metro shall be addressed only to the Contract Administrator, who is identified in the invitation for Bid Letter. All communication shall be writing.

IB-12 IFB PLANHOLDER LIST

Metro will maintain a list of those companies who have obtained the IFB Documents through Metro. This list is referred to as the IFB Planholders List. Metro will notify only those companies on the IFB Planholders List of amendments, written response(s) to questions, and requests for interpretation or clarification. All interested parties can obtain a copy of the IFB Planholders List by contacting the Procurement Department Receptionist on the 9th Floor of Metro’s Gateway Plaza Building.

IB-13 RESERVED

IB-14 MODIFIED AND ALTERNATIVE BID PROHIBITIONS

The Bidder shall submit Step-One Technical Bid and Step-Two Price Bid in strict conformity with the requirements of the IFB Documents. The prepared bids shall be complete in itself and shall be submitted within a sealed bid envelope clearly marked in accordance with the instructions herein. Unauthorized conditions, limitations, and/or provisions attached to either a Step-One Technical Bid or Step-Two Price Bid may render it non-responsive and may cause its rejection. Bidders shall not delete, modify, and/or supplement the printed matter on the forms and/or make substitutions thereon unless directed to do so in writing by Metro. Oral, telegraphic, or telephonic bids and/or modifications will not be considered.

IB-15 AMENDMENT

Metro reserves the right to revise the IFB Documents prior to the Step-One Technical Bid opening. Such revisions, if any, will be made by amendment to this IFB. Copies of such amendment will be furnished, to all those on the IFB Planholders List. If an amendment includes significant changes, the Bid opening due date may be postponed by a number of days that Metro considers appropriate for Bidders to revise their Bid. The announcement of a new date, if any, will be included in the amendment. In any event, the last amendment will be issued no later than five (5) working days prior to the bid opening. Bidders shall acknowledge receipt of all amendments to the IFB Documents in their Bid Letters. Failure to acknowledge receipt of all amendments may render the Bid non-responsive.

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IB-16 RESERVED

IB-17 SIGNING OF BIDS

An authorized signatory shall execute the Bid Letter and all applicable Bid Forms.

If the bidder is a Joint Venture/Partnership, it shall submit with its Bid a duly notarized venture/partner-executed irrevocable Power of Attorney that designates one of the ventures as a Management Sponsor along with a signed copy of the Joint Venture/Partnership Agreement. The Management Sponsor shall be empowered to execute the Bid on behalf of the Bidder and to act for and bind the Bidder in all matters relating to the Bid. The Power of Attorney shall specifically state that each venture/partner shall be jointly and severally liable for any and all of the duties and obligations of the Bidder that is assumed under the Bid and under any contract arising there from. The Management Sponsor on behalf of the Joint Venture/Partnership in its legal name shall execute the Bid.

IB-18 WITHDRAWAL OF BID

The Bidder may withdraw its Step-One Technical Bid before the Step Two Price Bid opening without forfeiture of its Bid Guarantee by means of a written request signed by the Bidder or its properly authorized representative. Such written request shall be delivered to the Contract Administrator identified in the Letter of Invitation. After the Bid opening, the Bidder may only seek relief of its Bid per Sections 5101 et seq. of the California Public Contract Code. Bids withdrawn after the Bid opening may be subject to forfeiture of the Bid Guarantee.

IB-19 BID MISTAKES (AFTER BID OPENING)

- A. A bidder who seeks to rescind its bid due to a mistake or error in preparation of its bid, shall notify LACMTA in writing within five (5) business days of public opening.
- B. For public works construction, Bidders alleging mistakes in bids may

seek relief in accordance with Section 5100 et. Seq. of the California Public Contract Code. Bids withdrawn after the bid opening may be subject to forfeiture of the Bid Guarantee

IB-20 DISCREPANCIES IN BID ITEMS

The Bidder shall furnish a price for each and every Bid item in the Schedule of Quantities and Prices. Failure to do so may render the Bid(s) incomplete and non-responsive and may cause its rejection. The Bid shall state the unit prices, the total amount of each Bid item, and the "Total Bid Price" for which the Bidder proposes to supply the labor, goods, and completely perform the Contract. If the unit price and the extended amount expressed by the Bidder for any item are not in agreement, the unit price alone will be considered as representing the Bidder's intention. The extended unit price and the Total Bid Price will be corrected by Metro. Should any unit price be left blank the Bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., unit price can be determined by dividing the total price by the estimated quantity). Should any total price be left blank the Bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., total price can be determined by multiplying the unit price by the estimated quantity). If any one line item is left blank, and the above situations do not apply, no attempt will be made to reconcile the amounts. The Bid in this case will be considered non-responsive.

IB-21 RESERVED

IB-22 RESERVED

IB-23 RESERVED

IB-24 RESERVED

IB-25 RESERVED

IB-26 EXECUTION OF CONTRACT

The Bidder to whom an award is made shall execute the Contract within ten (10) calendar days after being given a Notice of Award. Metro may require appropriate evidence that the persons executing the Contract and the bonds (see Attachments 1 and 2) for the Bidder are duly empowered.

IB-27 METRO RIGHTS

Metro may investigate the qualifications of any Bidder under consideration inclusive of, but not limited to, the information provided in the Pre-Qualification Application. Metro may require confirmation of information furnished by the Bidder, and require additional evidence of qualifications to perform the Work described in this IFB. Metro reserves the right to:

- reject any or all of the Bids, at its discretion;
- reject any Bid that, in the opinion of Metro, is so unbalanced in comparison to other Bids received and/or to Metro's internal estimates that it does not accurately reflect the cost to perform the Work;
- cancel the entire IFB;
- issue subsequent IFB;
- appoint evaluation committees to review Bids;
- seek the assistance of outside technical experts to evaluate Bids;
- disqualify the Bid(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the Bidder(s); and
- waive any errors or informalities in any Bid, to the extent permitted by law.

This IFB does not commit Metro to enter into a contract nor does it obligate Metro to pay for any costs incurred in the preparation and submission of Bids or in anticipation of a contract.

IB-28 PUBLIC RECORDS ACT

Responses to this IFB shall be subject to the provisions of the California Public Records Act (Government Code Sections §6250 et. seq.)

The Bidder may label information as "Trade Secret", "Confidential" or "Proprietary". Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act. Metro will use its best efforts to inform the Contractor of any request for any documents provided by the Bidder to Metro marked "Trade Secret", "Confidential", or "Proprietary". However, it is incumbent on the any rights to confidentiality and to seek and obtain a court order prohibiting the release of such information.

Under no circumstances, will Metro be responsible or liable to the Bidder or any other party for the disclosure of any such labeled information, whether the disclosure is required by law or a court order or occurs through inadvertence, mistake, or negligence on the part of Metro or its officers, employees, and/or Contractors.

The Bidder, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the information contained in the IFB and shall hold Metro harmless from all costs and expenses, including attorney's fees, in connection with such actions.

IB-29 DISQUALIFICATION OF BIDDERS

Except when an alternative Bid has been specifically requested by Metro, no person, firm, corporation, Joint Venture, or other interested party shall submit more than one Bid for any given contract. This requirement shall not prevent Subcontractors or Suppliers to one Bidder from providing goods and services to another Bidder, and/or from submitting a Bid as a Prime Bidder. Any person, firm, corporation, Joint Venture, or other interested party that has been

compensated by Metro or a consultant engaged by Metro for assistance in preparing the IFB Documents and/or estimate shall be considered to have gained an unfair competitive advantage in bidding and shall be precluded from submitting a Bid in response to the IFB. After the IFB is issued, any person, firm, corporation, Joint Venture, or other interested party that has discussions regarding the IFB with anyone other than the Contract Administrator may be considered to have gained an unfair competitive advantage. They may be disqualified from this IFB process, except for communications with Metro as stated above in instructions entitled, COMMUNICATIONS WITH METRO.

IB-30

APPEALS RELATED TO METRO'S DETERMINATION OF TECHNICALLY UNACCEPTABLE

Metro's determination of Technically Unacceptable for a particular Bidder shall not necessarily result in the suspension or deferral of the solicitation schedule, regardless of whether any appeal has been filed hereunder. Any suspension or deferral of the solicitation schedule shall be within the sole discretion of Metro.

- 1) Only a Bidder (excluding individual Joint Venture members, or individual members of any other business relationship) is eligible to submit an appeal of Metro's determination of Technically Unacceptable.

- 2) Process to Appeal

The filing and resolution of an appeal of Metro's determination of Technically Unacceptable resulting from the Metro's evaluation of the Bidder's Technical Bid will follow the process as set forth herein.

- a. A written appeal shall be filed within five (5) calendar days from the date Metro issues its determination of Technically Unacceptable to a Bidder. The written appeal shall be submitted by electronic means (with the original copy sent by express mail), or any other return receipt means. Metro is not responsible for lost or otherwise delayed deliveries. If a Bidder that has been served with a determination of Technically Unacceptable fails to file a timely written appeal as described herein, the determination of Technically Unacceptable shall become final.
- b. The Bidder shall file, with the Director of Contract Administration identified in the Technically Unacceptable notification, the grounds for the appeal in a written submission that must include all of the following:
 - (1) The name and address of the Bidder;
 - (2) Description of the nature of the appeal;
 - (3) Identification of the provision(s) of the IFB, regulations, or laws upon which the appeal is based, i.e., identification of the item of content in the IFB;
 - (4) All documentation supporting the allegations in the appeal must be attached;

- (5) The appeal shall only contain factual information directly related to the grounds of the appeal.
 - (6) Factual allegations in the written submission must be supported by an affidavit included with the written submission;
 - (7) A statement of the specific relief requested; and
 - (8) The appeal should also reference any pertinent court, GAO and agency decisions, which are relied upon in support of the appeal, as well as any contrary authority.
- 3) Metro Response

An Appeal Review Panel shall evaluate the appeal, and has the sole discretion to concur with or deny the appeal and issue a written decision within fourteen (14) calendar days of the receipt of the appeal. The Appeal Review Panel will consist of three members from Metro executive management not associated with the particular project. The Appeal Review Panel reserves the right to request additional information from either the Bidder or Metro staff. The decision of the Appeal Review Panel is final.

Costs and Damages

All costs of an appeal shall be the responsibility of the Bidder and undertaken at the Bidder's expense. In addition, if the appeal is denied, the Bidder filing the appeal shall be liable for Metro's costs reasonably incurred in defending against the appeal, including legal and consultant fees and costs, and any unavoidable damages sustained by Metro as a consequence of the appeal. Metro shall not be liable for damages to the Bidder filing the appeal or to any participant in the appeal process.

IB-31 FILING OF PROTESTS

- A. All Protests must be filed and resolved in a manner consistent with the Metro, "PROTEST INSTRUCTIONS" (available for download at <http://www.metro.net/EBB/protest.pdf>).
- B. Appeals related to a Pre-Qualification Denial must be filed in accordance with the Pre-Qualification Appeal entitled Contractor Pre-Qualification Program (available for download at <http://www.metro.net/EBB/PQA/vprequal.htm>).

END OF INSTRUCTIONS TO BIDDERS

SUPPLEMENTAL INSTRUCTIONS TO BIDDERS/PROPOSERS

1. BID GUARANTEE

Yes No

No bid shall be considered unless it is accompanied by an unconditional Bid Guarantee that ensures that the Bidder will, if its bid is accepted, execute a Contract. The guarantee shall be in the amount of 10 percent of the Total Bid Price as defined in the Bid Form entitled SCHEDULE OF QUANTITIES AND PRICES, Section entitled DETERMINATION OF TOTAL BID PRICE. The guarantee shall be in the form of cash (in U.S. dollars), a certified or cashier's check or Bid Bond executed by an admitted surety in the State of California, or any combination thereof. Checks and bonds shall be made payable to the Los Angeles County Metropolitan Transportation Authority.

If a Bid Bond is submitted, it shall be documented on the form furnished by Metro or a legible photocopy thereof. Certified or cashiers checks must be drawn on a solvent state or national bank, or branch thereof, in the State of California.

If the Bidder to whom the award is made fails or refuses to sign a Contract or to furnish the required insurance certificates as defined in Instruction to Bidders entitled INSURANCE REQUIREMENTS, bonds as defined in Instruction to Bidders entitled PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS, and Alcohol-and-Drug-Free Workplace Program as defined in the Alcohol-and-Drug-Free Workplace Manual, the Bid Bond shall be subject to forfeiture to Metro.

The liability of Metro in connection with such Bid Guarantees will be limited to the return of the Bid Guarantees to the successful Bidder after all acts, for the performance of which said security is required, have been fully performed. The remaining Bid Guarantees will be returned after Metro has made an award to the successful Bidder.

2. PERFORMANCE AND PAYMENT BOND REQUIREMENTS

Yes No

Within 10 days after award, but prior to Metro's execution of a Contract for Construction or Furnish and Install (Systems) Services, the successful Bidder shall deliver to Metro an original of the Performance Bond and Payment Bond on the forms supplied by Metro or legible photocopy thereof. The Bonds shall be executed by a surety acceptable to Metro and authorized to issue such bonds in the State of California.

The bond requirements for Furnish Only (Equipment) Contracts are defined in the Special Provisions.

- A. Concurrent with the execution of the Contract, the Contractor shall furnish Metro, at its own expense, a Performance Bond and Payment Bond satisfactory to Metro in the form supplied herein, issued by a surety satisfactory to Metro and authorized to issues such bond in the State of California.

- B. The Performance Bond shall be for 100 percent of the Total Contract Price as a guarantee of good faith and timely performance on behalf of the Contractor that the terms of the Contract shall be complied with in every particular.
- C. The Payment Bond shall be for 100 percent of the Total Contract Price as security for the payment of all obligations arising under the Contract or incurred by reason of performance of the Work and shall meet the requirements of Civil Code Section 3247et seq.

3. ESCROW OF BID DOCUMENTS

Yes No

Bidders submitting bids having a value over \$5 million may be required to submit one copy of all documentary information generated in preparation of the bid prices to Metro within 48 hours after the time of receipt of bids. See the Article entitled ESCROW OF BID DOCUMENTS in the Special Provisions.

END OF SUPPLEMENTAL INSTRUCTIONS

DBE INSTRUCTIONS TO BIDDERS/PROPOSERS AND DESIGN/BUILD FORMS (RC-FTA)

100 DBE PROGRAM

101 **FEDERAL OBLIGATION:** This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*.

102 **METRO POLICY STATEMENT:** It is Metro's policy to provide equal opportunity for Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, to receive and participate on DOT-assisted contracts. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts
3. Ensure that Metro's DBE program is narrowly tailored in accordance with applicable law
4. Ensure that only firms that meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts
6. Assist the development of firms that can compete successfully in the market place outside the DBE program

103 **INTERPRETATION:** Any conflict, error, omission or ambiguity which may arise between these instructions and the federal regulations or the above mentioned DBE Program obligation, shall be resolved first in favor of the federal regulations and second the DBE Program. Failure of an Offeror, its subcontractors, consultants, suppliers or other entities to carry out these requirements, may be grounds for Metro to implement administrative penalties or other remedies imposed by Metro.

104 **SUSPENSION OR DEBARMENT:** Suspension or debarment proceedings may be initiated by Metro against any firm that:

1. Attempts to participate in a DOT-assisted program as a DBE and does not meet the eligibility criteria stated in the certification standards for DBE programs; or on the basis of false, fraudulent or deceitful statements; or under circumstances indicating a serious lack of business integrity or honesty.
2. Attempts to use false, fraudulent or deceitful statements or representations in order to meet its DBE administrative requirements; or uses another firm that does not meet the DBE eligibility criteria stated in the certification standards.

In accordance with 49 CFR Part 26.107, DOT may take action itself through its Fraud and Civil Remedies Program or refer the matter to the Department of Justice for prosecution under appropriate criminal statutes.

Metro may refer any false, fraudulent, or dishonest conduct to the attention of the Department of Transportation in connection with the DBE program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, and/or referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules)..

105 **METRO OVERALL DBE GOAL:** Metro has established a triennial overall DBE goal for DBE participation. Metro will use both Race-Conscious (RC) and Race-Neutral (RN) measures to achieve its overall goal. To ascertain whether the overall DBE goal is being achieved, Metro will monitor contractor's DBE commitments and will track the payments to all firms (DBE and Non-DBE).

106 **RACE CONSCIOUS (RC) DBE MEASURES:** Includes setting RC DBE contract goals for the participation of DBE groups found in Metro's Disparity Study to have significant statistical disparity. The RC DBE groups are African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, and Subcontinent Asian Americans.

107 **RACE NEUTRAL (RN) DBE MEASURES:** The DBE group(s) that have not been found in Metro's Disparity Study to have significant statistical disparity and cannot be counted toward the RC DBE contract goal, but will be counted as RN DBE participation in accordance with 49 CFR Part 26.

Participation by all DBE groups will be tracked and reported to meet Metro's overall DBE goal.

200 DBE PARTICIPATION

201 **DBE CONTRACT GOAL:** DBE goals are established based on the analysis of the scope of work, and the availability of DBE firms that are ready, willing, and able to perform. If established, the contract goal is listed in the "Letter of Invitation Supplement (FTA)" contained in the solicitation document.

If a contract goal is not established, Offerors are encouraged to utilize DBE firms when opportunities are available during the performance of the contract. The successful Offeror will be required to report DBE participation throughout the period of performance. DBE participation obtained when a contract goal is not established is counted as RN participation.

202 **RESPONSIVENESS TO CONTRACT GOAL:** If a RC DBE contract goal is established for this contract, obtaining the contract goal is a matter of responsiveness. Offerors are required to document sufficient DBE participation to meet the goals or, alternatively, document adequate good faith efforts (GFE). Offerors shall provide the following:

1. Names and addresses of DBE firms that will participate in this contract;
2. Description of the work each DBE will perform;
3. Dollar commitments of each DBE firm participating;

4. Written documentation of the Offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. Evidence of good faith efforts; upon receipt of Metro's request (refer to Section 400 - GFE Requirements).

203 **CONTRACTOR ASSURANCE:** The Offeror makes the following assurance and shall, after contract award include this assurance verbatim in each subcontract and/or purchase agreement awarded to both DBE and non-DBE subcontractors, suppliers, truckers, and brokers.

Contractors, subrecipients, nor subcontractors shall discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

204 **DBE COMMITMENT FORMS:** Offerors shall submit with its bid/proposal completed DBE Forms as provided in these Instructions to Bidders/Proposers (See: TABLE 1 – DBE COMMITMENT FORMS).

DBE FORMS

DBE SUBMITTALS FOR DESIGN

Submit DBE Forms 1 through 5 with bid/proposal.

- Form 1 Proposed Subcontractors & Suppliers
- Form 2 Affidavit
- Form 3 Proposed Lower Tier Subcontractors & Suppliers
- Form 4 Business Data Sheet
- Form 5 DBE Affirmation

The contractor shall provide, as part of its bid/proposal a complete listing of DBE and non-DBE subcontractors that will perform any portion of the design work, together with a description of their scope of work and dollar value of their participation.

DBE SUBMITTALS FOR CONSTRUCTION

Submit DBE Forms 1 through 5 with bid/proposal.

- Form 1 Proposed Subcontractors & Suppliers
- Form 2 Affidavit
- Form 3 Proposed Lower Tier Subcontractors & Suppliers
- Form 4 Business Data Sheet
- Form 5 DBE Affirmation

After the issuance of the NTP, the contractor shall provide Metro monthly updates of DBEs and non-DBE subcontractors added to perform any portion of Construction

work, with values of 0.5% of the total contract price. DBE Forms shall be completed by DBE and non-DBE subcontractors added post NTP.

The Offeror shall provide, as part of its bid/proposal a complete listing of DBE and non-DBE subcontractors that will perform any portion of the work, together with a description of their scope of work and dollar value of their participation.

205 **DBE INFORMATION:** Offerors are informed of the following:

1. DBE firms must be DBE certified by the California Unified Certification Program (CUCP) by bid/proposal due date (reference Section D500 DBE Certification Requirements).
2. DBE firms must be certified in the North American Industry Classification System (NAICS) code(s) representing the scope(s) of work listed for DBE credit.
3. DBE firms listed to meet the contract goal must be in the designated RC DBE groups. (See: Section 106 Race Conscious (RC DBE) Measures). Offeror will receive credit toward the contract goal for DBE groups designated as race conscious.
4. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.
5. A DBE joint venture partner must be responsible for performing a clearly defined scope of work. DBE joint venture partners must actually perform, manage and supervise the work with its own forces; and share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
6. DBE firms must perform a commercially useful function, by being responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising at least 30% of the project work with its own workforce (See: Section 301- "Commercial Useful Function").

206 **REPLACEMENT OF A DBE FIRM:** Prior to contract award, if Offeror list's a DBE firm that was denied prequalification, the Offeror shall replace the DBE firm with another DBE subcontractor. The Offeror shall notify the Diversity & Economic Opportunity Department of this occurrence, and shall obtain prior written approval for replacement of the DBE firm. Offeror shall document good faith efforts to replace DBE firm by following the good faith effort steps outlined in Section 400 Good Faith Efforts Requirements.

207 **DBE CONTRACTING PLAN:** To be responsive for Design and Construction at the time of award, Offerors must submit with Step 2 bid documents as part of its proposal a DBE Contracting Plan for the utilization of DBE subcontractors (even if no DBE commitments are made), subject to review and approval by Metro. The plan shall include identification of a DBE Liaison officer. The plan shall also include but is not limited to the following:

1. Estimated monetary subcontractor commitments
2. Identification of the scopes of work for all DBE subcontractors commitment on Design; and all known DBE subcontractor for Construction

3. Identification of scopes of work committed and/or anticipated for award to DBE firms
4. Work breakdown structure (WBS) submitted monthly
5. Monthly Provisional Sum Work Status Report (include provisional sum items, request and approvals) reflecting DBE subcontract performance and payment
6. Document race-neutral efforts used to attain DBE participation

The Contracting Plan shall identify the delivery or subcontracting method that will be used for each element or package of the sum. 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 Subcontractor identified in the Contractor's bid/proposal; or (3) performance by a Subcontractor subsequently selected in accordance with a competitive process approved by Metro. Contractors will be required to provide monthly update of DBE Performance Plan during the performance of the contract.

Refer to General Conditions, for additional guidance concerning DBE commitments.

300 **COMMERCIAL USEFUL FUNCTION AND COUNTING DBE PARTICIPATION**

301 COMMERCIAL USEFUL FUNCTION: To receive DBE participation credit towards the DBE contract commitments, DBE firm(s) must perform a commercially useful function (CUF). A DBE must perform at least 30% of its listed work with its own workforce or must not subcontract a greater portion of the work than would be expected on the basis of normal industry practices for that type of work. A DBE performs a CUF when it is responsible for a clearly defined and distinct scope of work. DBE firms must be responsible for the execution of the work and carrying out its responsibilities by actually performing, managing, and supervising the work involved and normal industry practices.

Metro will count DBE participation, for firms performing a CUF, in accordance with 49 CFR Part 26.55. When a DBE participates in a contract, Metro will count only the value of the work actually performed by the DBE toward the DBE contract goal(s).

1. **DBE as the Prime Contractor:** 100% DBE credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies, for a construction contract, obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliates). When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE contract goal(s).
2. **DBE as a Joint Venture Contractor:** 100% DBE credit shall apply to the clearly defined and distinct portion of work performed by the DBE's own workforce.
3. **DBE as a Subcontractor:** 100% DBE credit shall apply to the work performed with the DBE's own forces, including the cost of materials and supplies (does not

include: the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the prime contractor or its affiliates). Work that a DBE subcontractor subcontracts to a non-DBE firm shall not be credited towards the DBE contract goal.

4. **DBE as a Material Supplier or Broker:**

- a) 60% DBE credit for the cost of the materials or supplies purchased from a DBE regular dealer.
- b) 100% DBE credit for the cost of materials or supplies obtained from a DBE manufacturer.
- c) 100% DBE credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.

5. **DBE as a Trucker:** 100% DBE credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the contract. Credit will be given for the full value of all such DBE trucks operated using DBE employed drivers. DBE credit will be limited to the value of the reasonable fee or commission received by the DBE if trucks are leased from a non-DBE company. Metro uses the following six (6) factors in determining whether to count expenditures to a DBE trucking firm, to determine if it is performing a commercially useful function:

- a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- b) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases the trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- e) The DBE may also lease trucks from a non-DBE, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

- f) For the purposes of determining whether a DBE trucking company is performing a commercially useful function, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

400 GOOD FAITH EFFORTS

401 GOOD FAITH EFFORTS REQUIREMENTS: Offerors are reasonably expected to take active and aggressive measures sufficient to meet the DBE contract goal, even if not fully successful. Mere pro forma good faith efforts are not sufficient to meet the DBE contract requirements. Only those efforts made prior to bid/proposal due date shall be considered for GFE evaluation. GFE measures taken by a third party shall not be considered.

402 GOOD FAITH EFFORTS RESPONSIVENESS: To determine whether an Offeror who failed to meet the DBE contract goal may be deemed responsive, Metro must determine whether the effort taken to obtain DBE participation satisfies the GFE requirements. Metro will consider the quality, quantity, and intensity of the good faith efforts made by an Offeror.

1. Any of the following conditions constitute failure to meet the contract goal and will require submittal of good faith effort documentation:
 - a. The DBE commitment reflected in the DBE Commitment Forms is less than the DBE contract goal established.
 - b. Firms listed toward meeting the contract goal but are not certified by the bid/proposal due date in the NAICS codes for the listed work to perform and/or not performing a commercial useful function.
2. If the Offeror has not met the stated contract goal, documentation of its GFE shall be submitted to the Contract Administrator in the proper form and upon written request of Metro, within 48 hours of notice.
3. Metro will evaluate each GFE item on a pass/fail basis. Offerors will receive either full or zero (0) points for each GFE item. Offerors must receive a score of 75 – 100 points to pass the GFE requirements. Offerors achieving a passing score of 75 or more points are considered responsive to the GFE requirements. Offerors who receive a score less than 75 points is considered to have failed the GFE requirements.
4. Metro shall notify Offerors in writing whether GFE requirements were met or not met. The notification will explain the basis and include the reasons for the determination. If an Offeror fails GFE, the Offeror will be provided the opportunity for administrative reconsideration of Metro's GFE determination.

403 RECONSIDERATION: Offerors shall receive written notification detailing the results of their GFE evaluation. If the Offeror failed to achieve adequate good faith efforts to meet the established DBE goal(s), they shall have the right to request a Reconsideration Hearing. Hearing procedures include:

1. Right to Reconsideration Hearing: If an Offeror receives notice that they failed GFE requirements, they may request a reconsideration hearing. Hearing requests shall be made in writing, via U.S. Mail or delivery service, to Metro, Attn: Karen Gorman, GFE Reconsideration Officer, One Gateway Plaza, Mail Stop 99-11-12, Los Angeles, CA 90012-2952. Requests may also be submitted by facsimile to the Reconsideration Officer's ("RO") fax number at 213.922.2986, provided, however, that requests must be received by the RO within two (2) business days after the date the Offeror receives DEOD notice. The Offeror shall be presumed to have received the notification five (5) days after the date of the DEOD notice letter. The RO shall provide DEOD with a copy of the hearing request.
2. Scheduling of Reconsideration Hearing: Upon receipt of a request for a reconsideration hearing, the RO or his/her designee will contact the Offeror and the DEOD to schedule the hearing. Reconsideration hearings will be held no later than five (5) business days after receipt of the Offeror's request, unless the RO agrees to extend this time period based on good cause. Extensions are disfavored.
3. Decision: The RO will provide a written decision to the Offeror and DEOD within five (5) business days of the hearing, or as soon as possible thereafter. The decision will explain the basis for finding that the Offeror did or did not meet the goal or make adequate good faith efforts to do so. Pursuant to 49 CFR 26.53, the decision is final and not administratively appealable to any other person within Metro, the United States Department of Transportation or any other authority.

404 GOOD FAITH EFFORTS STEPS: The achievement of good faith efforts (GFE) will be based on evaluation of the following criteria in accordance with 49 CFR Part 26.53 Appendix A.

- (1) ADVERTISEMENT
- (2) NOTIFICATION TO SMALL BUSINESS ORGANIZATIONS/COMMUNITY GROUPS
- (3) SELECT PORTION OF THE WORK TO BE SUBCONTRACTED
- (4) REQUEST FOR PROPOSAL, SPECIFICATION INFORMATION
- (5) SOLICITATION FOLLOW-UP
- (6) ASSISTANCE IN OBTAINING BONDS & INSURANCE
- (7) ATTEND PRE-BID/PRE-PROPOSAL CONFERENCE
- (8) LIST OF SUBCONTRACTORS SUBMITTING BIDS/PROPOSALS
- (9) COMMITMENT OF OTHER OFFERORS

1. ADVERTISEMENT

(15 POINTS)

(Ref: "Attachment A – Sample Advertisement" and complete "Attachment B - Newspaper Advertisement Log")

Effort: No fewer than 21 days prior to the bid/proposal opening date, Offerors shall have in place advertisements soliciting sub-bids on this contract from DBE firm(s). If, due to the bidding/proposal schedule established by Metro, 21 days are not available, advertisements for a shorter reasonable period of time is acceptable. Such advertisements will refer only to bids/proposals for Metro's contract and will specify the categories of work for which subcontracting opportunities exist for this contract. The advertisements will be placed in a minimum of three paid daily or weekly newspapers: Offeror shall advertise in one general newspaper and two advertisements in varied minority and/or women trade association newspapers or other minority and/or women trade focus publications or media that will reach all DBE firms. The advertisements will be in publications or media that can reasonably be expected to reach both women and minority DBE firms that are likely to bid/propose on this contract.

1. The advertisement shall include, at a minimum, the name of the newspaper, company contact person, type of publication, circulation dates of advertisement, project name and number, date of DBE subcontractor bid/proposal or quote due date to the Offeror, Offeror bid/proposal due date to Metro, detailed description of subcontracting work solicited, and time and location where bid/proposal plans, specifications and other documents may be reviewed.
2. The advertisement must further identify Metro as owner, and indicate that the solicitation is in response to Metro's DBE requirements and that the Offeror will provide an equal opportunity to DBEs and that intends to conduct itself in good faith with DBE firms seeking subcontract opportunities for the contract.

Evidence: Include a list of advertisements placed, including a copy of the advertisements and/or tear sheets (with authorized media signatures). Metro will closely analyze the tear sheets to verify dates and adherence to requirements.

2. NOTIFICATION TO SMALL BUSINESS ORGANIZATIONS AND COMMUNITY GROUPS

(5 POINTS)

Effort: Notification must be made to outreach to a minimum of five (5) small business and disadvantaged business organizations and community groups. For assistance, reference the listing of member organizations included in Metro's Transit Business Advisory Council (TBAC) website: <http://www.metro.net/about/deod/member-organizations>.

Notification to organizations shall include, at a minimum, the items that are required for advertisement under GFE item #1.

Evidence: Copies of letters, e-mails, faxes, fax confirmation sheets, telephone logs, etc. used to contact organizations. The documentation must include names of organizations/groups, dates, names of contacts, and telephone numbers. Copies of correspondence received from any of these organizations/groups acknowledging contact by proposer shall be considered in assessing evidence of good faith effort. Evidence of a minimum of five (5) organizations/groups must be attached.

3. SELECT PORTION OF THE WORK TO BE SUBCONTRACTED (10 POINTS)

(Complete "Attachment C – Selected Work Categories Form")

Effort: The Offeror shall determine which services it intends to perform with its own work force and those services that it intends to subcontract. Include estimates for each scope of work identified. Offerors must have selected enough subcontracting items to meet the goal. The categories listed must also include subcontracting items identified in Offerors DBE Commitment Forms.

Evidence: Documents showing all the work that the Offeror intends to perform with its own work force and all the work that the Offeror has identified for subcontracting/supply should be evidenced on the selected work categories form.

4. INVITATION FOR BID/REQUEST FOR PROPOSAL, SPECIFICATIONS AND INFORMATION (10 POINTS)

(Complete "Attachment G – Sample Letter of Solicitation" and use "Attachment D – Written Solicitation Submittal Form")

Effort: Extend written Requests for Bid or Proposal to DBE firms for all services that the Offeror intends to subcontract and provide specification requirements to DBEs. Offeror shall solicit sub-bids, proposal or quotes to DBE firms qualified to perform those categories of work which the Offeror is willing to subcontract. Solicitation letters shall be mailed, emailed or sent no fewer than 21 days prior to the bid/proposal due date. If, due to the schedule established by Metro, 21 days are not available, a mailing providing a shorter reasonable period of notice is acceptable.

Evidence: Names, contact persons, addresses, phone numbers, and dates of all DBE firms solicited at least 10 days prior to bid/proposal due date and by what means (certified letters, fax, phone, emails, etc.). Copies of the solicitation letters must be included. Only certified DBE firms will be taken into consideration. Offerors notifications shall:

1. Clearly identify portions of the work, which the Offeror is willing to have performed by subcontractors, and offer to break down any portion of the work into economically feasible units in order to facilitate DBE participation.
2. Identify if there is a bond requirement for subcontractors for this contract and specify requirements.
3. Offer assistance with regard to bonding requirements and insurance requirements, where applicable, and/or financing (e.g., lines of credit), specifying the type of assistance that the Offeror is offering. Assistance may include, but is not limited to the following:

- a. Contact bonding and/or insurance companies on behalf of DBEs.
 - b. Arrange with sureties incremental or phased bonding for the DBEs and/or paying for the cost of the bond or insurance
 - c. Waive bond or other requirements.
 - d. Refer DBEs to Business Development Centers or other resource agencies, which may assist DBEs in obtaining bonding, insurance, or lines of credit.
 - e. Offer to make plans and specifications available to DBEs at reasonable hours for viewing, copying, or borrowing and provide a list containing the location of plan rooms.
4. When complying with the guidelines for contacting an adequate number of DBE firms, Offerors shall use Metro's DBE certified list included in the solicitation. As an additional resource, Offerors may obtain a listing from the CUCP directory. Prior to obtaining any additional listings, Offeror shall first use Metro's CUCP listing of certified firms. Offerors shall ensure that all DBE firms listed shall be certified under NAICS codes applicable to the scopes of work associated with the project. Additional DBE listings, not included in the solicitation, must be included in the Offerors good faith efforts response.
 5. Offeror shall use the Metro DBE certified list provided in the solicitation. Offeror shall also use the CUCP Database as a source to obtain an adequate number of DBE firms for solicitation. The Offeror shall first use the Metro certified list, and if necessary, shall use the CUCP directory. Offerors that use the CUCP directory shall apply below guidelines for contacting adequate number of DBE firms.

Note: Determination of an adequate number of DBE's contacted shall depend on the number of DBEs available in each of the NAICS code work categories identified by Metro.

Guidelines for Contacts for various Work Categories:	
Number of DBEs Identified	Guidelines for number of DBEs to Contact
1 - 50	Contact 50% of all listed DBEs
51 - 199	Contact 50% of all listed DBEs
200 or more	Contact 40% of all listed DBEs

5. SOLICITATION FOLLOW-UP

(15 POINTS)

(Complete Attachment E – Solicitation Follow-up Log)

Effort: Offerors shall follow up initial solicitations of DBE sub-bids, proposal and quotes no later than 10 days after the mailing of the initial solicitation letters. The follow-up will be conducted by someone familiar with the project and capable of answering questions from potential DBE subcontractors. If, due to the schedule established by Metro, 10 days are not

available between the mailing of the solicitations and the bid/proposal due date, follow-up shall occur within a shorter reasonable period of time. Follow up communication may be conducted via orally or email. Oral communication must be followed up with email for documentation.

Evidence: Follow-up must be done with a minimum of 75% of the initial solicitations to certified DBEs. Such follow-up activity must be documented by telephone logs or other written documentation which provide, at a minimum, the following information:

1. Type of contact, e.g., telephone call, visit, email, letter.
2. Name and position of person who made contact on behalf of the Offeror.
3. Name and address and/or email of firm contacted.
4. Name and position of person contacted, telephone number, and date of contact.
5. The response from the firm contacted with regard to its interest in submitting a sub-bid.
6. Email return receipts to document successful delivery to DBE subcontractors and, in the case of returned email correspondence, documentation from the mail server that the email was undeliverable.
7. Follow-up, if any, to the assistance offered in the initial solicitation letter with regard to breakdown of work into economically feasible units, bonding, insurance, lines of credit, and plans and specifications.

6. ASSISTANCE IN OBTAINING BONDS AND INSURANCE (5 POINTS)

Effort: Assist DBE firms in obtaining bonding and insurance. The maximum points given if bonding and insurance is not required.

Evidence: Includes a description of assistance provided by Offeror to DBEs in obtaining bonding and insurance.

7. ATTENDANCE AT PRE-PROPOSAL CONFERENCE (10 POINTS)

Effort: Attendance at the Pre-Bid / Pre-Proposal Conference scheduled by Metro. Each Offeror is strongly encouraged to attend the pre-bid/proposal meetings to be informed of the DBE requirements for this contract and provides an opportunity for Offerors to meet, network and outreach to DBE firms. Regardless of whether an Offeror attends the meeting, the Offeror assumes responsibility for being informed and complying with DBE and GFE requirements.

Evidence: Name and date of person(s) attending (verified by conference sign-in sheet).

8. LIST OF SUBCONTRACTORS SUBMITTING BIDS/PROPOSALS (15 POINTS)

(Complete Attachment F – List of All Firms/Solicitation Responses Received)

Effort: The Offeror negotiated in good faith with DBEs and did not unjustifiably reject bids/proposals prepared by any DBE. For each DBE contacted who declined to bid, the reason provided by the DBE for declining to bid. If the reason cited relates to bonding, financing or insurance, or requested further breakdown of the work the Offeror must provide documentation describing in detail the assistance offered by the Offeror to the DBE.

Evidence: Names, addresses, dates, contact person, phone numbers, and emails of all subcontractors DBE and non-DBE firms who submitted bids/proposals and copies of all proposals including telephone bids for all work categories identified in GFE item #3. Identify number of total bids, proposal or quotes received for each work category and corresponding number from DBE firms. Indicate reason for your choice of subcontractor(s). Submit written (e.g. emails, letters or faxes) documentation evidencing good faith negotiations between subcontractor and Offeror. Only significant price differences (10% or more) between selected subcontractor/supplier, rejected DBE and prime contractors are valid cause for rejecting bid/proposals. Offerors must have selected enough subcontracting item to meet the goal.

9. COMMITMENT OF OTHER OFFERORS (15 POINTS)

Effort: In determining whether an Offeror has made good faith efforts, Metro will take into account the performance of other Offerors in meeting the contract goal. If an apparent successful Offeror fails to meet the contract goal, but others meet it, Metro will reasonably raise the question of whether, with additional reasonable efforts, the apparent successful Offeror could have met the goal. If the apparent successful Offeror fails to meet the goal, but meets or exceeds the average DBE participation obtained by other Offerors, Metro may view this, in conjunction with other factors, as evidence of the apparent successful Offeror having made good faith efforts.

Evidence: Metro will review the Offerors efforts in conjunction with other factors, such as **contract goal, DBE commitments and good faith efforts made by other Offerors.**

405 **GOOD FAITH EFFORTS DOCUMENTATION FORMS:** The following GFE documentation forms shall be in the Offeror's efforts to meet good faith criteria:

ATTACHMENT A - SAMPLE ADVERTISEMENT

ATTACHMENT B - NEWSPAPER ADVERTISEMENT LOG

ATTACHMENT C - SELECTED WORK CATEGORIES FORM

ATTACHMENT D - WRITTEN SOLICITATION SUBMITTAL FORM

ATTACHMENT E - SOLICITATION FOLLOW-UP LOG

ATTACHMENT F - LIST OF ALL FIRMS/SOLICITATION RESPONSES RECEIVED

ATTACHMENT G - SAMPLE LETTER OF SOLICITATION

ATTACHMENT A - SAMPLE ADVERTISEMENT

**DBE SUBCONTRACTORS/SUPPLIER BIDS
REQUESTED**

**CONTRACT NO. B234
WINDOW INSTALLATION, LOS ANGELES, CA.**

BID/PROPOSAL SUBMITTAL DATE: DECEMBER 29, 20xx @ 2:00 PM

**OWNER: LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
(METRO)
PERFORMANCE/PAYMENT/SUPPLY BOND MAY BE REQUIRED**

**THIS ADVERTISEMENT IS IN RESPONSE TO METRO'S DBE PROGRAM. LA CORP.
INTENDS TO CONDUCT ITSELF IN "GOOD FAITH" WITH DBE FIRMS REGARDING
PARTICIPATION ON THIS PROJECT. DRAWINGS AND SPECS WILL BE REVIEWED IN
OUR OFFICE MONDAY THROUGH FRIDAY, 8:00 AM TO 5:00 PM. QUOTES ARE
REQUIRED BY COB, DECEMBER 25, 20xx, SO THAT ALL BIDS CAN BE FAIRLY
EVALUATED. PLEASE SUBMIT BIDS FOR THE FOLLOWING WORK (BUT NOT LIMITED
TO): SIGNS, TRACK CONSTRUCTION, TIMBER TIES, BALLAST, APPURTENANCES, RAIL
WELDING, A.C. PAVING, REINFORCING STEEL, SUPPLY PORTLAND CEMENT,
CONCRETE PUMPING, METAL FABRICATIONS AND ELECTRICAL.**

**CONTACT: JOE DOE, PROJECT MANAGER - LA CORP.
134 MAYFLOWER AVE LOS ANGELES, CA 90343
213/555-5555 FAX 213/555-5555**

ATTACHMENT B - NEWSPAPER ADVERTISEMENT LOG

(Attach copies of ads)

Newspaper	Phone No.	Type of Publication Minority/General/Trade	Circulation	Dates of Advertisement

ATTACHMENT D - WRITTEN SOLICITATION SUBMITTAL FORM
Attach copy of Solicitation Letter

Please check one:

- I've attached a list of solicitations*
- Refer to log below

Date Sent	Name of DBE Firm	Contact Person	Email and/or Phone Number	Work Category

* If attaching list of solicitations, the list must contain same information required on the log.

ATTACHMENT E - SOLICITATION FOLLOW-UP LOG

Date and Time	Follow-up Method	Name of DBE Firm	Contact Person	Email and/or Phone No.	DBE Response	Bidding Yes/No	Date Bid Received

ATTACHMENT G - SAMPLE LETTER OF SOLICITATION

Date

DBE Firm
Address
City, State, Zip

ATTN: Chief Estimator

Project: B234, Trackwork Installation
Owner: Metropolitan Transportation Authority
Bid/Proposal Due Date: December 29, 20xx at 2:00 p.m.

We are bidding the above project as a prime contractor and would appreciate quotes from DBEs who are currently certified with metro for the following services and/or materials:

Clearing and Grubbing	Signal & Lighting
Excavation	Fencing
Backfill	Construction Area Signs
Landscaping	

Plans and specifications are available for inspection at our office or at a local plan room (give name and location of alternate plan rooms, if available). Should you need any assistance in obtaining bonding or insurance, please feel free to call us. DBE firms are also referred to the Small Business Administration (SBA) and/or the Federal Department of Transportation (DOT) Bond Assistance Programs.

We are an Equal Opportunity Employer and, as a matter of policy, encourage the participation of Small Business Enterprises.

All DBE firms must be certified by the bid/proposal due date and must provide our office with a copy of your DBE certification to include with the bid/proposal. Should you have any questions regarding metro's certification process, contact metro's certification Hotline at (213) 922-2600.

We will be contacting you by phone regarding this project, but feel free to contact us at (phone number) or by fax (phone number).

Yours truly,

Mr. Jim Mason
Chief Estimator

500 DBE CERTIFICATION

501 CERTIFICATION REQUIREMENTS: A firm only holding a current DBE certification issued by a certifying agency in the California Unified Certification Program (CUCP) may participate in the Metro DBE Program. Firms listed by Offerors to meet DBE contract goal(s) must be certified by bid/proposal due date. Metro has a responsibility to ensure that eligible DBE firms participate in Metro's contracting. If not, firm's participation may not be counted toward the Offeror's DBE commitment. Offerors shall ensure DBE firms are certified in the North American Industry Classification System (NAICS) codes for the work in which the DBE firm is listed to perform and for which the Offeror seeks DBE credit towards its DBE commitment. Certifications as a Metro DBE firm, means the firm met the DBE certification requirements and eligibility standards of the CUCP in accordance with 49 CFR Part 26 –Subpart D Certification Standards as followed by the CUCP. These standards and procedures are described in detail in the Certification Instructions, provided with the Application for Certification. Interested individuals or companies seeking certification will start the process by obtaining a copy of the DBE Application and Instructions.

502 DBE CERTIFICATION ELIGIBILITY:

1. Each applicant for DBE certification must prove to Metro's Certification Unit, by a preponderance of the evidence, that the applicant meets the criteria of social and economic disadvantaged, business size, ownership and control.
2. Certifications with respect to economic disadvantage, including signed statements of personal net worth and supporting documentation are required. If an individual's Statement of Personal Net Worth shows that the individual's personal net worth exceeds \$1.32 million the individual's presumption of economic disadvantage is rebutted and the person is not qualified to be a SBE owner.
3. The applicant firm can only be an eligible DBE, if the firm is an existing small business and including its affiliates, has had average gross receipts over the previous three years of less than \$22.41 million or as adjusted for inflation by the US Secretary of Transportation.
4. A firm's ownership by at least 51-percent majority owned by socially and economically disadvantaged individuals and must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in merely the ownership documents but possess the power to control the firm's management and policies.
5. The firm must be independent and not depend on its relationship with another firm or firms to be viable.

503 VERIFY THAT DBE CERTIFICATION IS CURRENT: Offerors shall confirm the DBE certification status of listed DBE firms. To verify status of firms, for additional certification information, questions and to obtain a certification application, Offerors or other interested parties may contact the Metro Certification Unit via email at CertificationUnit@metro.net and by calling the DEOD Hotline at (213) 922-2600.

Requests for verification of a firm's DBE certification status, granted by Metro, can also be sent by fax to (213) 922-7660. It is recommended that verification be made within 72 hours of the bid/proposal due date. Offerors shall include in its bid/proposal a copy of the DBE certification letter for each DBE firm listed. The letter serves to assist in verifying a firm's eligibility.

600 CONTRACT COMPLIANCE

COMPLIANCE MONITORING: Metro will monitor the Contractor's compliance with the DBE Program and administrative requirements for this contract as provided in the Contract Compliance Manual Federal incorporated into the executed contract.

TABLE 1 - DBE COMMITMENT FORMS DESIGN

Form No.	Form Name	To Be Completed By		DBE Form Submittals
		Offeror (Includes DBE Primes)	All Subcontractors/Suppliers	
Form 1	Proposed List of Subcontractors & Suppliers	<input checked="" type="checkbox"/>		Required
Form 2	DBE Affidavit	<input checked="" type="checkbox"/>		Required
Form 3	DBE Proposed lower tier subcontractors & suppliers		<input checked="" type="checkbox"/>	Required
Form 4	Business Data Sheet	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Required
Form 5	DBE Affirmation (Only if subcontracting with DBE business)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Required

- The Offeror is required to complete and submit DBE Forms 1, 2 and 4. The Offeror and each DBE subcontractor are required to complete and submit Form 5.
- All Subcontractors/Suppliers are required to complete and submit Form 3 (if they are subcontracting) and Form 4. Subcontractors and Suppliers are required to complete and submit Form 5 if subcontracting with a DBE business.

NOTE: Offerors are required to utilize Race Conscious (RC) DBE firms in the performance of this project. RC DBEs are ethnic groups that have been identified as statistically and significantly underutilized. These groups include: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, and Subcontinent Asian Americans. ONLY RC DBEs listed in the Offeror's bid or proposal will be counted towards the contract goal.

Metro will achieve its overall DBE goal using race conscious and race neutral measures in accordance with the US Department of Transportation DBE Program Rule 49 Code of Federal Regulations, Part 26. Race Neutral (RN) DBEs include non-minority women.

FORM 1 – PROPOSED LIST OF SUBCONTRACTORS AND SUPPLIERS – DESIGN

TO BE COMPLETED BY OFFEROR

Offerors are required to list ALL (DBE and Non-DBE) first-tier subcontractors. Offerors are required to utilize Race Conscious (RC) DBE firms in the performance of this project. RC DBEs are ethnic groups that have been identified as statistically and significantly underutilized. These groups include: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, and Subcontinent Asian Americans. ONLY RC DBEs listed in the Offeror’s bid or proposal will be counted towards the contract goal. Metro will achieve a percentage of its overall goal utilizing race neutral measures. Race Neutral (RN) DBEs include non-minority women. Completion of this form and Form 4 (Business Data Sheet) fulfills the requirements of the California Subletting and Subcontracting Fair Practices Act.

1. Offeror’s Name: _____ 2. Project Name: _____
 3. Total Bid Price: _____ 4. Bid Due Date: _____

	A	B	C	D	E	F	G
	NAME OF OFFEROR AND ALL SUBCONTRACTORS (1 ST TIER)	DESCRIPTION OF WORK	SUBCONTRACTORS: C = Consultant Or Contractor S = Supplier ¹ M = Manufacturer B = Broker ¹ T = Trucker	BID PRICE	BID PRICE FOR RC DBE FIRMS (Race Conscious participation)	BID PRICE FOR OTHER DBE FIRMS (Race Neutral Participation)	TOTAL DBE BID PRICE (COL # E + F)
Offeror			Prime’s \$ Amount → with its own workforce			\$	\$
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9. TOTAL BID PRICE (Should equal Line #3 above)				\$	\$	\$	\$

¹If a RC DBE or RN DBE firm listed in column D and E are regular dealers enter 60% of the bid price in column G. If a RC DBE or RN DBE firm listed in column E and F are brokers, enter the total amount of the fees and /or commissions charges in column G. If a DBE business is listed to provide materials/supplies, only sixty-percent (60%) of the cost for materials/supplies will be counted toward the DBE.

FORM 2 – DBE AFFIDAVIT – DESIGN

TO BE COMPLETED BY OFFEROR ONLY

Part A: DBE GOAL DECLARATION

RC DBE GOAL ACHIEVED

The Offeror declares to the best of its knowledge, information and belief that by its efforts, it ACHIEVED a level of participation greater than or equal to the goal established for RC DBE participation.

The level achieved is _____ percent (_____ %)

RC DBE GOAL NOT ACHIEVED

The Offeror declares to the best of its knowledge, information and belief that while it made efforts to achieve the RC DBE participation goal, it DID NOT ACHIEVE a level of RC DBE participation greater than or equal to the goal established for RC DBE participation.

The level achieved is _____ percent (_____ %)

While the Offeror did exert efforts to achieve the goal, it was not successful. The Offeror certifies that, if requested, evidence of good faith efforts (GFE) will be submitted within forty-eight (48) hours of Metro's written request.

DO NOT INCLUDE EVIDENCE OF GOOD FAITH EFFORTS WITH BIDS/PROPOSALS

Part B: SIGNATURE

Executed on: _____, 20____, at _____, _____
Date City State

Business Name: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

E-mail: _____

Phone: _____

FORM 3 - PROPOSED LOWER TIER SUBCONTRACTORS & SUPPLIERS – DESIGN

TO BE COMPLETED BY ALL SUBCONTRACTORS

Project Name: _____ **IFB/RFP #:** _____

All subcontractors listed on Form 1 that are subcontracting work are requested to list ALL (DBE and Non-DBE) lower tier subcontractors. Offerors are required to utilize Race Conscious (RC) DBE firms in the performance of this project. RC DBEs are ethnic groups that have been identified as statistically and significantly underutilized. These groups include: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, and Subcontinent Asian Americans. ONLY RC DBEs listed in the Offeror's bid or proposal will be counted towards the contract goal. Metro will achieve a percentage of its overall goal utilizing race neutral measures. Race Neutral (RN) DBEs include non-minority women.

Completion of this form and Form 4 (Business Data Sheet) fulfills the requirements of the California Subletting and Subcontracting Fair Practices Act.

1. Subcontractor (Sub.): _____ 2. Prime's Name: _____
 3. Total Bid Price: _____

Lower Tier Subcontractors

	A	B	C	D	E	F	G
	NAME OF SUBCONTRACTOR AND ALL LOWER TIER SUBCONTRACTORS	DESCRIPTION OF WORK	SUBCONTRACTORS C = Consultant Or Contractor S = Supplier ¹ M = Manufacturer B = Broker ¹ T = Trucker	BID PRICE	BID PRICE FOR RC DBE FIRMS (Race Conscious participation)	BID PRICE FOR RN DBE FIRMS (Race Neutral Participation)	TOTAL DBE BID PRICE (COL # E + F)
Subs			Your business' \$ Amount	\$	\$	\$	\$
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9. TOTAL BID PRICE (Should equal Line #3 above)				\$	\$	\$	\$

¹If a RC DBE or RN DBE firm listed in column D and E are regular dealers enter 60% of the bid price in column G. If a RC DBE or RN DBE firms listed in column E and F are brokers, enter the total amount of the fees and /or commissions charges in column G. If a DBE business is listed to provide materials/supplies, only sixty-percent (60%) of the cost for materials/supplies will be counted toward the DBE.

FORM 4 - BUSINESS DATA SHEET – DESIGN

TO BE COMPLETED BY OFFERORS AND ALL SUBCONTRACTORS LISTED ON FORM 1 AND FORM 3

Completion of this form, Form 1, and Form 3 fulfills the requirements of the California Subletting & Subcontracting Fair Practices Act.

Part A: Business Data

1. Business Name: _____
2. Business Address: _____
Street City State Zip
3. Mailing Address: _____
(If different from above) PO. Box or Street Address City State Zip
4. County (and State) Business is located in: _____ (_____)
State
5. Name of Owner: _____
Name Title
6. Owner(s) Ethnicity: _____
7. Phone: () _____ - _____ 9. Email Address: _____
8. Fax: () _____ - _____ 10. Age of Business: _____ Years _____ Months
11. If your business requires a license, complete below:
 - a. License Type _____
 - b. License # _____
 - c. Expires on _____
12. Business Annual Gross Receipts:
 - a. Less than \$500,000
 - b. \$500,000 to \$1,000,000
 - c. \$1,000,000 to \$2,000,000
 - d. \$2,000,000 to \$5,000,000
 - e. Over \$5,000,000

Part B: DBE CERTIFICATION STATUS

13. Is your business currently a DBE? Yes No
 If "YES," **attach a copy of your DBE Certification Letter** and check all appropriate boxes below:

	DBE	Non-DBE
a. Certified by the California Unified Certification Program (CUCP)?	<input type="checkbox"/>	<input type="checkbox"/>
b. Certified by an organization outside of California?	<input type="checkbox"/>	<input type="checkbox"/>
c. Name of Certifying Agency: _____	Yes	No
14. Is your business currently participating in a Joint Venture?
 If "YES," **a copy of the Joint Venture Agreement must be attached to this Form.**

	Yes	No
_____	<input type="checkbox"/>	<input type="checkbox"/>
15. Name of Joint Venture and Partners. Is this business currently a certified DBE?

	DBE	Non-DBE
a. Business Name _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of Certifying Agency _____		
b. Business Name _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of Certifying Agency _____		

c. Business Name _____
Name of Certifying Agency _____

DBEs must attach a copy of current certification.

FORM 4 - BUSINESS DATA SHEET – DESIGN (Continued)Page 2 of 2

Part C: Work Descriptions

16. RFIQ, IFB, or RFP #: _____
17. Provide complete description of scope of work, services, and materials to be performed or furnished¹:

NAICS: _____
18. Will your business provide trucking company services on this project? Please mark one: Yes No
- If marked YES, please complete items a. to c. below. If answered NO, answer "Not Applicable."**
- a. How many trucks does your company own? _____
- b. How many trucks does your company lease? _____
- c. How many trucks are registered to your company? _____

Part C: Signature

The authorized signer declares that the information on this form and any attachments, are current, complete and accurate.

Business Name: _____

Authorized Signature: _____
Signature of Director, Officer, General Partner or similarly situated Principal of the Business

Printed Name: _____

Title: _____

Date: _____

FORM 5 - DBE AFFIRMATION - DESIGN

TO BE COMPLETED BY OFFEROR AND AFFIRMED BY DBE SUBCONTRACTORS

Offeror and DBE subcontractors, at any tier level, are required to complete this form and affirm that DBEs subcontractors will be utilized consistent with the level of participation referenced on the Form 1 (Proposed List of Subcontractors & Suppliers) and Form 3 (DBE Proposed Lower Tier Subcontractors & Suppliers). Offeror and DBE subcontractors must sign this form attesting to the accuracy of the information provided.

1. RFP/IFB Number: _____

—

2. Project Name _____

—

3. Name of the Prime: _____

—

4. Business Address: _____

—

Street City State Zip

5. Name of Proposed DBE Business: _____

6. Business Address: _____

—

Street City State Zip

7. Total DBE Dollars Committed: \$ _____

(Amount should match \$ Amount listed for this business on Form 1 or Form 3)

8. Identify the scope of work to be performed by DBE subcontractor and provide applicable Northern America Industry Classification System (NAICS) code(s): <<http://www.census.gov/eos/www/naics/>>

NAICS: _____

Affirmation:

Signatures of the authorized representatives of the Offeror and the DBE business below, represents the commitment by both parties. A formal subcontract agreement between the Offeror and the DBE subcontractor shall include the scope(s) of work and monetary commitment referenced above. DBE commitments in this document shall be a condition of contract award.

Name of Business

Name of DBE Business

Authorized Signature of Business

Authorized Signature of DBE Business

Typed or Printed Name of Signee

Typed or Printed Name of Signee

Title of Signee

Telephone

Email

Date

Title of Signee

Telephone

Email

Date

TABLE 1 - DBE COMMITMENT FORMS - CONSTRUCTION

Form No.	Form Name	To Be Completed By		DBE Form Submittals
		Offeror (Includes DBE Primes)	All Subcontractors/Suppliers	
Form 1	Proposed List of Subcontractors & Suppliers	<input checked="" type="checkbox"/>		Required
Form 2	DBE Affidavit	<input checked="" type="checkbox"/>		Required
Form 3	DBE Proposed lower tier subcontractors & suppliers		<input checked="" type="checkbox"/>	Required
Form 4	Business Data Sheet	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Required
Form 5	DBE Affirmation (Only if subcontracting with DBE business)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Required

- The Offeror is required to complete and submit DBE Forms 1, 2 and 4. The Offeror and each DBE subcontractor are required to complete and submit Form 5.
- All Subcontractors/Suppliers are required to complete and submit Form 3 (if they are subcontracting) and Form 4. Subcontractors and Suppliers are required to complete and submit Form 5 if subcontracting with a DBE business.

NOTE: Offerors are required to utilize Race Conscious (RC) DBE firms in the performance of this project. RC DBEs are ethnic groups that have been identified as statistically and significantly underutilized. These groups include: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, and Subcontinent Asian Americans. ONLY RC DBEs listed in the Offeror's bid or proposal will be counted towards the contract goal.

Metro will achieve its overall DBE goal using race conscious and race neutral measures in accordance with the US Department of Transportation DBE Program Rule 49 Code of Federal Regulations, Part 26. Race Neutral (RN) DBEs include non-minority women.

**FORM 1 – PROPOSED LIST OF SUBCONTRACTORS AND SUPPLIERS – CONSTRUCTION
TO BE COMPLETED BY OFFEROR**

Offerors are required to list ALL (DBE and Non-DBE) first-tier subcontractors. Offerors are required to utilize Race Conscious (RC) DBE firms in the performance of this project. RC DBEs are ethnic groups that have been identified as statistically and significantly underutilized. These groups include: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, and Subcontinent Asian Americans. ONLY RC DBEs listed in the Offeror's bid or proposal will be counted towards the contract goal. Metro will achieve a percentage of its overall goal utilizing race neutral measures. Race Neutral (RN) DBEs include non-minority women. Completion of this form and Form 4 (Business Data Sheet) fulfills the requirements of the California Subletting and Subcontracting Fair Practices Act.

1. Offeror's Name: _____ 2. Project Name: _____
3. Total Bid Price: _____ 4. Bid Due Date: _____

	A	B	C	D	E	F	G
	NAME OF OFFEROR AND ALL SUBCONTRACTORS (1 ST TIER)	DESCRIPTION OF WORK	SUBCONTRACTORS: C = Consultant Or Contractor S = Supplier ¹ M = Manufacturer B = Broker T = Trucker	BID PRICE	BID PRICE FOR RC DBE FIRMS (Race Conscious participation)	BID PRICE FOR OTHER DBE FIRMS (Race Neutral Participation)	TOTAL DBE BID PRICE (COL # E + F)
Offeror			Prime's \$ Amount with its own workforce →				
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9. TOTAL BID PRICE (Should equal Line #3 above)				\$	\$	\$	\$

¹If a RC DBE or RN DBE firm listed in column D and E are regular dealers enter 60% of the bid price in column G. If a RC DBE or RN DBE firm listed in column E and F are brokers, enter the total amount of the fees and or commissions charges in column G. If a DBE business is listed to provide materials/supplies, only sixty-percent (60%) of the cost for materials/supplies will be counted toward the DBE.

FORM 2 – DBE AFFIDAVIT – CONSTRUCTION

TO BE COMPLETED BY OFFEROR ONLY

Part A: DBE GOAL DECLARATION

RC DBE GOAL ACHIEVED

The Offeror shall demonstrate compliance with the DBE goal by achieving a level of DBE participation greater than or equal to the goal established for RC DBE participation.

The level achieved is _____ percent (_____ %)

NOTE: Offeror shall identify additional subcontractors (DBE and non-DBE) on Form 1-PROPOSED SUBCONTRACTORS AND SUPPLIERS – CONSTRUCTION (Pro Form 070), no later than ninety (90) days after design packages are approved by Metro’s Contracting Officer.

RC DBE GOAL NOT ACHIEVED

The Offeror declares to the best of its knowledge, information and belief that while it made efforts to achieve the RC DBE participation goal, it DID NOT ACHIEVE a level of RC DBE participation greater than or equal to the goal established for RC DBE participation.

The level achieved is _____ percent (_____ %)

While the Offeror did exert efforts to achieve the goal, it was not successful. The Offeror certifies that, if requested, evidence of good faith efforts (GFE) will be submitted within forty-eight (48) hours of Metro’s written request.

DO NOT INCLUDE EVIDENCE OF GOOD FAITH EFFORTS WITH BIDS/PROPOSALS

Part B: SIGNATURE

Executed on: _____, 20____, at _____, _____
Date City State

Business Name: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

E-mail: _____

Phone: _____

FORM 3 - PROPOSED LOWER TIER SUBCONTRACTORS & SUPPLIERS – CONSTRUCTION

TO BE COMPLETED BY ALL SUBCONTRACTORS

Project Name: _____ **IFB/RFP #:** _____

All subcontractors listed on Form 1 that are subcontracting work are requested to list ALL (DBE and Non-DBE) lower tier subcontractors. Offerors are required to utilize Race Conscious (RC) DBE firms in the performance of this project. RC DBEs are ethnic groups that have been identified as statistically and significantly underutilized. These groups include: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, and Subcontinent Asian Americans. ONLY RC DBEs listed in the Offeror's bid or proposal will be counted towards the contract goal. Metro will achieve a percentage of its overall goal utilizing race neutral measures. Race Neutral (RN) DBEs include non-minority women.

Completion of this form and Form 4 (Business Data Sheet) fulfills the requirements of the California Subletting and Subcontracting Fair Practices Act.

1. Subcontractor (Sub.): _____ 2. Prime's Name: _____
 3. Total Bid Price: _____

Lower Tier Subcontractors

	A	B	C	D	E	F	G
	NAME OF SUBCONTRACTOR AND ALL LOWER TIER SUBCONTRACTORS	DESCRIPTION OF WORK	SUBCONTRACTORS	BID PRICE	BID PRICE FOR RC DBE FIRMS (Race Conscious participation)	BID PRICE FOR RN DBE FIRMS (Race Neutral Participation)	TOTAL DBE BID PRICE (COL # E + F)
			C = Consultant Or Contractor S = Supplier M = Manufacturer B = Broker T = Trucker				
Subs			Your business' \$ Amount	\$	\$	\$	\$
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9. TOTAL BID PRICE (Should equal Line #3 above)				\$	\$	\$	\$

¹If a RC DBE or RN DBE firm listed in column E and F are regular dealers enter 60% of the bid price in column G. If a RC DBE or RN DBE firm listed in column D and E are brokers, enter the total amount of the fees and or commissions charges in column G. If a DBE business is listed to provide materials/supplies, only sixty-percent (60%) of the cost for materials/supplies will be counted toward the DBE.

FORM 4 - BUSINESS DATA SHEET – CONSTRUCTION

TO BE COMPLETED BY OFFERORS AND ALL SUBCONTRACTORS LISTED ON FORM 1 AND FORM 3

Completion of this form, Form 1, and Form 3 fulfills the requirements of the California Subletting & Subcontracting Fair Practices Act.

Part A: Business Data

1. Business Name: _____
2. Business Address: _____
3. Mailing Address: _____
(If different from above)
Street City State Zip
PO. Box or Street Address City State Zip
4. County (and State) Business is located in: _____ (_____)
State
5. Name of Owner: _____
Name Title
6. Owner(s) Ethnicity: _____
7. Phone: (_____) _____ - _____
9. Email Address: _____
8. Fax: (_____) _____ - _____
10. Age of Business: _____ Years _____ Months
11. If your business requires a license, complete below:
12. Business Annual Gross Receipts:
 - a. License Type _____
 - b. License # _____
 - c. Expires on _____
 - a. Less than \$500,000
 - b. \$500,000 to \$1,000,000
 - c. \$1,000,000 to \$2,000,000
 - d. \$2,000,000 to \$5,000,000
 - e. Over \$5,000,000

Part B: DBE CERTIFICATION STATUS

13. Is your business currently a DBE? Yes No
 If "YES," attach a copy of your DBE Certification Letter and check all appropriate boxes below:

	DBE	Non-DBE
a. Certified by the California Unified Certification Program (CUCP)?	<input type="checkbox"/>	<input type="checkbox"/>
b. Certified by an organization outside of California?	<input type="checkbox"/>	<input type="checkbox"/>
c. Name of Certifying Agency: _____		
14. Is your business currently participating in a Joint Venture? Yes No
 If "YES," a copy of the Joint Venture Agreement must be attached to this Form.
15. Name of Joint Venture and Partners. Is this business currently a certified DBE?

	DBE	Non-DBE
a. Business Name _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of Certifying Agency _____		
b. Business Name _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of Certifying Agency _____		
c. Business Name _____	<input type="checkbox"/>	<input type="checkbox"/>
Name of Certifying Agency _____		

DBEs must attach a copy of current certification.

Part C: Work Descriptions

16. RFIQ, IFB, or RFP #: _____

17. Provide complete description of scope of work, services, and materials to be performed or furnished²:

NAICS: _____

18. Will your business provide trucking company services on this project? Please mark one: Yes No

If marked YES, please complete items a. to c. below. If answered NO, answer "Not Applicable."

- a. How many trucks does your company own? _____
- b. How many trucks does your company lease? _____
- c. How many trucks are registered to your company? _____

Part C: Signature

The authorized signer declares that the information on this form and any attachments, are current, complete and accurate.

Business Name: _____

Authorized Signature: _____
Signature of Director, Officer, General Partner or similarly situated Principal of the Business

Printed Name: _____

Title: _____

Date: _____

FORM 5 - DBE AFFIRMATION – CONSTRUCTION

TO BE COMPLETED BY OFFEROR AND AFFIRMED BY DBE SUBCONTRACTORS

Offeror and DBE subcontractors, at any tier level, are required to complete this form and affirm that DBEs subcontractors will be utilized consistent with the level of participation referenced on the Form 1 (Proposed List of Subcontractors & Suppliers) and Form 3 (DBE Proposed Lower Tier Subcontractors & Suppliers). Offeror and DBE subcontractors must sign this form attesting to the accuracy of the information provided.

- 1. RFP/IFB Number: _____
- 2. Project Name _____
- 3. Name of the Prime: _____
- 4. Business Address: _____
Street City State Zip
- 5. Name of Proposed DBE Business: _____
- 6. Business Address: _____
Street City State Zip
- 7. Total DBE Dollars Committed: \$ _____
(Amount should match \$ Amount listed for this business on Form 1 or Form 3)
- 8. Identify the scope of work to be performed by DBE subcontractor and provide applicable Northern America Industry Classification System (NAICS) code(s): <<http://www.census.gov/eos/www/naics/>>

NAICS: _____

Affirmation:

Signatures of the authorized representatives of the Offeror and the DBE business below, represents the commitment by both parties. A formal subcontract agreement between the Offeror and the DBE subcontractor shall include the scope(s) of work and monetary commitment referenced above. DBE commitments in this document shall be a condition of contract award.

Name of Business

Authorized Signature of Business

Typed or Printed Name of Signee

Title of Signee

Telephone

Email

Date

Name of DBE Business

Authorized Signature of DBE Business

Typed or Printed Name of Signee

Title of Signee

Telephone

Email

Date

SECTION 4 – PRE-QUALIFICATION DOCUMENTS

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**Los Angeles County
Metropolitan Transportation Authority
CONTRACTOR PRE-QUALIFICATION APPLICATION**

Construction Related Projects

If this Application is being submitted in response to a Request For Proposal (RFP), Invitation For Bid (IFB), or other procurement action, please reference the RFP or IFB name and number in the spaces provided below.

If this Application is not in response to a specific contracting action and is being submitted for general purposes, please write "GENERAL" in the "Name of Procurement" space.

Name of Procurement: _____

RFP or IFB Number: _____

Name of Applicant Firm: _____

Date Submitted: _____

Preparer's Name: _____

THIS PAGE MUST BE COMPLETED AND INCLUDED WITH THE APPLICATION

**READ THE INSTRUCTIONS
BEFORE FILLING OUT THE QUESTIONNAIRE**

PRE-QUALIFICATION APPLICATION INSTRUCTIONS

1. This is a Pre-Qualification Application for the Los Angeles County Metropolitan Transportation Authority (LACMTA). There are two different applications to be used for firms seeking contracts of \$100,000 or greater with the LACMTA.
2. **Which application should you use?** Use the Construction Related Projects application if you are a construction company that will be bidding on any type of construction work. Use the Other than Construction Projects application if you are an engineering firm, consultant, legal firm, product vendor, or other business entity seeking a contract with the LACMTA for the furnishing of goods or services.
3. The application should be completed by a person in the firm who is knowledgeable of and duly authorized to attest to the past and present operations of the firm and its policies. A corporate officer of the firm, owner or partner, as appropriate, must sign the Pre-Qualification Certification form (or Validation form if the firm is already approved).
4. All questions must be answered completely and any Yes answers must be fully explained. Disclaimers, general statements with global qualifications, or notations of Not Applicable (N/A) are not acceptable. Please note that a Yes answer to any question does not automatically result in denial of pre-qualification for a particular procurement.

DEFINITIONS

1. **Affiliate** is defined as any one of the following: (1) any Firm other than Applicant Firm which owns 25% or more of Applicant Firm, such as parent companies or holding companies; (2) a subsidiary or a Firm in which Applicant Firm owns 25% or more; (3) a Firm in which a major stockholder or owner of Applicant Firm owns controlling interest; (4) a Firm with which Applicant Firm has or has had an unseverable business or professional identity, and (5) any permanent or temporary common business enterprise relationship in which the parties share operating responsibility and profits such as joint ventures.
2. **Key Person** – For purposes of pre-qualification a key person is (1) any person in Applicant Firm who owns 10% or more of the Firm and/or those who make decisions with respect to its operations, finances, or policies, such as the President, CEO, CFO, COO, and, in the case of partnerships, the General Partner(s); (2) Corporate Secretaries and Treasurers, as well as Directors, if they meet criteria #1, above; (3) Division or Regional Business Managers who operate away and independently from the Applicant Firm, but only if the division or regional office is bidding directly with the LACMTA.

APPLICATION SUBMITTAL

Do not submit applications with bid or proposal, mail or deliver them to:

LACMTA Pre-Qualification Office
Mail Stop 99-9-1
One Gateway Plaza
Los Angeles, CA 90012-2952

If you have questions, call the Pre-Qualification Office at (213) 922-4130.

Applicant Firm: _____
Tax ID No. or SSN: _____

SECTION I: IDENTIFICATION

1. Identification Of Applicant Firm

A. _____
Name of Applicant Firm

B. _____
Address City State Zip Code

C. _____
(Mailing Address, if different from above)

D. _____
(If doing business with the LACMTA under a DBA or other name, include legal name of the company and Tax ID No., if different)

E. Primary Company Telephone No. () _____ Fax No. () _____

F. Applicant Firm's Contact Person for Pre-Qualification Office follow-up:

Print or Type Name	Position	E-Mail	Telephone Number
--------------------	----------	--------	------------------

G. Has the Applicant Firm changed its address or has the Firm or its owner operated under any other name(s) including other DBAs in the past five years? If yes, explain fully on a separate sheet of paper.
 No Yes

H. Type of business organization: _____

YEAR organization established: _____ NUMBER of current employees: _____

Sole Proprietor Corporation
[Date and State of Incorporation _____]

Limited Liability Corporation (LLC)
(Date and State of Incorporation _____)

Limited Partnership (LP) Limited Liability Partnership (LLP)

General Partnership (GP)

[Date and State of Partnership filing _____]

Other (describe) _____

Applicant Firm: _____
 Tax ID No. or SSN: _____

I. List general type of business in which Applicant Firm is engaged (may include more than one).
 Attach copies of business licenses, if appropriate:

J. List type of product or service to be provided to the LACMTA.

SECTION II: OWNERSHIP/MANAGEMENT, PROJECT TEAM MEMBERS, AND RELATED ENTITIES

1. Owners/Key Persons

List Owners and Key Persons of Applicant Firm. For large publicly traded companies, list only Key Persons. (See DEFINITIONS for clarification if necessary.)

Full Legal Name	Title	Social Security No. (last four digits only)	% Of Ownership

[Use additional sheets if necessary]

2. Related Entities (Affiliates/Subsidiaries/Joint Ventures)

A. List Affiliates, subsidiaries, holding companies, joint ventures, etc., of Applicant Firm. If no affiliates, state NONE. *N/A is not an acceptable answer.* Provide organizational, geographical or functional chart, if it would assist in clarifying the line(s) of authority. (See DEFINITIONS for clarification if necessary.)

Affiliate Name & Address	Tel. #	% Owned	Top Executive's Name	*Type of Relation

*Type of Relationship: 1. Joint Venture (JV), 2. Parent Co (PC), 3. Holding Co (HC), 4. Subsidiary (S), 5. Other (O), please explain.

Applicant Firm: _____
 Tax ID No. or SSN: _____

- B. At any time during the past five years have any Owners or Key Persons of Applicant Firm (if yes, explain fully):
1. Served as Key Person, Officer or Director, in any other Firm not affiliated with applicant Firm? If so, please explain in a separate sheet.
 No Yes
 2. Had any ownership interest in any other Firm other than shares of publicly owned companies? If so, please explain in a separate sheet.
 No Yes

SECTION III: CONTRACTING HISTORY

1. Contracting History

- A. List the applicant Firm's three largest government contracts, subcontracts, or sales. If none, list the three largest contracts with non-governmental entities.

	Contract #1	Contract #2	Contract #3
Agency/Owner			
Contract No.			
Name/Location			
Describe Goods or Services Furnished			
Were you a Prime or Subcontractor?			
Start Date/Complete Date			
Contract Amount			
Agency/Owner Contact to Verify (Name/Telephone No.)			

NOTE: ANY "YES" ANSWERS BELOW MUST BE FULLY EXPLAINED ON A SEPARATE SHEET OF PAPER AND ATTACHED TO THIS APPLICATION.

- B. Is the applicant Firm currently certified by the LACMTA or other public agency as a disadvantaged business entity, minority, or woman-owned business?
 No Yes
- C. During the past five years, has Applicant Firm or any of its Key Persons had any certificates or certifications revoked or suspended, including disadvantaged-, minority-, or woman-owned business certifications?
 No Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

In the past five years has the Applicant Firm or any Affiliate been the subject of any of the following actions?

- D. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?
 No Yes
- E. Failed to complete a contract for a commercial or private owner?
 No Yes
- F. Been denied a low-bid contract in spite of being the low bidder?
 No Yes
- G. Had a contract terminated for any reason, including default?
 No Yes
- H. Had liquidated damages assessed against it during or after completion of a contract?
 No Yes

SECTION IV: CIVIL ACTIONS

If "Yes" to Sections IV, V or VI, provide details including a brief summary of cause(s) of action, indicate if Applicant Firm, Key Person or Affiliate Firms were plaintiffs (P) or defendants (D); define charges explicitly, by what authority, court or jurisdiction, etc. In the case of tax liens, please indicate whether the liens were resolved with the tax authorities. Please submit proof of payment or agreements to pay the liens.

Complete details are required!

1. Violations Of Civil Law

In the past five years has Applicant Firm, any of its Key Persons, or any Affiliate been the subject of an investigation of any alleged violation of a civil antitrust law, or other federal, state or local civil law?
 No Yes

2. Lawsuits With Public Agencies

At the present time is, or during the past five years has the Applicant Firm, any of its Key Persons, or any Affiliate been a plaintiff or defendant in any lawsuit regarding services or goods provided to the LACMTA or to a public agency?
 No Yes

3. Bankruptcy

During the past five years, has the Applicant Firm or any Affiliate filed for bankruptcy or reorganization under the bankruptcy laws?
 No Yes

4. Judgments, Liens And Claims

During the past five years, has the Applicant Firm been the subject of a judgment, lien or claim of \$25,000 or more by a subcontractor or supplier?
 No Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

5. Tax Liens

During the past five years, has the Applicant Firm been the subject of a tax lien by federal, state or any other tax authority?

No Yes

SECTION V: COMPLIANCE WITH LAWS AND OTHER REGULATIONS

1. Criminal

In the past five years has the Applicant Firm, any of its principals, officers, or Affiliates been convicted or currently charged with any of the following:

- A. Fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction?
 No Yes
- B. Federal or state antitrust statutes, including price fixing collusion and bid rigging?
 No Yes
- C. Embezzlement, theft, forgery, bribery, making false statements, submitting false information, receiving stolen property, or making false claims to any public agency?
 No Yes
- D. Misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors?
 No Yes
- E. Non-compliance with the prevailing wage requirements of the California or similar laws of any other state?
 No Yes
- F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement?
 No Yes
- G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction?
 No Yes
- H. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction?
 No Yes
- I. Do any Key Persons in Applicant Firm have any felony charges pending against them that were filed either before, during, or after their employment with the Applicant Firm?
 No Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

2. Regulatory Compliance

In the past five years, has Applicant Firm, any of its Key Persons, or Affiliates:

- A. Been cited for a violation of any labor law or regulation, including, but not limited to, child labor violations, failure to pay wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies?
 No Yes
- B. Been cited for an OSHA or Cal/OSHA "serious violation"?
 No Yes
- C. Been cited for a violation of federal, state or local environmental laws or regulations?
 No Yes
- D. Failed to comply with California corporate registration, federal, state or local licensing requirements?
 No Yes
- E. Had its corporate status, business entity's license or any professional certification, suspended, revoked, or had otherwise been prohibited from doing business in the State of California, in the last three years?
 No Yes

SECTION VI: ETHICS

1. Conflict Of Interest

- A. Does the Applicant Firm or any of its Key Persons have any existing relationships that could be construed as either personal or organizational conflicts of interest, or which would give rise to a conflict if Applicant Firm should be a recipient of a contract with the LACMTA?
 No Yes
- B. Has any Owner, Key Person or Project Team member of Applicant Firm ever (if yes explain fully):
 - 1. Been an employee of the LACMTA, or served as a Member of the LACMTA Board of Directors or as an Alternate?
 No Yes
 - 2. Been related by blood or marriage to an LACMTA employee, LACMTA Board Member or Alternate?
 No Yes

2. Political, Charitable, And Other Contributions

Has the Applicant Firm, any of its Key Persons, or Affiliates ever, regardless of amount:

- A. Given (directly or indirectly), or offered to give on behalf of another or through another person, money, contributions (including political contributions), or other benefits, to any current LACMTA Board Member or Alternate?
 No Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

- B. Given, or offered to give on behalf of another, money, contributions, or other benefits, directly or indirectly, to any current or former LACMTA employee?
 No Yes
- C. Been directed by any LACMTA employee, Board member or Alternate Board member, or contractor to offer or give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member or alternate Board member?
 No Yes
- D. Directed any person, including employees or subcontractors, to give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member, Alternate Board member, or to someone else in order to benefit an LACMTA employee, Board member, or Alternate Board member?
 No Yes
- E. Been solicited by any LACMTA employee, Board member, or Alternate Board member to make a contribution to any charitable nonprofit organization?
 No Yes

IF YES TO ANY OF THE ABOVE, SUBMIT LIST OF CONTRIBUTIONS AND FULL DETAILS.

SECTION VII: ADDITIONAL DOCUMENTATION REQUIRED

Copies of the following documents are to be submitted with this application:

- 1. **Applicant Firm's Current Local Business Licenses, if required by city, county or state, and**
- 2. Applicant Firm's Financial Statements (see specific requirements below):
 - A. **PUBLICLY TRADED COMPANIES:** Financial information will be accessed on-line. However, if additional information is needed, it will be specifically requested from the firm.
 - B. **NON-PUBLICLY TRADED COMPANIES WITH AUDITED OR REVIEWED FINANCIAL STATEMENTS:** Statements, including balance sheet, statement of earnings and retained income, with footnotes, for the most recent three years.
 - C. **NON-PUBLICLY TRADED COMPANIES WITHOUT AUDITED OR REVIEWED FINANCIAL STATEMENTS:** Company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years. The Chief Financial Officer of the corporation, a partner, or owner, as appropriate, must certify these financial statements.
 - D. **SOLE PROPRIETORSHIPS:** Refer to C. If financial statements are not generated, please fill out and sign the Financial Statement form (page 10). Submit one form for each of the most recent three years.

NOTE: The LACMTA reserves the right to ask for additional documentation if it is reasonably required to make a determination of integrity and responsibility relevant to the goods or services the Applicant Firm will provide to the LACMTA if awarded a contract.

Applicant Firm: _____
Tax ID No. or SSN: _____

LACMTA PRE-QUALIFICATION VALIDATION

A copy of this VALIDATION must be completed and signed by at least one General Partner, Owner, Principal or Officer authorized to legally commit the Applicant Firm.

RFP or IFB Name and Number: _____

DECLARATION

I, (printed full name) _____, Social Security Number _____ being first duly sworn, hereby declare that I am the (position or title) _____ of (Firm name) _____, and that I am duly authorized to execute this Validation Statement on behalf of this entity. I acknowledge that any false, deceptive or fraudulent statements on this validation will result in denial of pre-qualification. I hereby state:

the Pre-Qualification Application dated _____ on file with LACMTA is correct and current as submitted.

OR

the Pre-Qualification Application dated _____ on file with LACMTA is correct and current as submitted, except as modified by the attached changed pages and/or attachments to said Application. (Applicant may attach additional sheets to describe changes). Attach recent financial statements if previous are more than one year old.

Signature of Person Certifying for Applicant Firm

Date

Subscribed and sworn to before me this _____ day of _____,

(Notary Seal or Stamp)

Notary Public Signature

My Commission expires _____

NOTICE TO APPLICANTS

A material false statement, omission or fraudulent inducement made in connection with this pre-qualification application is sufficient cause for denial of the application or revocation of a prior approval, thereby precluding the applicant Firm from doing business with, or performing work for, the LACMTA, either as a vendor, prime contractor, subcontractor, consultant or sub-consultant for a period of three years. In addition, such false submission may subject the person and/or entity making the false statement to criminal charges. (Title 18 USC 1001, false statements; California Penal Code Section 132, offering altered or antedated or forged documents or records; and Section 134, preparing false documentary evidence).

NOTE: Applicant information submitted to the LACMTA in connection with pre-qualification is considered confidential. All such applicant information is confidential business information and will be afforded protection to the fullest extent permitted by law.

Validation Submittal Do not submit validations with bid or proposal, mail or deliver them to:

LACMTA Pre-Qualification Office
Mail Stop 99-9-1
One Gateway Plaza
Los Angeles, CA 90012-2952

SECTION 5 – BID/PROPOSAL FORMS

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BID LETTER

HONORABLE CHAIRMAN AND MEMBERS OF THE
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
ONE GATEWAY PLAZA
LOS ANGELES, CA 90012-2952

SUBJECT: INVITATION FOR BIDS FOR CONTRACT NO. (IFB No. C0991)
(DIVISION 16: SOUTHWESTERN YARD)

In response to the above-referenced Invitation For Bids (IFB) and in accordance with the accompanying Instructions to Bidders, the Bidder hereby commits to the Los Angeles County Metropolitan Transportation Authority (Metro) to perform the Work in accordance with the provisions of the Bid Level Contract Documents and any amendment thereto and at the prices stated opposite the respective items set forth in the form entitled SCHEDULE OF QUANTITIES AND PRICES, included and made a part of the Contract.

The Bidder agrees that the Bid constitutes a firm offer that cannot be withdrawn for one hundred eighty (180) calendar days from the bid opening or until the Contract for the Work is fully executed between Metro and a third party, whichever is earlier.

If awarded a Contract, the Bidder agrees to execute the Contract and deliver it to Metro within ten (10) calendar days after receiving a Letter of Award together with the necessary Certificates of Insurance, Performance Bond, Payment Bond, and Alcohol and Drug-Free Workplace Program. The Contractor shall proceed with the Work upon receipt of a Notice to Proceed in accordance with Article entitled NOTICE TO PROCEED of the General Conditions.

Attached is a certified check, a cashier's check (in U.S. Dollars), Bid Bond, or a combination thereof in an amount not less than ten percent (10%) of the Total Bid Price. The undersigned agrees that said amount shall be retained by Metro if we fail or refuse to execute the Contract or furnish the required Bonds, Certificates of Insurance, and Alcohol and Drug-Free Workplace Program within the time provided.

In addition to the formal certifications provided in the following, the Bidder certifies that it has:

1. Examined and is fully familiar with all of the provisions of the IFB Documents and any amendment thereto;
2. Satisfied itself as to the requirements of the Contract, the nature and location of the Work, the general and local conditions to be encountered in performance of the Work, and all other matters that can in any way affect the Work and/or the cost thereof;
3. Examined the experience, skill and certification requirements specified in the Statement of Work and that the entities (Bidder, Subcontractor, Supplier) performing the Work under the Contract fulfill the specified requirements; and
4. Carefully reviewed the accuracy of all statements and figures shown in the Bid and attachments hereto.

Therefore, the undersigned hereby agrees that Metro will not be responsible for any errors or omissions in the Bid.

The undersigned acknowledges receipt, understanding and full consideration of the following amendment to the Contract Documents:

Amendment No(s):

| Amendment #6 issued 2-27-15

| Amendment #7 issued 3-11-15

The Bidder further certifies that:

1. The only persons, firms, corporations, Joint Ventures/partnerships, and/or other parties interested in the Bid as principals are those listed as such in the Bid Forms; and that,
2. The Bid has been prepared without collusion with any other person, firm, corporation, Joint Venture/partnership, and/or other party.

(Joint Ventures/partnerships are to provide a signed copy of their agreement with their bid)

Bidder's Name: _____

Business Address: _____

Contractor's License No.: _____

License Expiration Date: _____

Classification Type: _____

Phone: _____ Fax: _____

Signature of Authorized Official

Type or Print Name

Title

Date

_____ being duly sworn, deposes and says

Name

That he/she is the _____ of _____
Title Company

and that all statements and information contained in the Proposal and made a part of through attachment and/or reference, are true and correct.

Subscribed and sworn before me before this _____ day of _____, 20__.

Notary Public: _____

My Commission expires: _____

BIDDERS LIST FORM

The Los Angeles County Metropolitan Transportation Authority (LACMTA) is required per 49 CFR 26. 11 (c) to create and maintain a comprehensive Bidders List. The Bidders List Form (PRO FORM 132) will be used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and will assist with establishing the agency's annual DBE goal. Each Bidders List is a compilation of bidders, proposers, quoters, subcontractors, manufacturers, and suppliers of materials and services who have submitted bids during the advertising period of a specific acquisition. Please provide the following mandatory data:

Part A: Business Data

9. Business Name: _____
10. Business Address: _____

- | | | | |
|--------|------|-------|-----|
| Street | City | State | Zip |
|--------|------|-------|-----|
3. County Business is located in: _____
4. Name of Contact Person: _____
5. Phone: () _____ 6. Fax: () _____
7. Email Address: _____
8. Is this business certified as a Disadvantaged Business Enterprise? a. Yes b. No
9. Business Annual Gross Receipts: 10. Age of Business: _____ Years _____ Months
- | | | |
|--|--|--|
| a. <input type="checkbox"/> Less than \$500,000 | b. <input type="checkbox"/> \$500,000 to \$1,000,000 | c. <input type="checkbox"/> \$1,000,000 to \$2,000,000 |
| d. <input type="checkbox"/> \$2,000,000 to \$5,000,000 | e. <input type="checkbox"/> Over \$5,000,000 | |

Part B: Project and Work Description

11. RFIQ, IFB, or RFP # _____
12. Project Name: _____
13. Provide brief description of scope of work, services, and/or materials to be performed/furnished:

14. Will you subcontract any of your work? a. Yes * b. No
(* If "Yes," the subcontractor(s) must complete an individual Bidders List Form also.)

Part C: Signature

The undersigned declares that the information set forth on this page is current, complete and accurate.

Authorized Signature: _____ Date: _____
Printed Name: _____ Title: _____

SCHEDULE OF QUANTITIES AND PRICES INSTRUCTIONS

1. The Bidder shall submit its firm unit prices and lump sum prices for the Work set forth in the Bid and described in the Invitation for Bids (IFB) Documents on the following Bid Form entitled SCHEDULE OF QUANTITIES AND PRICES.
2. The estimated quantities shown on the SCHEDULE OF QUANTITIES AND PRICES are approximate and are based on the best information available at the time of Bid; they are used solely for the purpose of evaluating the Bids. Metro does not represent, expressly or by implication, that the actual quantities used in the Work will equal the estimated quantities.
3. In the case of Bid items for which a fixed dollar amount predetermined by Metro has already been entered on the SCHEDULE OF QUANTITIES AND PRICES, the dollar amount so entered shall be binding on all Bidders as the price for such item; said dollar amount shall not be revised unless Metro directs a Change in the Work affecting the item to which said dollar amount relates.
4. The Bidder's unit price shall be based on the estimated Work and shall remain firm within the range of a 25 percent increase or decrease in actual quantity.
5. Unit prices, lump sum prices, and other values must be entered in the appropriate spaces provided in the SCHEDULE OF QUANTITIES AND PRICES. Unit prices must be multiplied by the estimated quantity shown and the total inserted in the "Total Price" column. The "Total Prices" must be added together in arriving at the "Total Bid Price". The Total Bid Price shall be for the completion and acceptance of all Work as required by the Contract.
6. The unit prices and lump sum prices must conform to their respective requirements and parameters as specified in the Statement of Work. They also must be inclusive of all costs for the Work specified in other Contract Documents, including the proportional costs for overhead, profit, all applicable taxes, tariffs, insurance and other expenses of the Contractor, Subcontractors, and Suppliers of all tiers.
7. DETERMINATION OF TOTAL BID PRICE
 - A. The Contract will be awarded on the basis of the Total Bid Price shown on the SCHEDULE OF QUANTITIES AND PRICES.
 - B. In event of error or discrepancy between the unit price bid and the Total Bid Price calculated, the unit price is agreed to be the valid bid per unit. The Total Bid Price shall be the sum of the Total Prices (unit prices multiplied by the estimated quantities). The award amount will be based on the actual sum as recalculated by Metro.
 - C. Should any unit price be left blank, the Bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., unit price can be determined by dividing the total price by the estimated quantity).
 - D. Should any total price be left blank, the Bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., total price can be determined by multiplying the unit price by the estimated quantity).

- E. If any one line item is left blank, and the above situations do not apply, no attempt will be made to reconcile the amounts. The Bid in this case will be considered non-responsive.
- F. If Option pricing is requested, the evaluation for Contract Award will be based upon the Base Contract, plus Option(s), in any possible combination, as determined by Metro.

BIDDER/PROPOSER: _____

**CONTRACT NO. ((IFB No. C0991))
 DIVISION 16: SOUTHWESTERN YARD
 SCHEDULE OF QUANTITIES AND PRICES FORM**

SCHEDULE OF QUANTITIES AND PRICES - SCHEDULE 'A' BASE WORK						
ITEM NO.	STANDARD COST CATEGORY	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
SCHEDULE 'A' BASE WORK						
Support Facilities: Yards, Shops, Administration Buildings (SCC 30)						
1	30.03	Supporting Shops/Offices/Employee Facilities (1st & 2nd Flr.) Bldg. - (B-01) and Equipment	1	LS	N/A	\$ -
2	30.03	Truck/Car Repair/S&I/Blow-Down/Wheel True Pit (1st Flr.) Bldg. (B-02) and Equipment	1	LS	N/A	\$ -
3	30.03	Control Tower (3rd Flr.) Bldg. (B-03) Including Console	1	LS	N/A	\$ -
4	30.04	Carwash Bldg. (B-04) Including Equipment	1	LS	N/A	\$ -
5	30.04	Material Storage Bldg. (B-06) Including Equipment	1	LS	N/A	\$ -
6	30.04	Cleaning Platform Area (B-07) Including Equipment	1	LS	N/A	\$ -
7	30.04	Paint and Body Shop Bldg. (B-08) and (B-09) Including Equipment	1	LS	N/A	\$ -
8	30.05	Yard and Yard Track	1	LS	N/A	\$ -

Sitework & Special Conditions (SCC 40):						
9	40.01	Demolition, Clearing and Earthwork	1	LS	N/A	\$ -
10	40.02	Site Utilities, Utility Relocation	1	LS	N/A	\$ -
11	40.05	Guard House & Main Entrance Gate (B-11)	1	LS	N/A	\$ -
12	40.06	Landscape / Hardscape	1	LS	N/A	\$ -
13	40.08	Mobilization - Construction	1	LS	N/A	\$ -
14	40.08	General Requirements	1	LS	N/A	\$ -
15	40.08	120 Day Schedule, Baseline Schedule and Current Schedule Update	1	LS	N/A	\$ -
16	40.08	Quality Insurance and Quality Control	1	LS	N/A	\$ -
17	40.08	Approval of As-built Drawings	1	LS	N/A	\$ 800,000
18	40.08	Insurance Liability	1	LS	N/A	\$ -
Systems (SCC 50):						
19	50.01	Train Control System & Signals - Bldgs. (B-13) and (B-14)	1	LS	N/A	\$ -
20	50.03	Traction Power System Substation (TPSS) - Bldg. (B-05)	1	LS	N/A	\$ -
21	50.04	Traction Power Distribution (TPD) Catenary - Emergency Generator and Pad - (B-10)	1	LS	N/A	\$ -
22	50.04	Traction Power Distribution (TPD) Catenary - DWP Service Site with Metering - (B-12) and (East Service)	1	LS	N/A	\$ -
23	50.05	Communications	1	LS	N/A	\$ -

Professional Service Systems (SCC 80):							
24	80.02	Mobilization - Design	1	LS	N/A	\$	-
25	80.02	Final Design	1	LS	N/A	\$	-
SCHEDULE 'A' - SUBTOTAL						\$	-
The items in Schedule 'A' are included by LACMTA as part of the Total Contract Price and contract award to cover specified Work.							

Legend: **CY**=Cubic Yard, **CD**=Calendar Day, **EA**=Each, **LF**=Linear Foot, **HR**=Hours, **LS**=Lump Sum, **SY**=Square Yard, **TF**=Track Foot, **PS**=Provisional Sum, **SF**=Square Foot, **TONS**=Tons, **SHIFT**=Shifts, **MO**=Month, **NTE**=Not to Exceed.

SCHEDULE OF QUANTITIES AND PRICES - SCHEDULE 'B' OPTIONS						
ITEM NO.	STANDARD COST CATEGORY	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
SCHEDULE 'B' OPTIONS						
3.3.1	10.12	Optional Test Track	1	LS	N/A	\$ -
3.3.2	30.03	Optional Wheel Truing Machine	1	LS	N/A	\$ -
3.3.3	30.04	Optional Cleaning Platform Canopy				
		A) - Base Platform Canopy – 200 Foot Length	1	LS	N/A	\$ -
		B) - Full Platform Canopy – Additional 100 Foot Length	1	LS	N/A	\$ -
3.3.4	30.04	Optional Cleaning Platform – Full Length (Additional 100 Feet)	1	LS	N/A	\$ -
3.3.5	30.04	Optional Full Build-Out of Storage Tracks	1	LS	N/A	\$ -
3.3.6	30.04	Deductive Option, Paint and Body Shop	1	LS	N/A	(\$ -)
		SCHEDULE 'B' - TOTAL				\$ -
<p>The items in Schedule 'B' are included by LACMTA and will be evaluated with the total price, but will not be part of the contract award unless the option(s) are exercised. LACMTA will determine if any or all of the options will be exercised at award of this contract.</p>						

Legend: **CY**=Cubic Yard, **CD**=Calendar Day, **EA**=Each, **LF**=Linear Foot, **HR**=Hours, **LS**=Lump Sum, **SY**=Square Yard, **TF**=Track Foot, **PS**=Provisional Sum, **SF**=Square Foot, **TONS**=Tons, **SHIFT**=Shifts, **MO**=Month, **NTE**=Not to Exceed.

SCHEDULE OF QUANTITIES AND PRICES - SCHEDULE 'C' PROVISIONAL SUMS						
ITEM NO.	STANDARD COST CATEGORY	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
SCHEDULE 'C' PROVISIONAL SUMS						
1	40.03	Hazardous Material / Contaminated Soil Removal	1	PS	LS	\$ 2,000,000
2	40.08	Safety's First Incentive Program SP-24	1	PS	LS	\$ 180,000
3	40.08	Partnering SP-30	1	PS	LS	\$ 240,000
4	40.08	Disputes Review Board SP-58	1	PS	LS	\$ 160,000
5	40.08	Support of Special Events	1	PS	LS	\$ 80,000
6	40.08	Requests from Third Parties	1	PS	LS	\$ 975,000
7	40.08	Incremental Community Improvement	1	PS	LS	\$ 260,000
8	60.01	Approved Removal of Unknown Right-of-Way Encroachments Determined by Design-Build Survey	2	PS	\$40,000	\$ 80,000
9	50.05	Repair or Replacement of Metro Furnished Goods Damaged on or Before Furnishing to the Design-Builder	1	PS	LS	\$ 50,000
10	50.05	Allowance for Spare Parts, Special Tools and Materials	1	PS	LS	\$ 1,000,000

11	50.05	Miscellaneous Materials and Equipment for Systems Integration and Testing as Directed by LACMTA	1	PS	LS	\$ 75,000
12	40.08	Document 2-1 Supplemental Work	1	PS	LS	\$ 50,000
13	40.08	Supply of AF track circuits, cab loops and software platform protocol specific to the southbound, northbound leads and optional test track. Refer to Document 2-1, 5.13.4.1.E	1	PS	LS	\$ 60,000
SCHEDULE 'C' - SUBTOTAL						\$ 5,210,000
<p>The Provisional Sums in Schedule 'C' are amounts included by LACMTA as part of the Total Contract Price and contract award to compensate contractor for such work that may be necessary during performance of the Work. In the event that the programs or Work contemplated by the line items in Schedule 'C' are not fully implemented, the Contract Price will be reduced by the unused amount in each line item. Contractor shall not be paid any of the Schedule 'C' amounts, except for amounts authorized and released by LACMTA in writing, in accordance with the Special Provisions Article entitled Provisional Sums.</p>						

Legend: **CY**=Cubic Yard, **CD**=Calendar Day, **EA**=Each, **LF**=Linear Foot, **HR**=Hours, **LS**=Lump Sum, **SY**=Square Yard, **TF**=Track Foot, **PS**=Provisional Sum, **SF**=Square Foot, **TONS**=Tons, **SHIFT**=Shifts, **MO**=Month, **NTE**=Not to Exceed.

SCHEDULE OF QUANTITIES AND PRICES - SCHEDULE 'D' OVERHEAD COMPENSATION						
ITEM NO.	STANDARD COST CATEGORY	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
SCHEDULE 'D' OVERHEAD COMPENSATION						
1	40.08	Daily rate for a delay that is both Excusable and Compensable, as defined by the General Conditions Article EXTENSION OF TIME, that occurs between Notice to Proceed and the first 420 calendar days.	60	CD	\$ -	\$ -
2	40.08	Daily rate for a delay that is both Excusable and Compensable, as defined by the General Conditions Article EXTENSION OF TIME, that occurs between calendar day 421 and calendar day 1,311.	90	CD	\$ -	\$ -
SCHEDULE 'D' - SUBTOTAL						\$ -
<p>The items in Schedule 'D' will be evaluated with the total price, but will not be part of the contract award. Contractor shall not be paid any or all of the Schedule 'D' amount, except for amounts released by LACMTA through Contract Modifications for Excusable and Compensable Delays.</p>						

Legend: **CY**=Cubic Yard, **CD**=Calendar Day, **EA**=Each, **LF**=Linear Foot, **HR**=Hours, **LS**=Lump Sum, **SY**=Square Yard, **TF**=Track Foot, **PS**=Provisional Sum, **SF**=Square Foot, **TONS**=Tons, **SHIFT**=Shifts, **MO**=Month, **NTE**=Not to Exceed.

SCHEDULE OF QUANTITIES AND PRICES - SCHEDULE 'E' UNIT PRICES

ITEM NO.	STANDARD COST CATEGORY	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
SCHEDULE 'E' UNIT PRICES						
1	40.08	Daily Standby	20	Day	\$ -	\$ -
2	40.03	Incremental Costs for Segregation of Potentially Contaminated Soils.	1,000	TONS	\$ -	\$ -
3	40.03	Incremental Costs for Hauling and Disposing RCRA Hazardous Waste Soils (1 to 1,000 tons).	1,000	TONS	\$ -	\$ -
4	40.03	Incremental Costs for Hauling and Disposing RCRA Hazardous Waste Soils (1,001 to 10,000 tons).	9,000	TONS	\$ -	\$ -
5	40.03	Incremental Costs for Hauling and Disposing Non-RCRA, California Hazardous Waste Soils (1 to 1,000 tons).	1,000	TONS	\$ -	\$ -
6	40.03	Incremental Costs for Hauling and Disposing Non-RCRA, California Hazardous Waste Soils (1,001 to 10,000 tons).	9,000	TONS	\$ -	\$ -
7	40.03	Incremental Costs for Hauling and Disposing Non-Hazardous Waste Soils (1 to 1,000 tons).	1,000	TONS	\$ -	\$ -
8	40.03	Incremental Costs for Hauling and Disposing Non-Hazardous Waste Soils (1,001 to 10,000 tons).	9,000	TONS	\$ -	\$ -

9	40.03	Cost for Investigation, Permitting, Cleaning, Removal, Transportation, and Disposal of Underground Storage Tanks, Including Cost for Collection and Analysis Required Soil Sampling and Closure Reports.	3	EA	\$	-	\$	-
10	40.03	Abandon Existing Groundwater/Soil Evaporation Monitoring Wells	8	EA	\$	-	\$	-
11	40.03	Relocate Existing Groundwater/Soil Evaporation Monitoring Wells	8	EA	\$	-	\$	-
12	40.03	Modify Existing Groundwater/Soil Evaporation Monitoring Wells	6	EA	\$	-	\$	-
13	40.03	Install New Groundwater/Soil Evaporation Monitoring Wells	4	EA	\$	-	\$	-
14	40.02	Utility Investigation Potholes	60	EA	\$	-	\$	-
15	40.03	Combined Utility/Environmental Investigation Potholes	20	EA	\$	-	\$	-
16	40.07	Additional Concrete Curb, Type A	300	LF	\$	-	\$	-
17	40.07	Additional Concrete Integral Curb and Gutter, Type C	300	LF	\$	-	\$	-
18	40.07	Additional Concrete Sidewalk (Three Inch Thickness)	300	SY	\$	-	\$	-
19	40.07	Additional Concrete Driveway (Six Inch Thickness)	400	SY	\$	-	\$	-
20	40.07	Grind and overlay to City Standards (Normal work hours between Monday - Friday)	1,400	TONS	\$	-	\$	-
21	40.07	Grind and overlay to City Standards (After normal work hours and/or weekends)	1,500	TONS	\$	-	\$	-
22	40.08	Special Events - Incidental Traffic Control or Site Modifications	20	SHIFT	\$	-	\$	-

23	40.08	Special Events - Additional Security Guard Services	1,000	HR	\$	-	\$	-
24	40.08	Street Vacuum Sweeper with Operator	100	HR	\$	-	\$	-
25	40.08	Special Events - Portable Toilets (3)	6	MO	\$	-	\$	-
26	50.05	Traction Power Technician	800 (NTE)	HR	\$	-	\$	-
27	50.05	Radio Technician	800 (NTE)	HR	\$	-	\$	-
28	50.05	Electrician - Eight-hour shift 6:00 AM to 6:00 PM	800 (NTE)	HR	\$	-	\$	-
29	50.05	Electrician - Eight-hour shift 6:00 PM to 6:00 AM	800 (NTE)	HR	\$	-	\$	-
30	50.05	Electrician - Two-hour overtime 6:00 AM to 6:00 PM	800 (NTE)	HR	\$	-	\$	-
31	50.05	Electrician - Two-hour overtime 6:00 PM to 6:00 AM	800 (NTE)	HR	\$	-	\$	-
32	50.05	Electrician Eight-hour shift on Saturday above normal work week 6:00 AM to 6:00 PM	800 (NTE)	HR	\$	-	\$	-
33	50.05	Communications Technician - Eight-hour 6:00 AM to 6:00 PM	800 (NTE)	HR	\$	-	\$	-
34	50.05	Communications Technician - Eight-hour 6:00 PM to 6:00 AM	800 (NTE)	HR	\$	-	\$	-
35	50.05	Communication Technician - Two-hour overtime 6:00 AM to 6:00 PM	800 (NTE)	HR	\$	-	\$	-
36	50.05	Communication Technician - Two-hour overtime 6:00 PM to 6:00 AM	800 (NTE)	HR	\$	-	\$	-
37	50.05	Communications Technician Eight-hour shift on Saturday above normal work week 6:00 AM to 6:00 PM	800 (NTE)	HR	\$	-	\$	-

38	50.05	Technical Support - Provide Assistance to LACMTA in integration testing from LACMTA's Rail Operations Center	800	HR	\$ -	\$ -
39	50.05	Technical Support - Rail Activation	1,000	HR	\$ -	\$ -
SCHEDULE 'E' - SUBTOTAL						\$ -

The total price for the line items in Schedule 'E' are not part of the Total Contract Price award. The contractor shall not be paid any of the amounts in Schedule 'E'. The unit prices are fixed for the duration of the contract and will be used to price Changes and Provisional Sum Authorizations under the contract. The unit prices are complete and fully burdened and are not subject to any mark up when pricing changes for Provisional Sum authorizations. The Total Prices for the line items in Schedule E shall be included in contractor's total price in accordance with the IFB.

Legend: CY=Cubic Yard, CD=Calendar Day, EA=Each, LF=Linear Foot, HR=Hours, LS=Lump Sum, SY=Square Yard, TF=Track Foot, PS=Provisional Sum, SF=Square Foot, TONS=Tons, SHIFT=Shifts, MO=Month, NTE=Not to Exceed.

SCHEDULE OF QUANTITIES AND PRICES - SCHEDULES 'A', 'B', 'C', 'D' AND 'E' TOTALS

TOTAL SCHEDULE 'A' BASE WORK = \$ _____ -

TOTAL SCHEDULE 'B' OPTIONS = \$ _____ -

TOTAL SCHEDULE 'C' PROVISIONAL SUMS = \$ 5,210,000 -

TOTAL SCHEDULE 'D' OVERHEAD COMPENSATION = \$ _____ -

TOTAL SCHEDULE 'E' UNIT PRICES = \$ _____ -

TOTAL SCHEDULES A, B, C, D and E = \$ _____ -

**IN WORDS - TOTAL
BID:**

US DOLLARS

END OF SCHEDULE OF QUANTITIES AND PRICES

BIDDER/PROPOSER: _____

(Click here for the pdf with form fields version: http://www.metro.net/EBB/contract_templates/5-005_054_and_055_List_of_Curr_and_Comp_Proj_%28Backlog%29.pdf)

LIST OF CURRENT PROJECTS (BACKLOG)

PROJECT NAME AND LOCATION	DESCRIPTION OF WORK	OWNER'S NAME, ADDRESS, PHONE NO. CONTACT PERSON	ESTIMATED COST OF BIDDER'S WORK	ESTIMATED COMPLETION
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	

BIDDER/PROPOSER: _____

LIST OF COMPLETED PROJECTS - LAST THREE YEARS

(Click here for the pdf with form fields version: http://www.metro.net/EBB/contract_templates/5-005_054_and_055_List_of_Curr_and_Comp_Proj_%28Backlog%29.pdf)

Include only projects that are pertinent for this Invitation For Bids/Request for Proposal, in order to demonstrate Bidder's/Proposer's ability to perform the required Work.

PROJECT NAME AND LOCATION	DESCRIPTION OF WORK	OWNER'S NAME, ADDRESS, PHONE NO. CONTACT PERSON	ACTUAL FINAL CONTRACT VALUE	DATE CONTRACT DURATION
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	
	Prime <input type="checkbox"/> Sub <input type="checkbox"/>		\$	

BID BOND

**KNOW ALL MEN BY THESE PRESENTS:
THAT,**

_____ as Principal
and,

_____ as Surety

are held firmly bound unto the LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY, hereinafter called Metro,

in the sum of

(use words)

_____ DOLLARS

(\$), _____
(figures)

being not less than ten percent (10%) of the Total Bid Price; for the payment of which sum well
and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and
assigns, jointly and severably, firmly by these presents.

WHEREAS, said Principal has submitted a bid to Metro to perform all Work required under
Metro's Invitation For Bids (IFB) Contract No. (IFB No. C0991).

NOW, THEREFORE, if said Principal is awarded a Contract for the Work by Metro and, within
the time and in the manner required by the Invitation For Bids (IFB), enters into the written
Contract Agreement bound with said IFB and furnishes the required bonds, one to guarantee
faithful performance and the other to guarantee payment for labor and materials, and furnishes
the required certificate of insurance and Alcohol and Drug-Free Workplace Program, then this
obligation shall be null and void; otherwise, it shall remain in full force and effect. In the event
suit is brought upon this Bond by Metro and judgment is recovered, said Surety shall pay all
costs incurred by Metro in such suit, including reasonable attorneys' fees to be fixed by the
court.

SIGNED AND SEALED, this _____ day of _____, 20____

(SEAL)

(SEAL)

Principal

Surety

BY: _____
Signature

BY: _____
Signature

ATTACHMENT 1 - PERFORMANCE BOND

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY**

CONTRACT NO. (IFB No. C0991)

DIVISION 16: SOUTHWESTERN YARD

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to _____ ("Principal"), Contract No **(IFB No. C0991), Division 16: Southwestern Yard** and

WHEREAS Principal is required under the terms of the Contract to furnish a Bond for the faithful performance of the Contract;

NOW, THEREFORE, we _____, as Principal, and _____, ("Surety"), as Surety, are held and firmly bound unto Metro in the sum of _____ Dollars (\$ _____), 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 severably, 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.

The condition of this obligation is such that, if the hereby-bonded Principal or its heirs, executors, administrators, successors, assigns, or Subcontractors shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the Contract and any alteration thereof, made as therein provided, all within the time and in the manner therein designated and in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Further, Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of the Work to be performed thereunder, shall in any way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or modification of the contract documents or of the Work to be performed thereunder.

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the _____ day of _____ 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: _____
(Principal)

By: _____
(Surety)

By: _____

ATTACHMENT 2 - PAYMENT (MATERIAL AND LABOR) BOND

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY**

**(IFB No. C0991)
Division 16: Southwestern Yard**

PAYMENT (MATERIAL AND LABOR) BOND

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to _____ ("Principal"), **(IFB No. C0991), Division 16: Southwestern Yard** and

WHEREAS Principal is required under the terms of the Contract 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 _____, as Principal, and _____, ("Surety"), as Surety, are held and firmly bound unto Metro in the sum of _____ Dollars (\$ _____), 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 severably, 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.

The condition of this obligation is such that, if the hereby-bonded Principal, or its heirs, executors, administrators, successors, or assigns, or Subcontractors shall fail to pay any of the persons named in Civil Code § 3181 or to pay 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.

This Bond shall inure to the benefit of any of the persons named in Civil Code § 3181 as to give a right of action to such persons or their heirs, executor's, administrators, successors, or assigns in any suit brought upon this Bond.

Further, Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of the Work to be performed thereunder, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such change, extension of time, alteration, or modification of the contract documents, or of the Work to be performed thereunder.

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: _____
(Principal)

By: _____
(Surety)

By: _____

BIDDER/PROPOSER: _____

SAFETY

The bidder/proposer shall submit the following items with its bid/proposal by attaching them directly behind this page.

1. The Table of Contents of bidder's/proposer's currently implemented safety program.
2. A resume of the proposed Project/Site Safety Representative, along with copies of certification cards. The resume and certification cards must indicate that the proposed individual meets the criteria for the position at the time of bid/proposal. A separate Submittal after NTP will be required of the successful Bidder/Proposer.

The Bidder/Proposer affirms by signature below that it has an established Safety Program that complies with the provisions of these Contract Documents and all government regulations, including California Labor Code Section 6401.7 and Cal-OSHA General Industry Order, Title 8, Subchapter 7, Section 3203.

Executed on _____, 20____, at _____, _____
(Date) (City) (State)

Typewritten or Printed Name Signature of Authorized Official Title

BIDDER/PROPOSER: _____

BIDDER'S INDUSTRIAL SAFETY RECORD

The information entered on the Bid Form must include all construction work undertaken nationwide and in the state of California by the Bidder, as well as by any partnership, corporation or joint venture that any principal of the Bidder participated in as a principal or owner, for the current calendar year and the prior five calendar years. A separate Bid Form shall be submitted for each individual, partnership, corporation and/or joint venture that make up the Bidding entity. The Bidder may be requested to submit additional information or explanation of data that the METRO requires for evaluating the safety record.

ITEM	INFORMATION	2009	2010	2011	2012	2013	Current Year
1.	Total Hours Worked						
	Nationwide:						
	California:						
2. ¹	Number of fatalities						
	Nationwide:						
	California:						
3. ¹	Number of OSHA recordable injury/illness cases						
	Nationwide:						
	California:						
4. ¹	Number of lost workday cases						
	Nationwide:						
	California:						
5. ¹	Number of lost workdays						
	Nationwide:						
	California:						

BIDDER/PROPOSER: _____

ITEM	INFORMATION	2009	2010	2011	2012	2013	Current Year
6. ¹	Recordable Incident Rates: ²						
	Nationwide:						
	California:						
	Lost Workday Incident Rates ³						
	Nationwide:						
	California:						
	Lost Days Rates ⁴						
	Nationwide:						
7. ¹	Worker's Compensation Experience Modifier						
	Nationwide:						
	California:						

The above information was compiled from records available at the time the Bid was prepared. I declare under penalty of perjury under the laws of the state of California that the information is true and correct within the limitation of those records.

Executed on _____, 20____, at _____, _____
 (Date) (City) (State)

 Typewritten or Printed Name Signature of Authorized Official Title

- 1 The information required for items is the same as required for columns 3 to 13, code 10, Log and Summary of Occupational injuries and Illnesses, OSHA (Cal-Osha) Form 200
- 2 Recordable Incidence Rate = $\frac{\text{Recordable Cases} \times 200,000}{\text{Total Hours Worked}}$
- 3 Lost Workday Incident Rate = $\frac{\text{Lost Workday Cases} \times 200,000}{\text{Total Hours Worked}}$
- 4 Lost Days Rate = $\frac{\text{Total Lost Days} \times 200,000}{\text{Total Hours Work}}$

SECTION 6 – REQUIRED CERTIFICATIONS

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ETHICS DECLARATION

- A. The following questions are designed to ensure contractors and Metro, including its employees and Board of Directors, are able to comply with their obligations to avoid conflicts of interest issues. Your company should make or cause to be made a reasonably diligent investigation prior to responding to the questions to ensure your responses are correct and you must have an authorized official sign below where indicated.

The authorized official is responding on behalf of your company and your sub-contractors and other persons and entities that your company or its subsidiaries have designated to perform the work requested in the bid/proposal.

An affirmative response to any of the questions will not automatically cause your company to be disqualified. However, failure to answer the questions in good faith or providing material false answers may subject your company to consequences up to and including disqualification of its bid.

If you have any questions please contact the contract administrator assigned to this procurement.

- B. State the names of your company's parent, all subsidiaries, and "related business entities" as that term is defined in California Code of Regulations 18703.1(d). If none, circle "none" under each category below:

Name of parent: (none)

Name of subsidiaries (use additional sheet if necessary): (none)

Name of related businesses (use additional sheet if necessary) (none)

Questions	Yes/No
1. Are any of your employees, officers, shareholders, partners, or directors (including your and those of your subcontractors' and consultants' collectively "Employees") formerly a Metro board member or employee within the previous 12 months?	
2. Are any of your Employees related to any Metro board member or employee?	
3. Are any of your Employees also Metro board members or employees?	
4. Do any Metro board members or employees own any stock in your company, or that of your consultants or subcontractors?	
5. Have you or Employees given any gifts within the previous 12 months to a Metro board member or employee?	

Questions	Yes/No
6. Have you, your Employees or their family members of your parent, subsidiaries and relate business entities as stated above, made any campaign contributions any present Metro Board Member or employee in the past four years?	
7. Have you employed or do you intend to employ as a lobbyist any former Metro board member or employee who has left Metro within the last twelve months?	
8. Did you or you Employees receive any confidential information concerning this contract?	
9. Did you or any of your Employees perform work within the last 3 years relating to the project or services contemplated to be performed under this contract, including development of the specifications or earlier phases of the project or services to be provided under this contract?	
	No. of Pages Attached
10. If you answered "yes" to any question 1 through 9 above, explain in detail on a separate sheet the facts and information, including names, dates, amounts, and other circumstances relevant to the question.	

You have read and shall abide by Metro Code of Conduct for Contractors at all times during your relationship with Metro. Your consultants and subcontractors you retain (if any) to perform any services under the contract you are seeking have or will promptly upon your hiring of those persons, shall read and abide by Metro Code of Conduct for Contractors. You have read and will continually remain in compliance with Metro Lobby Ordinance.

C. DECLARATION

I, (name) _____, on behalf of (name of bidder/proposer) including its subcontractors and consultants, _____ at which I am employed as (your title) _____, declare that after having made or caused to be made a reasonably diligent investigation both regarding my company and all sub-contractors and consultants designated by the above bidder/proposer, the foregoing responses, and the explanation on the attached sheet, if any, in response to question 10, are correct to the best of my knowledge and belief.

Signature

Date

BIDDER/PROPOSER: _____

GENERAL CERTIFICATIONS

The Bidder/Proposer shall respond either "Yes" or "No" to each of the following where indicated. If the Bidder/Proposer's response is "No", a full explanation shall be provided in the space following the last item.

1.0 CERTIFICATE OF NONDISCRIMINATION Yes No

The Bidder/Proposer hereby certifies: that it does not unlawfully discriminate against any employee or applicant for employment with regard to race, sex, color, religion, ancestry, national origin, marital status, age (over 40), or disability (including AIDS, and cancer-related medical condition); that it is in compliance with all applicable Federal, state, and local directives and executive orders regarding nondiscrimination in employment; and that it agrees to pursue positively and aggressively the principle of equal opportunity in employment. The Bidder/Proposer and its Subcontractors shall comply with the provisions of the Fair Employment and Housing Act Gov. Code § 12900 and the applicable regulations promulgated thereunder. The Bidder/Proposer agrees specifically to adhere to the following:

- A. Establish and observe employment policies that actively promote opportunities for minority persons and women at all job levels.
- B. Communicate this policy to all company employees, outside recruiting services, especially those serving minority communities and women, and minority communities and women at large.
- C. State in all solicitations or advertisements for employees that the Bidder/Proposer will consider all qualified applicants for employment without regard to race, sex, color, religion, ancestry, national origin, marital status, age (over 40), or disability (including AIDS, and cancer-related medical condition).

2.0 AFFIRMATIVE ACTION Yes No

The Bidder/Proposer certifies that it and those Subcontractors with subcontracts in excess of ten thousand dollars (\$10,000) are maintaining Affirmative Action Programs consistent with those required under Federal Executive Order 11246. The detailed requirements are set forth in the Contract Compliance Manual.

3.0 FRAUDULENT USE OF DBE FRONTS

Yes No

Only certified Disadvantaged Business Enterprises are eligible to participate in Metro contracts as DBEs. The Bidder/Proposer certifies that it has not knowingly and willfully used "fronts" as defined in section 100.6 of Metro's Contract Compliance Manual (Federal) to meet the DBE goal established for this contract. The use of "fronts" and "pass through" Subcontracts to non-disadvantaged firms may constitute a criminal violation³.

4.0 WHISTLEBLOWER REQUIREMENTS

Yes No

The Bidder/Proposer certifies that it will take no action, or adopt any rule, regulation or policy which is contrary to the provisions set forth in California Labor Code § 1101.

A full explanation of all "No" answers shall be provided below.

Bidder/Proposer hereby declares under the penalty of perjury under the laws of the State of California that the certifications made above in No. 1-4 are true and correct.

Executed on _____, 20____, at _____, _____
(Date) (City) (State)

Typewritten or Printed Name	Signature of Authorized Official	Title

³ Any indication of fraud, waste, abuse, or mismanagement of these funds should be immediately reported to the Metro Small Business Diversity and Labor Compliance Office, at (213) 922-6000; the Metro Inspector General Office at (213) 344-7300 or the toll free hotline number (800) 221-1142; or to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline number (800) 424-9071; or to the following field office: 201 Mission Street, Suite 2210; San Francisco, CA 94105-1926; (415) 744-3133.

BIDDER/PROPOSER: _____

**CERTIFICATE OF COMPLIANCE WITH 49 CFR PART 655,
PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN
TRANSIT OPERATIONS**

Bidder/Proposer hereby certifies that:

A. Anti-drug Use and Alcohol Misuse Program

(Choose one Alternative with "X" in the box)

1. Bidder/Proposer has established and implemented an anti-drug use and alcohol misuse program meeting the requirements on 49 CFR 655.

OR

2. Bidder/Proposer will establish and implement an anti-drug use and alcohol misuse program meeting the requirements on 49 CFR 655 prior to contract award.

B. Drug and Alcohol Testing Program

(Choose one alternative with "X" in the box)

1. To the best of my knowledge and belief the Work required under the Contract will not require the performance of "Safety Sensitive Functions" as defined in 49 CFR Part 655.

OR

2. To the best of my knowledge and belief the Work required under the Contract will require the performance of "Safety Sensitive Functions" as defined in 49 CFR Part 655.

(If Alternative 2 was chosen, select one of the following alternatives with an "X" in the box)

- a. Bidder/Proposer has established and implemented a drug and alcohol testing program that complies with 49 CFR Part 655.

OR

- b. Bidder/Proposer will establish and implement a drug and alcohol testing program that will comply with 49 CFR Part 655 prior to contract award.

C. Submittals

Bidder/Proposer will submit its Anti-drug Use and Alcohol Misuse Program, and, if B.2 was marked above, its Drug and Alcohol Testing Program, to Metro for review and approval prior to contract award.

Bidder/Proposer: _____

Authorized Representative: _____

Signature of Authorized Representative: _____

Title: _____

Date: _____

BIDDER/PROPOSER: _____

**BUY AMERICA CERTIFICATE
FOR COMPLIANCE WITH TITLE 49 USC § 5323(J)(1)
(For Procurement of Steel, Iron, or Manufactured Products)**

The Bidder/Proposer hereby certifies that it will comply with the requirements of Title 49 USC § 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Executed on _____, 20____, at _____, _____
(Date) (City) (State)

Typewritten or Printed Name Signature of Authorized Official Title

BUY AMERICA CERTIFICATE FOR NON-COMPLIANCE WITH TITLE 49 USC §. 5323(J)(1)

The Bidder/Proposer hereby certifies that it cannot comply with the requirements of Title 49 USC § 5323(j)(1), but it may qualify for an exception pursuant to Title 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Executed on _____, 20____, at _____, _____
(Date) (City) (State)

Typewritten or Printed Name Signature of Authorized Official Title

BIDDER/PROPOSER: _____

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 _____ (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 _____, 20____, at _____, _____
(Date) (City) (State)

Typewritten or Printed Name Signature of Authorized Official Title

RESTRICTIONS ON LOBBYING

(a) Definitions, as used in this clause:

Agency as defined in Title 5 USC § 552(f), includes federal executive departments and agencies as well as independent regulatory commissions and government corporations, as defined in Title 31 USC § 9101(1).

Metro means the Los Angeles County Metropolitan Transportation Authority.

Covered Federal action means any of the following federal actions:

1. The awarding of any federal contract;
2. The making of any federal grant;
3. The making of any federal loan;
4. The entering into of any cooperative agreement, and
5. The extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

Covered federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

Indian tribe and **tribal organization** have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act Title 25 USC § 450(b). Alaskan Natives are included under the definitions of Indian tribes in that Act.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any covered federal action.

Local government means a unit of government in a state and, if chartered, established, or otherwise recognized by a state for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the government under Title 5, USC, including a position under a temporary appointment;
2. A member of the uniformed services as defined in Title 37 USC § 101(3);
3. A special government employee as defined in, Title 18 USC § 202; and,
4. An individual who is a member of a federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5 USC Appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization,

or any other Indian organization with respect to expenditures specifically permitted by other federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the federal government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes all contractors and subcontractors at any tier in connection with a federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 days.

State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a state, and a multi-state, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

(1) Title 31 USC § 1352 provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay 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, or an employee of a member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a federal

contract if the payment is for agency and legislative liaison activities not directly related to a covered federal action.

- (B) For purposes of paragraph (b) (2) (i) (A) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.
 - (C) For purposes of paragraph (b) (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable at anytime only where they are not related to a specific solicitation for any covered federal action:
 - (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the persons products or services, conditions or terms of sale, and service capabilities, and
 - (2) Technical discussions and other activities regarding the application or adaptation of the persons products or services for an agency's use.
 - (D) For purposes of paragraph (b) (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable only when they are prior to formal solicitation of any covered federal action:
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to official submission, and
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
 - (E) Only those activities expressly authorized by paragraph (b) (2) (i) of this section are allowable under paragraph (b) (2) (i).
- (ii) Professional and technical services by Own Employees.
- (A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a federal contract or an extension, continuation, renewal, amendment, or modification of a federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal or application for that federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal contract.
 - (B) For purposes of paragraph (b) (2) (ii) (A) of this section professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document

accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her clients proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(D) Only those services expressly authorized by paragraph (b) (2) (ii) of this section are allowable under paragraph (b) (2) (ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal contract.

(B) For purposes of paragraph (b) (2) (iv) (A) of this section professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a

professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (D) Persons other than officers or employees of a person requesting or receiving a covered federal action include consultants and trade associations.
- (E) Only those services expressly authorized by paragraph (b) (2) (iv) of this section are allowable under paragraph (b) (2) (iv).

(c) Disclosure.

- (1) Each person who requests or receives from Metro a contract with federal assistance shall file with Metro a certification, set forth in Bid/Submittal Form entitled FEDERAL LOBBYING CERTIFICATION, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from Metro a contract with federal assistance shall file with Metro a disclosure form, Standard Form-LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c) (2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or

- (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or,
 - (iii) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (c) (1) of this section a subcontract with a contract value exceeding \$100,000 at any tier under a contract with federal assistance shall file a certification, and a disclosure form, if required, to the next tier above. All disclosure forms shall be forwarded from tier to tier until received by the Prime Contractor who will forward it to Metro.

EXHIBIT 1

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, hereby certify on behalf of
(Name and title of contracting or sub-contracting official)

_____ that:
(Name of contractor or subcontractor)

- (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, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federally appropriated funds have been paid or will be paid 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, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including 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 is 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. Any person 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 this _____ day of _____, 20_____.

By: _____
(Signature of Authorized Official)

(Typewritten or Printed Name)

(Title of Authorized Official)

EXHIBIT 2

DISCLOSURE OF LOBBYING ACTIVITIES INSTRUCTIONS FOR COMPLETION OF SF-LLL

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation of receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31 USC § 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime if the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks Subawardee, then enter the full name, address, city, state and zip code of the prime federal recipient. Include the Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program, name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g. Request for Proposal (RFP) number, Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., RFP-DE-90-001.
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the dates of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-46-0046). Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction Standard Form LLL-A

BIDDER/PROPOSER: _____

**CERTIFICATION OF PROSPECTIVE CONTRACTOR REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY
EXCLUSION**

**PRIMARY COVERED TRANSACTIONS MUST BE COMPLETED BY BIDDER FOR
CONTRACT VALUE OVER \$100,000**

[See Instructions for Completion in Instructions to Bidders in the section entitled CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION]

Choose one alternative with "X" in the box:

The Bidder, _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this Bid had one or more public transactions (Federal, State or local) terminated for cause or default.

OR

The Bidder is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Bidder certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

Executed on _____, 20____, at _____,
(Date) (City) (State)

Typewritten or Printed Name Signature of Authorized Official Title

CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

Pursuant to 49 CFR Part 29, to confirm the eligibility of the Bidder/Proposer or any covered Subcontractor to contract with Metro, Bidder/Proposer shall complete and submit with the bid/proposal the Certificate entitled "Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion", and comply with subsection B below related to each Lower Tier covered transaction.

1. Instructions for Bidder/Proposers Certification - Primary Covered Transactions
 - A. In addition to signing and submitting this bid/proposal, the Bidder (also referred to as "prospective primary participant") shall also provide the Certificate entitled Certification of Potential Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Primary Covered Transaction.
 - B. The inability of a person to provide the subject certification will not necessarily result in denial of participation in this Contract (also referred to as "primary covered transaction" or "covered transaction). The Bidder/Proposer shall submit an explanation of why it cannot provide the subject certification. The certification or explanation will be considered in whether or not to enter into this Contract. Failure of the Bidder/Proposer to furnish a certification or an explanation shall disqualify the Bidder/Proposer from participation of this Contract.
 - C. This certification is a material representation of fact upon which Metro will rely when Metro determines whether to enter into this Contract. If it is later determined that the Bidder/Proposer knowingly rendered an erroneous certification, Metro may terminate this Contract for cause or default in addition to other remedies available to Metro.
 - D. The Bidder/Proposer shall provide immediate written notice to Metro if at any time the Bidder/Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - E. The terms covered transaction (or as used herein "Contract"), debarred, suspended, ineligible, lower tier covered transaction (or as used herein "Subcontract" including a subcontract with a supplier), participant (or as used herein "Bidder/Proposer"), person, primary covered transaction (or as used herein "Contract" or "Prime Contract"), principal, bid/proposal (or as used herein "Bidder/Proposer") and voluntarily excluded, as used in this Section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The Bidder/Proposer may contact Metro for assistance in obtaining a copy of those regulations.
 - F. The Bidder/Proposer agrees by submitting this bid/proposal that, should the Contract be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9,

subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Metro.

- G. The Bidder/Proposer further agrees by submitting this bid/proposal that it will include subsection B of this section and the certification titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by Metro in the Bid/Proposal Forms without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - H. The Bidder/Proposer may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Bidder/Proposer may decide the methods and frequency by which it determines the eligibility of its principals. The Bidder/Proposer may, but is not required to, check the "List of Parties Excluded from Federal Procurement and Non-procurement Programs".
 - I. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Section. The knowledge and information of the Bidder/Proposer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - J. Except for transactions authorized under paragraph 6 of this subsection, if a Bidder/Proposer knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to Metro, Metro may terminate this transaction for cause or default.
2. Instructions for Prime tor Require of Sub-contractors Certification - Lower Tier Covered Transactions
- A. By signing and submitting its lower tier bid/proposal, the prospective lower tier participant shall provide the certification in the Bid/Proposal Form entitled Certification of Prospective Lower Tier Participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.
 - B. The certification in this subsection is a material representation of fact upon which Metro will rely when Metro enters into the Contract. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to Metro, Metro may pursue available remedies, including suspension and/or debarment.
 - C. The prospective lower tier participant shall provide immediate written notice to the Bidder/Proposer if at any time the prospective lower tier participant learns

that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

- D. The terms covered transaction (or as used herein "Contract"), debarred, suspended, ineligible, lower tier covered transaction (or as used herein "Subcontract," including a subcontract with a Supplier), participant (or as used herein "Bidder/Proposer"), person, primary covered transaction (or as used herein "Contract" or "Prime Contract"), principal, bid/proposal, and voluntarily excluded, as used in this section, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The prospective lower tier participant may contact the Bidder/Proposer for assistance in obtaining a copy of those regulations.
- E. The prospective lower tier participant agrees by submitting its bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this Contract, unless authorized by Metro.
- F. The prospective lower tier participant further agrees by submitting its bid/proposal that it will include this subsection B and the Certification (in the Bid/Proposal Forms) titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph 5 of this subsection, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to Metro, Metro may pursue available remedies, including suspension and/or debarment.

CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION INSTRUCTIONS

Pursuant to 49 CFR Part 29, to confirm the eligibility of the Bidder/Proposer or any covered Subcontractor to contract with Metro, Bidder/Proposer shall complete and submit with the bid/proposal the Certificate entitled "Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion", and comply with Subsection B below related to each lower tier covered transaction.

1. Instructions for Bidder/Proposers Certification - Primary Covered Transactions.
 1. In addition to signing and submitting this bid/proposal, the Bidder (also referred to as "prospective primary participant") shall also provide the Certificate entitled Certification of Potential Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Primary Covered Transaction.
 2. The inability of a person to provide the subject certification will not necessarily result in denial of participation in this Contract (also referred to as "primary covered transaction" or "covered transaction.") The Bidder/Proposer shall submit an explanation of why it cannot provide the subject certification. The certification or explanation will be considered in whether or not to enter into this Contract. Failure of the Bidder/Proposer to furnish a certification or an explanation shall disqualify the Bidder/Proposer from participation of this Contract.
 3. This certification is a material representation of fact upon which Metro will rely when Metro determines whether to enter into this Contract. If it is later determined that the Bidder/Proposer knowingly rendered an erroneous certification, Metro may terminate this Contract for cause or default in addition to other remedies available to Metro.
 4. The Bidder/Proposer shall provide immediate written notice to Metro if at any time the Bidder/Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 5. The terms covered transaction or as used herein Contract, debarred, suspended, ineligible, lower tier covered transaction or as used herein "Subcontract" including a subcontract with a supplier, participant or as used herein Bidder/Proposer, person, primary covered transaction or as used herein Contract or Prime Contract, principal, bid/proposal or as used herein Bidder/Proposer and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The Bidder/Proposer may contact Metro for assistance in obtaining a copy of those regulations.
 6. The Bidder/Proposer agrees by submitting this bid/proposal that, should the Contract be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Metro.
 7. The Bidder/Proposer further agrees by submitting this bid/proposal that it will include subsection B of this section and the certification titled Certification Regarding

Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction, provided by Metro in the Bid/Proposal Forms without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. The Bidder/Proposer may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Bidder/Proposer may decide the methods and frequency by which it determines the eligibility of its principals. The Bidder/Proposer may, but is not required to, check the "List of Parties Excluded from Federal Procurement and Non-procurement Programs."
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. The knowledge and information of the Bidder/Proposer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of this subsection, if a Bidder/Proposer knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9 subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to Metro, Metro may terminate this transaction for cause or default.

2. Instructions for Certification - Lower Tier Covered Transactions

1. By signing and submitting its lower tier bid/proposal, the prospective lower tier participant shall provide the certification in the Bid/Proposal Form entitled Certification of Prospective Lower Tier Participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.
2. The certification in this subsection is a material representation of fact upon which Metro will rely when Metro enters into the Contract. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to Metro, Metro may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Bidder/Proposer if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction or as used herein Contract, debarred, suspended, ineligible, lower tier covered transaction or as used herein Subcontract, including a subcontract with a Supplier, participant or as used herein Bidder/Proposer, person, primary covered transaction or as used herein Contract or Prime Contract, principal, bid/proposal, and voluntarily excluded, as used in this section, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The prospective lower tier participant may contact the Bidder/Proposer for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting its bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this Contract, unless authorized by Metro.
6. The prospective lower tier participant further agrees by submitting its bid/proposal that it will include this subsection B and the Certification (in the Bid/Proposal Forms) titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Section. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of this subsection, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to Metro, Metro may pursue available remedies, including suspension and/or debarment.

BIDDER/PROPOSER: _____

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER
AND SUBMITTED WITH BID**

_____ (Name) deposes and says that he or she is
_____ (Title) of _____ (Company Name)
the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, 20____, at _____,
(Date) (City) (State)

Typewritten or Printed Name Signature of Authorized Official Title