



METROLINK®

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

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CONTRACTS & PROCUREMENT

CONTRACT NO. C3135-17

**VAN NUYS NORTH
PLATFORM PROJECT**



Metro



OCTA



cta

San Joaquin Hills
Transportation Authority



CONTRACT AGREEMENT

between

Kiewit Infrastructure West Co.
10704 Shoemaker Avenue
Santa Fe Springs, CA 90670

CONTRACT DOCUMENTS

CONTRACT NO. C3135-17

VAN NUYS NORTH PLATFORM PROJECT

Project Manager

Name: Paul Villanueva
Telephone: 562-946-1816

And

Contract Amount: \$18,644,000

Southern California Regional Rail Authority
One Gateway Plaza, 12th Floor
Los Angeles, CA 90012
(hereinafter "Authority")

SCRRA Project Manager:

Name: Kristofer Bartelle
Telephone: 213-330-7208

Contract Administrator:

Name: Sonny Ibrahim
Telephone: 213-452-0436

***This contract may be funded in part under grant by the U.S.
Department of Transportation, Federal Transit Authority***

**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM**

CONTRACT NO. C3135-17

VAN NUYS NORTH PLATFORM PROJECT

AGREEMENT

This Contract is made and entered into as of this 24th day of April, 2017, by and between the SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (hereinafter referred to as "Authority") and Kiewit Infrastructure West Co. (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, Authority is a joint powers Authority organized under Sections 6500 et seq. of the California Government Code and Section 130255 of the California Public Utilities code with power to contract for the Work described in this Contract.

WHEREAS, Authority desires to hire a Contractor to perform the Work.

WHEREAS, Contractor has indicated it is qualified to perform such Work and (1) has reviewed all the available data furnished by Authority pertinent to the Work to be rendered; (2) has inspected and reviewed the Work to be rendered; (3) will exercise the ordinary care and skill expected of a firm performing this type of Work; and (4) is willing to accept responsibility of performing the Work for the compensation and in accordance with the terms, requirements and conditions herein specified.

NOW, THEREFORE, for the consideration hereinafter stated, the parties agree to the following terms and conditions.

1. PERIOD OF PERFORMANCE

The Contractor shall perform and complete all Work under the Contract within 720 calendar days from the effective date of the Limited Notice to Proceed or Notice to Proceed, whichever occurs earlier. This Period of Performance can only be adjusted through a written Change Order to this Contract. The appendix to the Special Conditions entitled Exhibit A - WORK COMPLETION SCHEDULE identifies completion dates for individual milestones.

2. COMPENSATION

In consideration of the Work performed, the Authority shall pay the Contractor an amount not to exceed the Total Contract Price the sum of which is Eighteen Million Six Hundred Forty Four Thousand dollars (\$18,644,000), payable as provided in the Contract and pursuant to the Schedule of Quantities and Prices in Exhibit 1.

3. SAFETY MANAGEMENT

The Contractor shall be solely responsible for ensuring that all Work performed under the Contract is performed in strict compliance with all applicable Federal, State, local occupational safety regulations and SCRRA rules and requirements adopted to protect all operations, including the requirements identified in the SCRRA System Safety Program Plan and Contract Specifications.

4. CONTRACT DOCUMENTS

The Contract Documents consist of the following documents, all of which shall be incorporated by reference into the Contract and made part of the Contract. Except as otherwise expressly specified in the Contract, in the event of a conflict between provisions of the Contract Documents, the following order of precedence shall prevail:

1. Change Orders
2. Agreement and Recitals
3. Addenda
4. Special Conditions
5. General Conditions
6. Project Specific Specifications - Division 01 General Requirements
7. Project Specific Specifications - all other Divisions
8. SCRRA Standard Specifications
9. Contract Drawings
10. SCRRA Engineering Standards

The Contract, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire contract between the Authority and the Contractor and supersedes any prior representations, understandings, communications, commitments, contracts or proposals, oral or written.

5. CONTACT INFORMATION

	<u>Authority</u>
Address	One Gateway Plaza, 12 th Floor
City, State, Zip	Los Angeles, CA 90012

<u>Kiewit Infrastructure West Co</u>
10704 Shoemaker Avenue
Santa Fe Springs, CA 90670

	<u>Engineer Name</u>
Telephone	Kristofer Bartelle
E-mail	213-330-7208
	<u>Kristofer.Bartelle@aecom.com</u>

<u>Project Manager Name</u>
Paul Villanueva
562-946-1816
<u>paul.villanueva@kiewit.com</u>

Contract Administrator:	Sonny Ibrahim
Telephone:	213-452-0436
E-mail	<u>ibrahims@scrra.net</u>

IN WITNESS WHEREOF, the parties hereto have caused the Contract to be executed as of the day and year first above written.

**SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY**

By: Arthur T. Leahy
Arthur T. Leahy
Chief Executive Officer

Kiewit Infrastructure West Co.

By: Eric M. Scott
Eric M. Scott
Senior Vice President

Tax ID No.: 47-0647803

APPROVED AS TO FORM:

Don O. Del Rio
General Counsel

Don O. Del Rio



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Los Angeles)On April 19, 2017 before me, Monica Barbosa, Notary Public,
Date Here Insert Name and Title of the Officerpersonally appeared Eric M. Scott, Senior Vice President
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Monica Barbosa
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____Signer Is Representing: Kiewit Infrastructure West Co.

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM**

CONTRACT NO. C3135-17

EXHIBIT 1

**VAN NUYS NORTH PLATFORM
REPLACEMENT OF EXISTING PLATFORM
WITH CENTER PLATFORM**

SCHEDULE OF QUANTITIES AND PRICES

Schedule 1 – Station, Track, Signal, Concrete and Utilities

BID ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
Van Nuys North Platform Project					
1.0	Contaminated Soils Removal	CY	800	\$160.00	\$128,000.00
2.0	Wood Tie Disposal	TF	2275	\$30.00	\$68,250.00
3.0	Time Delay Allowance Per Spec Section 01 14 00	HRS	60	\$2,500.00	\$150,000.00
4.0	Demolition and Salvaging complete including but not limited to: Removing all Walls, Fences, Turnouts, Light Poles, Pavement, Ped Crossing, Gates, Amtrak Canopy, Misc platform and facilities, bike lockers, Miscellaneous Demo complete, and as shown on plans.	LS	1	\$50,000.00	\$50,000.00

BID ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
5.0	Temporary Facilities complete and as shown on plans. Including but not limited to, LADWP temporary security fencing, Temporary Signage, Fencing, Aluminum Mini Highs, Temporary Platforms and tactile, Temporary Stairs, Walkways, Ramps, Handrail, Signage/Wafinding, Fencing, Lighting,	LS	1	\$300,000.00	\$300,000.00
6.0	Mobilization, Demobilization, and Controls (Maximum of 5% of Schedule 1 Total Bid) including SWPPP Requirements.	LS	1	\$750,000.00	\$750,000.00
7.0	Cast-in-place Concrete (Platform & Mini High Platform) as shown on plans. Inclusive of but not limited to all structural concrete slabs, reinforcing steel, concrete footings, concrete ramps and stairs, railings, walls, benches, finishes, finish hardware, bollards, and tactile.	LS	1	\$1,800,000.00	\$1,800,000.00
8.0	Cast-in-place Concrete (Plaza, Tunnel and Entry, Ramps) as shown on plans. Including but not limited to structural concrete slabs, reinforcing steel, concrete footings, concrete ramps and stairs, walls, benches overhead formed concrete, Adhered Elastomeric Waterproofing and Drain Board (for Pedestrian Underpass), railings, and finishes.	LS	1	\$3,320,000.00	3,320,000.00
9.0	Miscellaneous Structural Concrete as shown on plans. Including but not limited to structural concrete, reinforcing steel, concrete curbs, impact resistant bollards, finish hardware, finishes.	LS	1	\$175,000.00	\$175,000.00
10.0	LADWP Retaining Wall & Grade Beam, Caltrans Type 60 Barrier, including but not limited to reinforcing steel, as shown on plans.	LS	1	\$125,000.00	\$125,000.00
11.0	Canopy And Architectural Platforms; Including Glass Blocking (Skylight, inclusive of structural supports), Platform Canopies and Appertenances (Inclusive of architectural structural steel, metal roof decking, gypsum sheathing, flash sheet metal and mesh, joint sealants, finish hardware), TVM Canopies and Appurtenances (Including, structural concrete, reinforcing steel, architectural structural steel, metal roof decking, gypsum sheathing, flash sheet metal and mesh, finish hardware), Custom Entry Sign(s) (Inclusive of finish hardware), Custom Entry Sign(s) (Inclusive of finish hardware), Stainless Steel (Satin) Handrail (Ramps and Stairs), Ornamental Panels (Platform, plaza), Gates (Inclusive of ornamental entry gate, accessible exit gate, and platform wheelchair lift gates, hardware), Pedestrian Underpass Metal Ceiling System, Railroad and Station Signage	LS	1	\$1,500,000.00	\$1,500,000.00

BID ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
12.0	Mechanical & Plumbing, Site Drainage, Subdrainage system including but not limited to: Water Distribution (Pipe/Trenching/Valves), Drain Lines, Wall Underdrains, Underdrains, Local Drain and Trench Drain Fixtures, Sump Pumps / Plumbing Fixtures, Retaining Wall Under Drain Line (4" @ base of retaining wall Underdrain). As shown on plans.	LS	1	\$150,000.00	\$150,000.00
13.0	Electrical: Interior and Exterior Lighting, Fixtures and poles, Raceways, Boxes, Conduits, Conductors and Cables, Controllers, Enclosures, Manholes, Handholes. As shown on plans	LS	1	\$1,650,000.00	\$1,650,000.00
14.0	Electronic Video Surveillance, Installation of Equipment and Materials, as shown on plans.	LS	1	\$310,000.00	\$310,000.00
15.0	Customer Information System: Customer Information System (Equipment, Installation, and Materials), Customer Information System (Ethernet Switches, Audio Amplifiers, Priority Controllers, 42" Commercial LCD Display, Network Media Player, Strobe Lights, Audio Decoder, Environmental Distribution Center, LED Message Display, EMP, Rack Mount Connector Housing, Transient Voltage Suppression, UPS, Closet Connector Housing-Pigtail Modules, Splice Trays, Bracket Inside Connector Housing, LCD Enclosure, Speakers, and Modular Media	LS	1	\$390,000.00	\$390,000.00
16.0	Earthwork: All Shoring for Project as shown on plans, or as required.	LS	1	\$600,000.00	\$600,000.00
17.0	Earthwork Including: Excavation, Backfill, Structural Fill, Hauling as shown on plans	LS	1	\$950,000.00	\$950,000.00
18.0	Utility Relocation Including: Installation of Owner Furnished Comm Shelter, Equipment Relocation, and Removal of Existing Comm Shelter. G1 Inlet, 18" RCP Pipe & Junction Structure & Encasing, Track Headwall, LACFCD Culvert Retrofit, 8" Smooth Steel Culvert pipe.	LS	1	\$100,000.00	\$100,000.00
19.0	Exterior Improvements as shown on plans. Including but not limited to Restriping, Pavement Markings, Relocation of Handicap parking/wayfinding/bumpers, Security Fencing, 20' Swing Gates, 6' Barrier Fences, Tubular Steel for edge fencing, Tubular Steel Intertrack Fence, Tube Steel Emergency Access Gates, Irrigation, & Landscaping.	LS	1	\$1,100,000.00	\$1,100,000.00
20.0	GemCo Yard Crossovers: Installation of new case and associated wayside equipment, wired and ready for testing. Includes interfaces with adjacent houses and cases at CP Woodman, CP Elliker, and other locations as	LS	1	\$400,000.00	\$400,000.00

BID ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
21.0	GemCo Yard Crossovers: Testing of case and associated wayside equipment, including adjacent houses and cases.	LS	1	\$30,000.00	\$30,000.00
22.0	GemCo Yard Crossovers: Place case and wayside equipment in service (system cutover), including interfaces with adjacent houses and cases.	LS	1	\$90,000.00	\$90,000.00
23.0	Signals 4541/4543: Installation of new house and associated wayside equipment, wired and ready for testing. Includes interfaces with adjacent houses and cases at CP Woodman, CP Elliker, and other locations as required.	LS	1	\$480,000.00	\$480,000.00
24.0	Signals 4541/4543: Testing of house and associated wayside equipment, including adjacent houses and cases.	LS	1	\$50,000.00	\$50,000.00
25.0	Signals 4541/4543: Place house and wayside equipment in service (system cutover), including interfaces with adjacent houses and cases.	LS	1	\$100,000.00	\$100,000.00
26.0	Signals 4552/4554/4556: Installation of house and associated wayside equipment, wired and ready for testing. Includes interfaces with adjacent houses and cases at CP Woodman, CP Elliker, and other locations as required.	LS	1	\$190,000.00	\$190,000.00
27.0	Signals 4552/4554/4556: Testing of house and associated wayside equipment, including adjacent houses and cases.	LS	1	\$30,000.00	\$30,000.00
28.0	Signals 4552/4554/4556: Place house and wayside equipment in service (system cutover), including interfaces with adjacent houses and cases.	LS	1	\$100,000.00	\$100,000.00
29.0	Insulated Joints	LS	1	\$85,000.00	\$85,000.00
30.0	Replacement of Cut spikes to Resilient Fastening System	LS	1	\$350,000.00	\$350,000.00
31.0	#11 Turnout, 136# RE on Wood Ties, Furnish and Install	EA	2	\$45,000.00	\$90,000.00
32.0	#10 Turnout, 136# RE on Concrete Ties Furnish and Install	EA	1	\$265,000.00	\$265,000.00
33.0	UPRR Type 2 Derail (Sliding with wheel Crowder)	EA	1	\$10,000.00	\$10,000.00
34.0	Aggregate Base - LADWP Yard	CY	210	\$80.00	\$16,800.00
35.0	Construct New Track 136# RE, Concrete Ties	TF	1,650	\$250.00	\$412,500.00
36.0	Construct New Track 136# RE, Wood Ties including 10' wood transition ties where noted on plans	TF	680	\$230.00	\$156,400.00
37.0	Demolition and Reconstruct Track	TF	1,150	\$260.00	\$299,000.00

BID ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
38.0	Track Resurfacing	TF	570	\$60.00	\$34,200.00
39.0	Track Shifting	TF	2,525	\$55.00	\$138,875.00
40.0	Track Relocation	TF	610	\$75.00	\$45,750.00
41.0	Track Underdrain 8" HDPE Pipe	TF	1,530	\$70.00	\$107,100.00
42.0	Hot Mix Asphalt Underlay	TON	950	\$150.00	\$142,500.00
43.0	Steel Handrail for Bridges (Van Nuys Bridge)	LF	107	\$85.00	\$9,095.00
Total Price for Schedule 1					\$17,248,470.00

Schedule 2 – Fiber Optic Utility Relocation

BID ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
Van Nuys North Platform Project					
1.0	Fiber Mobilization, Permitting, Management, and General Conditions by the General Contractor. Max 5% of Total Schedule 2 Bid.	LS	1	\$40,000.00	\$40,000.00
2.0	Fiber Relocation by the Fiber Contractor as shown on plans and in Spec Section 33 80 00.	LS	1	\$1,355,530.00	\$1,355,530.00
Total Price for Schedule 2					\$1,395,530.00

SCHEDULE 1 AND SCHEDULE 2 SUMMARY

SCHEDULE	DESCRIPTION	TOTAL PRICE
Van Nuys North Platform Project		
1.0	Total Price for Schedule 1	\$17,248,470.00
2.0	Total Price for Schedule 2	\$1,395,530.00
Total Bid Price for Schedule 1 & 2		\$18,644,000.00

Total Contract Price in Words: **Eighteen Million Six Hundred Forty Four Thousand Dollars and Zero Cents.**

GENERAL CONDITIONS TABLE OF CONTENTS

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
GENERAL AND ADMINISTRATIVE		1
GC-1	ABBREVIATIONS	1
GC-2	DEFINITIONS	1
GC-3	PROJECT CORRESPONDENCE.....	9
GC-4	AGENT TO ACCEPT SERVICE.....	10
GC-5	NOTICE AND SERVICE THEREOF	10
GC-6	CONFORMED CONTRACT DOCUMENTS	10
GC-7	LIABILITY AND INDEMNIFICATION.....	11
GC-8	BONDS	13
GC-9	AUTHORITY OF THE CONTRACTING OFFICER AND THE ENGINEER	13
GC-10	LICENSES, PERMITS AND COMPLIANCE WITH LAWS	14
GC-11	GOVERNING LAW	14
GC-12	PAYMENT OF TAXES.....	14
GC-13	GRATUITIES, CONTINGENT FEES, AND CONFLICTS OF INTEREST.....	15
GC-14	DISQUALIFYING POLITICAL CONTRIBUTIONS; COMPLIANCE WITH LOBBYING POLICIES	16
GC-15	NOTIFICATION OF EMPLOYMENT OF SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY BOARD MEMBERS/ALTERNATES AND EMPLOYEES.....	16
GC-16	PUBLIC RECORDS ACT	17
GC-17	AUDIT REQUIREMENTS AND INSPECTION OF RECORDS	17
GC-18	ASSIGNMENT	19
GC-19	NO WAIVER	19

Table of Contents

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
GC-20	SEVERABILITY	19
GC-21	WHISTLEBLOWER REQUIREMENTS.....	19
GC-22	PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS	20
GC-23	TITLE TO WORK.....	20
GC-24	SEISMIC SAFETY	21
GC-25	ENERGY CONSERVATION REQUIREMENTS.....	21
GC-26	CLEAN WATER REQUIREMENTS	21
GC-27	CLEAN AIR ACT	21
GC-28	REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT	22
GC-29	PAYMENT	22
GC-30	CHANGES	32
	SPECIFICATIONS AND DRAWINGS	43
GC-31	AUTHORITY-PROVIDED INFORMATION AND REFERENCE MATERIALS	43
GC-32	ACCURACY OF PLANS AND SPECIFICATIONS	43
GC-33	INTERPRETATION	43
GC-34	ELECTRONIC FILES.....	45
GC-35	SITE INVESTIGATION INFORMATION.....	45
GC-36	RIGHTS IN SHOP DRAWINGS, WORKING DRAWINGS, TECHNICAL DATA, PATENTS, AND COPYRIGHTS.....	46
GC-37	AS-BUILT INFORMATION	48
	SITE CONDITIONS AND USE.....	49
GC-38	RESPONSIBILITY FOR WORKSITE.....	49
GC-39	DIFFERING SITE CONDITIONS	49

Table of Contents

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
GC-40	HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL, AND SCIENTIFIC DISCOVERIES	50
GC-41	RIGHTS OF WAY	50
GC-42	COORDINATION WITH OTHERS	50
GC-43	PROTECTION OF EXISTING VEGETATION	51
GC-44	PROTECTION OF UTILITIES, STRUCTURES AND IMPROVEMENTS	51
GC-45	PRESERVATION AND PROTECTION OF PROPERTY	53
	CONTRACTOR'S DUTIES AND PERFORMANCE OF WORK	53
GC-46	SERVICES PROVIDED BY THE CONTRACTOR; FAMILIARITY WITH CONTRACT DOCUMENTS	53
GC-47	INDEPENDENT CONTRACTOR	54
GC-48	EXECUTION OF WORK	54
GC-49	CONTRACTOR'S PROJECT MANAGER	55
GC-50	DAMAGE TO WORK AND REPAIRS	56
GC-51	EMERGENCIES AND EXTRAORDINARY WORK	56
	SUBCONTRACTING	56
GC-52	SUBCONTRACTORS AND SUPPLIERS	56
GC-53	SUBSTITUTION AND APPROVAL OF SUBSTITUTIONS OF SUBCONTRACTOR	58
GC-54	DEBARMENT	59
	EMPLOYMENT PRACTICES	59
GC-55	LABOR COMPLIANCE AND PAYMENT OF PREVAILING WAGES	59
GC-56	COORDINATION WITH CALIFORNIA PREVAILING WAGES	62
GC-57	PREVAILING RATES FOR SIGNAL WORK	62
GC-58	APPRENTICESHIP REQUIREMENTS	62

Table of Contents

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
GC-59	LABOR DISPUTE	62
GC-60	PAYROLL RECORDS	63
GC-61	EQUAL EMPLOYMENT OPPORTUNITY	65
GC-62	LABOR NON-DISCRIMINATION	66
GC-63	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS	66
	SUSPENSION OR TERMINATION OF THE WORK.....	67
GC-64	SUSPENSION OF WORK	67
GC-65	TERMINATION FOR CONVENIENCE OF THE AUTHORITY	68
GC-66	TERMINATION FOR CAUSE.....	70
GC-67	COOPERATION IN THE EVENT OF TERMINATION	73
	DISPUTES AND CLAIMS	73
GC-68	NOTICE OF CLAIMS	73
GC-69	SUBMISSION OF CLAIMS	74
GC-71	PUBLIC CONTRACT CODE CLAIM PROCEDURE	75
GC-71	DISPUTE RESOLUTION	75

GENERAL AND ADMINISTRATIVE

GC-1 ABBREVIATIONS

ADA	Americans with Disabilities Act of 1990
BNSF	BNSF Railway Company
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DOJ	U.S. Department of Justice
DOT	U.S. Department of Transportation
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EPA	United States Environmental Protection Agency
FAR	Federal Acquisition Regulations
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GAO	U.S. Government Accountability Office
GCOR	The General Code of Operating Rules for Maintenance of Way
MWOR	The Maintenance of Way Operating Rules
NOAA	National Oceanic and Atmospheric Administration
OSHA	United States Department of Labor, Occupational Safety and Health Administration
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority (Authority)
U.S.C.	United States Code
UPRR	Union Pacific Railroad

GC-2 DEFINITIONS

The following definitions supplement other definitions provided throughout the Contract Documents:

Application for Final Payment	Contractor's application to Authority for final payment submitted after Authority issues a Certificate of Final Acceptance.
Authority	<p>The Southern California Regional Rail Authority (SCRRA) or its successor, or any successor in interest or, where appropriate, its Authorized Representative. The Authority is a joint powers entity created by the following member agencies:</p> <ul style="list-style-type: none"> • Los Angeles County Metropolitan Transportation Authority (LACMTA) • Orange County Transportation Authority (OCTA) • Riverside County Transportation Commission (RCTC) • San Bernardino Associated Governments (SANBAG) • Ventura County Transportation Commission (VCTC)
Authorized Representative	A person, persons, or firm specifically authorized and empowered to act for or in place of a named person or entity.
Beneficial Occupancy	The taking possession of all or a portion of the Work by the Authority for its use or occupancy on other than a temporary or emergency basis
Certificate of Final Acceptance	Written acceptance of the Work by the Authority as complete.
Change Notice (CN)	A document issued by the Authority to the Contractor detailing a proposed Change to the Contract. After negotiation, a Change Order may result from a Change Notice.
Change Order (CO)	A Change Order (CO) is a written document issued by the Authority to the Contractor and signed by the Authority and the Contractor modifying the Contract to incorporate a Change.
Change	An alteration, modification, or addition to the Contract that may result in an adjustment to the Contract Price or the Contract Time.
Changed Work	The scope of work included in a Change Notice, Work Authorization Change Notice, or Change Order.

Chief Executive Officer	The Chief Executive Officer of the SCRRA.
Claim	A written demand by one of the contracting parties submitted in accordance with the Contract provisions.
Construction Equipment	Contractor-furnished equipment required to perform the Work.
Construction Management Consultant	A consultant retained by the Authority to provide construction management support, engineering, and other services for the Project.
Construction Staging Area	Property available for use by the Contractor during the construction period for the purpose of storing materials and construction equipment, and for coordinating the Work.
Contract	Written contract executed by the Authority and the Contractor, which sets forth the rights and obligations of the parties in connection with the Work, and which includes the Contract Documents.
Contract Documents	All documents, Contract Drawings, manuals, Specifications or modifications that collectively constitute the Contract.
Contract Drawings	That part of the Contract showing construction details and the locations, character, dimensions, and details of the Work. Also referred to as Plans.
Contract Price	The Contract Price constitutes the total compensation, subject to authorized adjustments, payable to the Contractor for performance of the Work.
Contract Time	As stated in the Contract, the Contract Time is the original duration of the Contract in calendar days plus Change Order adjustments, also referred to as Period of Performance.
Contracting Officer	The Authority's Chief Executive Officer or his/her Authorized Representative with authority to execute Contracts and Contract modifications on behalf of the Authority.
Contractor	The individual, firm, partnership, corporation, joint venture, or combination thereof that has entered into the Contract with the Authority.

Cost of Work	The sum of all direct and indirect costs that are necessarily incurred and paid by the Contractor in performance of the Work.
Days	Unless otherwise stated, "Days" shall mean calendar days. When a required submittal due date falls on a SCRRA non-business day, submittal shall be on the next business day.
Engineer	An Authorized Representative of Authority, with specific and limited authority as described in the General Conditions of this Contract.
Engineering Consultant	An engineering consultant retained by the Authority to provide design, engineering, and other services for the Project.
Ethics Policy	An Authority policy that governs the conduct of all employees, consultants/contractors, and Board members/alternates of SCRRA and any of its organizational units.
Five County Area	The area within the borders of the five counties constituting the SCRRA.
Flag Protection	The provision of a safe working environment on the railroad right of way in conformance with the FRA and the GCOR.
General Code of Operating Rules for Maintenance of Way	Set of rules, supplements and bulleting thereto, which governs activity on and near the Authority's railroad tracks.
General Conditions	General Contract terms and conditions that have been developed to attain uniformity in contracting for construction of Authority improvements.
Inspector	The Authority or its Authorized Representative or other governmental agencies, railroads, utilities, or interested parties assigned to make inspections or tests of the Work performed or being furnished by the Contractor.
Installation, Install	Completing assembly, erecting, or connecting materials, parts, components, supplies, and related equipment specified or required for the completion of the Work.
Limit of Work	Boundary within which the onsite elements of the Work will be performed, except utility and drainage Work in local streets and on private property.

Limited Notice to Proceed	SCRRA written authorization to commence the performance of specified activities within the Work. If issued, the Limited Notice to Proceed will initiate the Contract Period of Performance.
Maintenance of Way Operating Rules and Instructions	Operating Rules and all supplements and bulletins thereto, which govern activity on and near the Authority's railroad tracks, sometimes referred to as GCOR.
METROLINK System	The entire rail transportation system, including right of way, pavement, tracks, structures, equipment, facilities, appurtenances, and all other property owned or operated by the Authority.
Milestone	An established event or occurrence that is associated with the Schedule as defined in the Contract.
Mobilization	The amount paid, as identified in the Schedule of Quantities and Prices, for the Contractor to assemble crews; transport material, equipment, and other resources; arrange for Worksite access; provide flag protection; remove material and equipment; and clean Worksite, which amount will be paid once for each category of Work in the Contract.
Non-Conformance Report (NCR)	Written notice from the Authority to the Contractor that specific Work is not in conformance with the Contract.
Notice of Termination	Written notice from the Authority to the Contractor and its surety terminating the Contract, or a portion thereof, either for convenience of the Authority or for default due to the Contractor's failure to perform its contractual obligations.
Notice to Proceed (NTP)	SCRRA written authorization to proceed with all Work, as specified and will initiate the Period of Performance if a Limited Notice to Proceed has not been issued.
Payment Bond	A surety bond which guarantees that the Contractor will cover payments of all obligations under the Contract, and which also guarantees against breach of Contract.
Performance Bond	A surety bond which guarantees that the Contractor will fully perform the Contract, and guarantees against breach of Contract.

Period of Performance	As stated in the Contract, the Period of Performance is the original duration of the Contract in calendar days plus Change Order adjustments, also referred to as Contract Time.
Plans	That part of the Contract showing construction details and the locations, character, dimensions, and details of the Work. Also referred to as Contract Drawings.
Product Data	Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for a portion of the Work.
Project Manager for Contractor	Individual designated and authorized by Contractor in accordance with the Section entitled Contractor's Project Manager, herein.
Project	The Work to be performed pursuant to the Contract Documents.
Project-Specific Specifications	Modifications, additions, or deletions to the SCRRA Standard Specifications that are specific to the Work.
Prompt Payment to Subcontractors	Specific time periods established by Statute within which the Contractor must pay the undisputed amounts of their subcontractor's progress payments and release withheld retentions.
Reference Codes	Federal, State, or local governmental codes, ordinances, or regulations, or trade organization codes.
Reference Drawings	Those drawings incorporated by reference in the Contract.
Reference Standards	Authoritative principles, rules, models, and the like, used to determine or establish the acceptability of material, equipment, Work, procedures, or workmanship that are physically located in other documents and are incorporated into the Contract only by reference. The Reference Standards shall have the same force and effect as if their full text were physically incorporated in the Contract.
Regular Work Day	Eight (8) consecutive working hours, allowing up to one non-working hour for lunch and breaks, unless otherwise agreed to by the Contractor and the Authority.
Regular Work Week	Five (5) working days within a seven (7) day period.

Request for Acceptance of Work	Contractor's request for Authority's Acceptance of Work; submitted by Contractor upon its determination that all Work has been completed.
Request for Change (RFC)	A written document submitted by the Contractor to the Authority, identifying desired revisions to the Contract.
Request for Information (RFI)	A written request to the Authority from the Contractor requesting clarification of or information on a portion of the Work.
Safety Representative	Representative of the Contractor designated to act in connection with safety inspections, meeting training, and accident investigations.
Schedule of Quantities and Prices	A comprehensive listing of specific tasks together with a specific unit of measurement and a Unit Price (also known as Bid Pricing Forms).
Schedule of Values	The breakdown of the Contract Price into values relating to specific components of the Work and is used as the basis for reviewing Contractor's applications for payment.
SCRRA Standard Drawings	Drawings that have been developed to attain uniformity in materials, geometries, arrangements, equipment, details, and procedures and, in some instances, to express prior acceptance thereof by the Authority, affected governmental agencies, utilities, railroads, or pipeline companies.
SCRRA Standard Specifications	General Authority specifications that have been developed to attain uniformity in the construction of Authority improvements.
SCRRA Standards	The SCRRA Standard Drawings or the SCRRA Standard Specifications for any of several elements of track, roadbed, structure, signal, or related facilities.
Shop Drawings	<p>Original drawings, plans, diagrams, schedules, and other data specifically prepared and submitted to the Authority by the Contractor or any of its Subcontractors pursuant to the Work, showing in detail the following:</p> <ul style="list-style-type: none"> • The proposed fabrication and assembly of a specific portion of the Work; and • The Installation (form, fit, and attachment details) of a specific portion of the Work

	Shop Drawings shall include Product Data, literature, and performance and test data, as appropriate.
Special Conditions	Modifications, additions, or deletions to certain terms and conditions of the General Conditions that are specific to the Work.
Specifications	The directions, provisions, requirements, and descriptions of the Work to be performed pursuant to the Project-Specific Specifications, the Contract Drawings, the SCRRA Standard Specifications, the SCRRA Standard Drawings, and any other specifications or drawings referenced in the Contract.
State	The State of California.
Subcontractor	Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, that enters into a Contract with the Contractor to furnish services, labor, equipment, or materials as a portion of the Work. Unless otherwise specified, Subcontractor includes a Subcontractor of any tier, and excludes Suppliers, manufacturers, and distributors.
Substantial Completion	Substantial completion of the Work or the designated portion thereof occurs when the Authority certifies that the Work is sufficiently complete as set forth in the Contract Documents so that the Authority may occupy or use the Work, or a designated portion thereof, for the use for which it is intended.
Substitution	A product, service, component, or system that the Contractor requests to use in lieu of that specified in the Contract.
Supplier	Any person, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, that furnishes a tangible product or services as a portion of the Work, with services usually limited to delivery or required testing.
Surety	A company whose business is to assume responsibility for the performance or payment obligation of the Contractor.

Unit Price	The value set by the Contractor in the Schedule of Quantities and prices for a single reoccurring item of Work or group of items commonly regarded as a single entity, that is inclusive of all fundamental and incidental costs and exclusive only of costs associated with any other Unit Price of Work.
Value Engineering Change Proposals (VECPs)	A proposal(s) submitted by the Contractor identifying areas or instances in which improvements can be made, in order to avail the Authority of potential cost savings.
Work Authorization Change Notice (WACN)	A unilateral written directive to the Contractor issued and signed by the Authority ordering a Change in the Work when, in the Authority's sole discretion, time constraints make it impractical or impossible to ascertain the total cost of the changes in the Work before Changes in the Work must commence.
Work	The sum total of productive and operative efforts used to generate the results specified, indicated, or implied in the Contract. Work includes all products, materials, facilities, and improvements as required by the Contract.
Working Drawings	Original drawings prepared by the Contractor or its Subcontractors or Suppliers, of any tier, illustrating Work required for construction that will not become an integral part of the completed Work. This includes, but is not limited to, drawings for temporary structures such as decking, bulkheads, excavation supports, utility support, groundwater control, forming, and falsework.
Worksite:	Area within which the onsite portions of the Work will be performed, which is enclosed by the Limit of Work, and immediately surrounding streets or easements (see Contract Drawings). It also includes offsite areas used in connection with the performance of the Work.

GC-3 PROJECT CORRESPONDENCE

Every letter, progress report, Change Order, and transmittal, and all other documents exchanged between the Contractor and the Authority, shall be assigned a unique correspondence number by the Contractor. The Contractor shall maintain a correspondence index and assign correspondence numbers consecutively for all Contract Documents. The Authority will maintain a similar correspondence numbering scheme identifying documents and correspondence initiated by the Authority. Project correspondence shall be addressed to the Authority and Contractor addresses given in the Section of the Recitals entitled CONTACT INFORMATION.

GC-4 AGENT TO ACCEPT SERVICE

The Contractor shall retain an agent within the Authority's Service Region, at the address specified in the Recitals, to accept service of legal process on its behalf, and shall keep the Authority advised of such agent's name and address during the duration of the Contract and for three (3) years after Final Payment, or as long as the Contractor has warranty obligations under the Section entitled WARRANTY OF WORK, whichever period terminates later. In the event that no such duly authorized agent is on file with the Authority, the Contractor agrees that the Secretary of State of the State of California shall be the Contractor's agent for service of legal process.

GC-5 NOTICE AND SERVICE THEREOF

Any notice legally required to be given under the Contract to the Authority shall be in writing, dated, and delivered to the Authority Contract Administrator. The notice shall be signed by the party giving such notice or by an Authorized Representative of such party.

Any notice shall not be effective, for any purpose whatever, unless it is transmitted by the legally required method (if any), or by United States Postal Service Registered Mail, or by a bonded and guaranteed courier/delivery service, addressed to the Contract Administrator's address given in the Section of the Recitals entitled CONTACT INFORMATION.

All notices to the Contractor will be enclosed in a sealed envelope and transmitted by personal delivery to the Contractor or its Project Manager at the Worksite, or by registered mail sent to the address given in the Section of the Recitals entitled CONTACT INFORMATION.

GC-6 CONFORMED CONTRACT DOCUMENTS

The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to describe a functionally complete project to be constructed. When the Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that the best general practice shall be followed and only materials and workmanship of the best standard quality shall be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the work involved in executing the Contract in a satisfactory and workmanlike manner. Any labor, materials, or equipment that are customarily provided, or that are reasonably inferable from the Contract Documents as being required to produce the intended result, shall be supplied by the Contractor, whether or not specifically called for. When words that have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning.

Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws, or regulations, including all amendments and supplements thereto in effect on the first published date of the invitation for bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Authority or Contractor, or any of their consultants, agents, or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to Authority, or any of Authority's consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the other provisions of the Contract Documents. Unless otherwise specified, references to industry standards apply only to materials, workmanship, and procedure, and merely supplement terms and conditions of the Contract Documents to the extent the industry standards are not inconsistent with these terms and conditions. Commercial terms and legal responsibilities are not intended to be included in the reference.

GC-7 LIABILITY AND INDEMNIFICATION

- A. To the fullest extent permitted by law, the Contractor shall, at its sole cost and expense, fully defend, indemnify and hold harmless the Authority, its member agencies, the Engineering Services Consultant (if an agent of the Authority), the Construction Management Consultant (if an agent of the Authority), their 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, agents, employees, Subcontractors or 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 but not limited to any costs or liability on account of (1) personal injury to or death of any person (including employees of the Indemnified Parties and Contractor and its agents) or for damage to or loss of use of property (including property of the Indemnified Parties and Contractor and its agents) and (2) the Authority's reliance upon the use of data or other information Provided or delivered by the Contractor pursuant to the Contract.
- B. The indemnification specified in this Section shall apply even in the event of the act, omission, fault or negligence, whether active or passive, of the Indemnified Parties, but shall not apply to claims, actions, demands, costs, judgments, liens,

penalties, liabilities, damages, losses and expenses arising from the sole negligence or willful misconduct of the Indemnified Parties.

- C. The indemnification specified in this Section shall survive termination of the Contract or final payment thereunder and is in addition to any other rights or remedies that the Indemnified Parties may have in equity, under the law or under the Contract. In the event of any claim or demand made against any Indemnified Party hereunder, the Authority may at its sole discretion reserve, retain and/or apply any monies due the Contractor under the Contract, for the purpose of resolving such claims; provided, however, that the Authority may release such funds if the Contractor gives the Authority reasonable assurance that the Indemnified Parties' interests will be protected. The Authority shall, at its sole discretion, determine whether such assurance is reasonable.
- D. Claims against an Indemnified Party by any employee of the Contractor, its Subcontractors, anyone directly or indirectly employed by any of them, and/or anyone for whose acts any of them may be liable shall not in any way limit the Contractor's indemnification obligation as set forth above, including the amount and/or type of damages, compensation, and/or benefits payable by or for the Contractor or its Subcontractors under workers' compensation acts, disability benefit acts, and/or other employee benefit acts and/or insurances.
- E. Nothing contained in the Contract is intended to or shall have the effect of creating any rights in any third party against the Indemnified Parties. The inclusion of the Contract or any part thereof in any other document shall not be deemed to be incorporating any obligation, duty or liability on the part of the Authority or its agent. The Contractor shall indemnify the Indemnified Parties in accordance with the provisions of this Section against any claim made by any third party claiming rights under the Contract.
- F. If the Contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the Contractor that are assumed under or arise out of the Contract. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of the Contractor contained in, resulting from or assumed under the Contract, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.
- G. The Contractor acknowledges that the rights and remedies of the Authority specified herein are in addition to and do not limit any rights or remedies of the Authority afforded by the Contract, by equity or by law.

GC-8 BONDS

At the time of execution of the Contract, the Contractor shall give the Authority a Performance Bond and a Payment Bond. Both shall be supplied using the Authority's forms, and shall be issued by admitted sureties satisfactory to the Authority and authorized to issue such bonds in the State of California.

The Performance Bond shall be for one hundred percent (100%) of the Contract Price and shall guarantee the faithful and timely performance of the Work in accordance with the terms and conditions of the Contract and in a manner acceptable to the Authority, as well as material and workmanship free from defects. The Payment Bond shall be for one hundred percent (100%) of the Contract Price and shall cover the payment of all obligations arising under the Contract or incurred by reason of performance of the Work. Should any surety at any time be unsatisfactory to the Authority, notice will be given the Contractor to that effect. No further payments shall be deemed due or will be made under the Contract until a new surety shall qualify and be accepted by the Authority. The Contractor shall pay all costs of compliance with this Section. Changes in the Work or extensions of time made pursuant to the Contract shall in no way relieve the Contractor or surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

GC-9 AUTHORITY OF THE CONTRACTING OFFICER AND THE ENGINEER

The Authority has the final approval in all matters relating to or affecting the Work. Nothing in the Contract should be construed to bind the Authority for acts of its officers, employees, or agents that exceed the delegation of authority specified herein.

The Contracting Officer has delegated to the Engineer certain powers and duties in connection with the Contract. Within the scope of this delegation, and as may be additionally authorized in writing by the Authority through the Engineer, the Engineer is the Authorized Representative of the Contracting Officer. The Engineer or his/her designee is empowered to do the following:

- A. Have general oversight of the Work and the Contractor, including the power to enforce compliance with the Contract. The exercise of or failure to exercise such power shall not relieve the Contractor of any of its obligations under the Contract.
- B. Suspend the Work or any part thereof by giving notice to the Contractor in writing as specified under the Section herein entitled SUSPENSION OF WORK.
- C. Subject to the review and acceptance of the Authority, negotiate with the Contractor all adjustments of price and time to perform Work and approve Change Orders up to the limits established by Authority policy or by Contracting Officer delegation.

- D. Have authority to accept or prepare payment applications for Work performed by the Contractor.
- E. Inspect and test the Work.

In addition to the foregoing, the Engineer shall have those rights and powers expressly set forth in other sections of the Contract. The powers and rights of the Engineer as the Authorized Representative of the Authority shall not include any right or power specifically reserved for the Authority or the Contracting Officer.

The Engineer shall not have control or charge of and shall not be responsible for the construction means, methods, sequences, or procedures, or for safety precautions and programs in connection with the Work, for the act or omissions of the Contractor, Subcontractors, or any other persons performing any of the Work.

GC-10 LICENSES, PERMITS AND COMPLIANCE WITH LAWS

The Contractor shall be fully responsible for identifying and obtaining, at its sole expense, all necessary licenses and permits required for the timely prosecution of the Work.

The Contractor acknowledges that prior to entering into the Contract it familiarized itself with the requirements of any and all applicable federal, state, and local laws, codes, rules, and regulations, as well as the conditions of any required licenses and permits. Contractor shall be responsible for complying with any and all of the foregoing at its sole expense and without any increase in any Unit Price, Contract Price, or Contract duration on account of such compliance, regardless of whether such compliance would require additional labor, construction equipment, or materials not expressly stated in the Contract.

GC-11 GOVERNING LAW

The Contract shall be governed by and interpreted in accordance with the laws of the State of California. 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. Proper venue of any action brought hereunder is and shall be Los Angeles County, California.

GC-12 PAYMENT OF TAXES

The Contractor shall pay all taxes and duties applicable to and assessable against any Work, materials, services, processes, and operations incidental to or involved in the Contract, including but not limited to sales and use, transportation, export, import, business, and special taxes. The Contractor shall withhold and pay all withholding taxes, whether federal, state, or local; Social Security taxes; State Unemployment Insurance charges; and all other taxes which are now or hereafter may be required to be paid or

withheld under any applicable laws. The Contractor will maintain auditable records, subject to Authority reviews, confirming that tax payments are current at all times.

The Contract prices paid for the Work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by federal, state, or local government, including federal excise taxes. No tax-exemption certificate, or any document designed to exempt the Contractor from payment of any tax, will be furnished to the Contractor by the Authority, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract.

GC-13 GRATUITIES, CONTINGENT FEES, AND CONFLICTS OF INTEREST

The Contractor warrants that no person or agent has been specifically employed or retained to solicit or obtain the Contract in exchange for a contingent fee, except a bona fide employee or agent. A breach or violation of this warranty shall be considered a breach of Contract pursuant to the Section entitled TERMINATION FOR DEFAULT. In addition to any rights and remedies otherwise provided for in the Contract or by law, the Authority may deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

"Bona fide agent," as used in this Section, means an established commercial or selling entity that is maintained by the Contractor for the sole purpose of securing business and that neither exerts nor proposes to exert improper influence to solicit or obtain Authority Contract(s) nor holds itself out as being able to obtain any Authority Contract(s) through improper influence.

"Bona fide employee," as used in this Section, means a person who is employed by the Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance and who neither exerts nor proposes to exert improper influence to solicit or obtain Authority Contract(s) nor holds itself out as being able to obtain any Authority Contract(s) through improper influence.

"Contingent fee," as used in this Section, means any commission, percentage, or other sum that is payable only upon success in securing an Authority Contract.

"Improper influence," as used in this Section, means any influence that induces or tends to induce an Authority employee, officer, Contractor, Subcontractor, agent, or Consultant to give consideration or to act regarding an Authority Contract on any basis other than the merits of the matter.

The Contractor shall not offer or provide gratuities in the form of gifts, entertainment, loans, meals, rewards, or services to representatives of the Authority, including the Engineer, other employees, agents, consulting engineers and architects, inspectors, or testing agencies retained by the Authority. If it is found that the Contractor has violated

this provision, the Contract may be subject to termination for cause as defined elsewhere in these General Provisions.

During the term of the Contract and until the final payment has been made to the Contractor, the Contractor shall not employ or compensate in any manner whatsoever, the Authority's Board members, Engineer, agents, representatives, or employees. Any exceptions to the employment or compensation to any of the above-named parties must be made in writing by the Authority. If the Contractor offers or provides employment or compensation to those named above during the term of the Contract, the Contract may be subject to termination for cause.

No member, officer, or employee of the Authority during his tenure or for one year after that tenure shall have any interest, direct or indirect, in this Contract or proceeds under this Contract.

GC-14 DISQUALIFYING POLITICAL CONTRIBUTIONS; COMPLIANCE WITH LOBBYING POLICIES

In the event of a proposed Change Order to this Contract requiring Board approval, Contractor shall provide a written statement disclosing any contribution(s) of \$250 or more made by Contractor or its Subcontractor within the preceding twelve (12) months of the date of the proposed Change Order. Applicable contributions include those made by any agent/person/entity on behalf of Contractor or Subcontractor.

Contractor agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by Authority in its Ethics Policy, it shall comply with, or ensure that its Lobbying Firm and Lobbyist complies with, the Authority's Ethics Policy.

If Contractor (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with Authority's Ethics Policy, such failure shall be considered a material breach of this Contract and Authority shall have the right to immediately terminate or suspend this Contract.

GC-15 NOTIFICATION OF EMPLOYMENT OF SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY BOARD MEMBERS/ALTERNATES AND EMPLOYEES

To ensure compliance with Authority's Ethics Policy, Contractor shall provide written notice to Authority disclosing the identity of any individual who Contractor desires to employ or retain under a Contract, and who (1) presently serves as a Board Member/Alternate or an employee of the Authority, or (2) served as a Board Member/Alternate or an employee of the Authority within the previous twelve (12) months of the date of the proposed employment or retention by Contractor. Contractor's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of the Contract.

GC-16 PUBLIC RECORDS ACT

All records, documents, drawings, plans, specifications, and all other information relating to the conduct of the Authority's business, including information submitted by the Contractor, shall become the exclusive property of the Authority and shall be deemed public records. Said information shall be subject to the provisions of the California Public Records Act (in the Government Code). The Authority's use and disclosure of its records are governed by this Act.

The Authority may receive information clearly and prominently labeled "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY," as determined by the Contractor. The Authority will endeavor to inform the Contractor of any request for the disclosure of such information. Under no circumstances, however, will the Authority be responsible or liable to the Contractor 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 the Authority or its officers, employees, or Contractors.

The Authority will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definition of "Trade Secret." The Contractor shall be solely responsible for all determinations made under the Act, and for clearly and prominently marking each and every page or sheet of information with "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" as it determines to be appropriate. Each Contractor is advised to contact its own legal counsel concerning the California Public Records Act and its applicability to the Contractor's own circumstances.

In the event of litigation concerning the disclosure of any information submitted by the Contractor, the Authority's sole involvement will be as a stakeholder, retaining the information until otherwise ordered by a court. The Contractor, at its sole expense and risk, shall be fully responsible for all fees and costs for prosecuting or defending any action concerning the information, and shall indemnify and hold the Authority harmless from all costs and expenses, including attorneys' fees, incurred in connection with such action.

GC-17 AUDIT REQUIREMENTS AND INSPECTION OF RECORDS

This section details audit requirements and record inspection procedures.

- A. The operations of the Contractor, its Subcontractors, Suppliers, and Consultants shall be subject at any time to audits by the Authority and other authorized agencies to verify compliance with all Contract requirements relative to practices, methods, procedures, and documentation in accordance with the FAR Section 31 et seq. and generally accepted accounting practices and principles.
- B. Contractor shall maintain a complete set of records including materials, payrolls, books, accounts, and other data relating to its performance under this Contract, in

accordance with generally accepted accounting procedures. These records shall be maintained at a location within Los Angeles County. Upon reasonable advance written notice, the Authority, its Authorized Representatives or any firm of auditors appointed by the Authority or other authorized agencies such as the U.S. Department of Transportation and the Comptroller General of the United States shall have access at all reasonable times to all records maintained by the Contractor and its Subcontractors, Suppliers, and Consultants for the purpose of auditing and verifying the Contractor's costs claimed to be due and payable hereunder in accordance with the FAR Section 31 et seq. and generally acceptable accounting practices and principles. The Authority and any other permitted parties shall have the right to reproduce any such records. The Contractor shall make said evidence (or, to the extent approved by the Authority, photographs, micro-photographs, or other authentic reproductions thereof) available to the Authority at the Contractor's offices at all reasonable times and without charge.

- C. The Contractor and its Subcontractors, Suppliers, and consultants shall keep and preserve all such records for a period of at least three (3) years from and after final payment or if the Contract is terminated in whole or in part until three (3) years after the final termination contract. Records pertaining to appeals or to litigation or the settlement of Claims arising under or relating to the performance of the Contract shall be made available until disposition of the appeals, litigation, or Claims.
- D. Contractor further agrees to include in all of its subcontracts under this Contract a provision to the effect that the Subcontractor agrees that the Authority, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly Authorized Representatives, shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor. The term "subcontract" as used in this Section excludes the following:
 - 1. Purchase orders not exceeding \$10,000.00
 - 2. Subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public
- E. In addition to the Flow-Down requirements pertaining to Subcontractors, the Contractor shall include, and require the inclusion in all contracts entered into for the performance of the Work, a provision to the effect that its Suppliers, consultants, and any other parties shall observe and comply with all of the obligations under this Section in the same manner and to the same extent as the Contractor.
- F. The requirements of this Section are in addition to other audit, inspection, and record keeping requirements specified elsewhere in the Contract including audit requirements relating to Section 27 Changes.

GC-18 ASSIGNMENT

This Agreement, and any interest herein or claim hereunder, may not be assigned by Contractor either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by Contractor, without the prior written consent of Authority. Consent by Authority shall not be deemed to relieve Contractor of its obligations to comply fully with all terms and conditions of this Agreement.

The Authority retains the right to assign the Work in whole or in part to another governmental jurisdiction or public agency as long as the assignment does not result in an increase in quantities above those in the original solicitation, including option quantities that were evaluated as part of the award decision.

GC-19 NO WAIVER

Failure of the Authority 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 the Authority of any breach of any provision of the Contract shall constitute a waiver of any other breach or of such provision.

Failure by the Authority to insist upon strict performance of any terms or conditions of the Contract, or any failure or delay in the Authority's exercise of any rights or remedies provided herein by law, shall not be deemed a waiver of any right of the Authority to insist upon strict performance of the Contractor's obligations set forth in the Contract, or any of its rights or remedies as to any prior or subsequent default hereunder.

GC-20 SEVERABILITY

In the event any Section, subsection, paragraph, sentence, clause, or phrase contained in the Contract shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other Sections, subsections, paragraphs, sentences, clauses, or phrases of the Contract, which shall remain in full force and effect as if the Section, subsection, paragraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable was not originally contained in the Contract.

GC-21 WHISTLEBLOWER REQUIREMENTS

The 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 federal, State, or local regulation; nor shall the Contractor retaliate against an employee for taking such actions.

GC-22 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The Contractor acknowledges that 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, apply to its actions pertaining to this project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA-assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the 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 the Contractor to the extent the federal government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 U.S.C. §5307, the government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the federal government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

GC-23 TITLE TO WORK

Title to Work for which progress or other payments are made shall pass to the Authority at the time of payment. To the extent that title has not been vested in the Authority previously by reason of payments, full title shall pass to the Authority at time of delivery of the Work at the destination specified in the Contract. Work to which the Authority has received title by reason of progress payments shall be segregated from other Contractor or Subcontractor materials related to the Work and clearly identified as Authority property.

The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, or other encumbrances. The Contractor shall not pledge or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items.

The transfer of title as specified above shall not imply acceptance by the Authority, nor relieve the Contractor from the responsibility for strict compliance with the Contract and for any loss of or damage to items. Notwithstanding the passage of title, the Contractor

shall continue to be liable and responsible to the Authority for any damage to or loss of such material until such material is actually delivered to the Worksite and incorporated in the Work.

The Contractor at its sole expense shall promptly execute, acknowledge, and deliver to the Authority proper bills of sale or other written instruments of title in a form as required by the Authority; said instruments shall convey to the Authority title to material free and clear of debts, claims, liens, mortgages, taxes, or encumbrances. The Contractor at its sole expense shall conspicuously mark such material as the property of the Authority; shall not permit such materials to become commingled with non-Authority-owned property; and shall take such other steps the Authority may require or regard as necessary to vest title to such material in the Authority free and clear of debts, claims, liens, mortgages, taxes, or encumbrances.

The Contractor shall have no property right in materials after they have been attached or affixed to the Work or after payment has been made by the Authority for materials delivered to the Worksite or stored subject to or under the control of the Authority, as specified elsewhere in this Section.

GC-24 SEISMIC SAFETY

Contractor shall comply with all applicable regulations of U.S. DOT on seismic safety at 49 CFR Part 41, and with any implementing guidance the FTA may issue.

GC-25 ENERGY CONSERVATION REQUIREMENTS

Contractor shall recognize 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. §6321 et seq.).

GC-26 CLEAN WATER REQUIREMENTS

The Contractor agrees to 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. The Contractor agrees to report any violation of these requirements resulting from any project implementation activity to the FTA and to the appropriate U.S. EPA Regional Office.

GC-27 CLEAN AIR ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401, et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to ensure notification to the FTA and the appropriate EPA Regional Office.

GC-28 REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT

The Contractor is also required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC §794; and 49 USC §5301(d), and the following regulations and any amendments thereto:

- A. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37.
- B. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27.
- C. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Federal Government Services," 28 CFR Part 35.
- D. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36.
- E. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19.
- F. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630.
- G. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F.
- H. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.
- I. Any implementing requirements that the FTA may issue.

PAYMENT AND CHANGES

GC-29 PAYMENT

A. MEASUREMENT AND PAYMENT

- 1. The Contractor will be paid based on the pay items in the Schedule of Values. Disbursement of the pay items will be in accordance with the requirements for Payments.

2. Contract quantities are those quantities that have been calculated from the exact lines shown on the Drawings, with no allowance for shrinkage, swelling, overbuild, or waste.
3. When the plans have been altered, or when disagreement exists between the Contractor and the Authority as to the accuracy of the plan quantities, or when the line or grade within the Contract Limits of Work differ from what is shown on the Drawings, either party shall have the right to request, in writing, a change to the noted quantity. This request should be made before any Work is started that would affect the measurement.

B. APPLICATION FOR PROGRESS PAYMENT

1. Application for payment will be for specific items, based on the quantity installed and the percentage completed, and in accordance with the Schedule of Values. The percentage complete will be based on the value of the partially completed work relative to the value of the item when entirely completed and ready for service.
2. Each application for payment shall be consistent with previous applications and payments, as approved by the Authority and paid for by the Authority. The Initial application for payment, the application for payment at time of Substantial Completion, and the final application for payment involve additional requirements.
3. Payment Application Times: The period covered by each application for payment is one month, ending on the last day of the month. Progress payments for the prior monthly period shall be submitted to the Authority within 14 days of the following month. The Contractor shall submit a draft copy of each application for payment seven days prior to the due date for review by the Authority.
4. Application for payment Forms: The Contractor will submit applications for payment on forms acceptable to the Authority. The Contractor shall submit forms for approval with the initial submittal of the Schedule of Values.
5. Application Preparation: Complete every entry on the form. Have the form executed by a person authorized to sign legal documents on behalf of the Contractor. The Authority will return incomplete applications without action.
 - a. Entries shall match data on the Schedule of Values and the Contractor's construction schedule. Use updated schedules if revisions were made.
 - b. Include amounts for Work completed since the previous Application for Payment, whether or not payment has been received on the prior request. Include amounts for work performed under executed Change

Orders and WACN directives issued during the construction period covered by the application.

- c. Certified payrolls shall be submitted to the Authority as part of each application for payment.
- d. Contractor shall submit final signed and approved applications for progress payments to:

Southern California Regional Rail Authority
One Gateway Plaza, 12th Floor
Los Angeles, CA 90012
Attn: Accounts Payable

- 6. At the sole discretion of the Authority, application for payment amounts may include materials or equipment purchased or fabricated and stored, but not yet installed. Payments may be made, if approved in advance by the Authority in writing, for materials stored off-site pursuant to following conditions:
 - a. When approved by the Authority in accordance with other Specification requirements, a maximum of 80 percent of the value of material will be paid for material stored off-site for off-site fabrication or finishing. Materials shall be stored at a bonded facility, and shall be adequately insured and protected against theft and exposure or loss. Materials shall not be susceptible to deterioration or physical damage in storage or in transit to the site. Payments shall not be made for materials in transit to the site or to the storage site.
 - b. Provide a certificate of insurance, evidence of transfer of title to the Authority, and surety's consent to payment for stored materials. Provide supporting documentation that verifies the amount requested, such as paid invoices. Match the amount requested with amounts indicated on documentation; do not include overhead and profit on stored materials.
 - c. Provide summary documentation for stored materials, indicating the following:
 - i. Materials previously stored and included in previous applications for payment.
 - ii. Work completed for this Application utilizing previously stored materials.
 - iii. Additional materials stored with this application.
 - iv. Total materials remaining stored, including materials with this application.

7. Transmittal: Submit signed application for payment to the Authority including lien waivers and other attachments as required. Each application shall be transmitted with a separate transmittal form, listing attachments and recording appropriate information about the application. For each application, attach a copy of the Authority approved certified payroll and worker hour report form, including individual forms for Subcontractors of any tier, to the Authority. The certified payroll and worker hour report form shall be submitted for Contractors and Subcontractors of any tier, even if no Work was performed by the Contractor or Subcontractor during the reporting period; in those cases, the form should state that no Work was performed.
8. Stop Notice Waivers and Release: With each application for payment, submit fully executed Conditional and Unconditional Stop Notice Waivers and Releases from entities lawfully entitled to file Stop Notices arising out of the Contract, and related to the Work covered by the payment.
 - a. Submit fully executed unconditional or partial waivers and releases for the amount requested in the previous application (after deduction for retainage) on each item and for each Subcontractor and Supplier included in the previous application.
 - b. Submit fully executed conditional or partial waivers and releases for the amount requested in each application, after deduction for retainage, on each item and for each Subcontractor and Supplier included in the application.
 - c. When an application shows completion of an item, submit conditional final or full waivers. The Authority reserves the right to designate which entities involved in the Work must submit waivers. Unconditional waivers and releases must state the amount that the Contractor, Subcontractor, or Supplier has been paid with respect to payment most recently made to the Contractor by the Authority.
 - d. Waiver Forms: Submit waivers on forms as set forth in California Civil Code. The forms should be executed in a manner acceptable to Authority, and they should clearly state that they are not intended to release claims beyond the amount of the progress payment made, and do not cover unprocessed or unresolved claims.
 - e. In the event the Contractor fails to supply any of the foregoing waivers and release forms, the Authority may retain the amount attributable to any such Subcontractor or Supplier until the appropriate form is received.
9. Application for payment at Substantial Completion: After issuing the Certificate of Substantial Completion, submit an application for Payment

showing 100 percent completion for that portion of the Work claimed as substantially complete.

- a. Include documentation supporting the Claim that the Work is substantially complete, and a statement showing an accounting of changes to the Contract Sum.
- b. This application shall reflect Certificates of Partial Substantial Completion issued previously for Authority occupancy of designated portions of the Work.
- c. Administrative actions and submittals that shall precede or coincide with this application include the following:
 - i. Occupancy permits and similar approvals
 - ii. Warranties (guarantees) and maintenance agreements
 - iii. Test/adjust/balance records
 - iv. Maintenance instructions
 - v. Meter readings
 - vi. Start-up performance reports
 - vii. Changeover information related to the Authority's occupancy, use, operation, and maintenance
 - viii. Final cleaning
 - ix. Application for reduction of retainage and consent of surety
 - x. Advice on shifting insurance coverages
 - xi. Final progress photographs
 - xii. List of incomplete Work, recognized as exceptions to Authority's Certificate of Substantial Completion

C. PROMPT PAYMENT TO SUBCONTRACTORS

Prior to the Authority's issuance of progress payments, commencing with the second invoice, the Contractor shall provide the Authority with evidence of Prompt Payment to Subcontractors for all amounts due for satisfactory work performed. Failure of Contractor to make prompt payment as defined in this Section or to delay payment without prior written consent of Authority shall constitute noncompliance

with this Contract, which may result in appropriate administrative sanctions which may include withholding of payment of Contractor's invoice by Authority until payment is made to the Subcontractor/Supplier or termination of the Contract in accordance with the Section entitled, Termination of Contract.

D. PAYMENT APPROVAL

1. The Authority may elect not to approve payment, and may withhold payment in whole or in part, to the extent reasonably necessary to protect the Authority if, in the Authority's opinion, payment in the amount of the application cannot be approved. The Authority will notify the Contractor in writing of the Authority's reasons for withholding payment in whole or in part. If the Contractor and the Authority cannot agree on a revised amount, the Authority will promptly issue a payment in the amount for which the Authority approves. The Authority may also decide not to approve payment or, because of subsequently discovered evidence or subsequent observations, may nullify all or part of any payment previously issued, to such extent as may be necessary in the Authority's opinion to protect the Authority from loss because of the following:
 - a. Defective Work not remedied
 - b. Third-party Claims filed, or reasonable evidence indicating probable filing of such Claims
 - c. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment
 - d. Reasonable evidence that Work cannot be completed for the unpaid balance of the Contract Sum
 - e. Damage to the Authority or another contractor
 - f. Reasonable evidence that Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay
 - g. Persistent failure to carry out Work in accordance with Contract Documents
 - h. Any liquidated damages that have accrued as of the date of the Application for Payment
 - i. Any sums expended by the Authority in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform

- j. Any other sums that the Authority is entitled to recover from the Contractor under the terms of the Contract equity, or the law, including insurance deductibles
- 2. When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.
- 3. The failure of the Authority to deduct any of the above-identified sums from a progress payment shall not constitute a waiver of the Authority's right to such sums.
- 4. The Authority shall not have an obligation to pay or to see to payment of money to Subcontractors, except as may otherwise be required by law.
- 5. A payment, partial payment, or partial or entire use or occupancy of the Project by the Authority shall not constitute acceptance of Work not in accordance with Contract Documents.

E. FINAL PAYMENT APPLICATION

- 1. After the Authority issues a Certificate of Final Acceptance, Contractor shall submit an application for final payment with releases and supporting documentation not previously submitted and accepted, including, but not limited, to the following:
 - a. Evidence of completion of Project closeout requirements
 - b. Completion of items specified for completion after Substantial Completion
 - c. Insurance certificates for products and completed operations (where required), and proof that taxes, fees, and similar obligations were paid
 - d. An updated final statement, accounting for final changes to the Contract Sum
 - e. Surety consent to Final Payment
 - f. Evidence that claims have been settled
 - g. Final meter readings for utilities, a measured record of stored fuel, and similar data as of the date of Substantial Completion or when Authority took possession of and assumed responsibility for corresponding elements of the Work
 - h. A final liquidated damages settlement statement
 - i. Transmittal of required Project Record documents to the Authority

- j. Removal of temporary facilities and services, surplus materials, rubbish, and similar elements
- 2. The Contractor shall prepare and submit a proposed Application for Final Payment to the Authority, showing the proposed total amount due the Contractor; any Change Order Work; increased or decreased bond premiums due to Change Order Work and other bases for payments; deductions made or to be made for prior payments; amounts to be retained; any Claims the Contractor intends to file at that time, or a statement that no Claims will be filed; and any unsettled Claims, stating the specific amounts. The Application for Final Payment shall be accompanied by complete and legally effective releases or waivers of liens and stop notices arising out of or filed in connection with the Work, in a form satisfactory to the Authority. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. Claims filed with the Application for Final Payment must be otherwise timely under these General Conditions. Payments to the Contractor shall be made only for the actual quantities of the Contract items constructed in accordance with the Contract Documents.
- 3. The Authority shall review the Contractor's proposed Application for Final Payment. Any recommended changes or corrections shall be forwarded to the Contractor. Within ten (10) days thereafter the Contractor shall submit its revised Application for Final Payment, incorporating any recommended changes or corrections made by the Authority. Upon acceptance by the Authority, the revised Application for Final Payment shall become the basis for final payment.
- 4. If no Claims have been filed with the Application for Final Payment and no other Claims remain unsettled, and agreements are reached on all questions regarding the Application for Final Payment, the Authority, in exchange for an executed release that is satisfactory in form and substance to the Authority, shall pay the entire sum found due on the approved Application for Final Payment, including the amount, if any, allowed on Claims.
- 5. Final payment shall be made within 30 days after the Authority's approval of the Application for Final Payment. The Authority may withhold from the final payment any amount authorized by the Contract, at law or equity.
- 6. Notwithstanding the Authority's acceptance of the Application for Final Payment and irrespective of whether it is before or after final payment has been made, the Authority shall not be precluded from subsequently showing that (1) the true and correct amount or type of Work performed or equipment and materials furnished is/are different from that previously accepted, (2) the previously accepted Work or materials did not in fact conform to the Contract requirements, or (3) a previous payment or portion thereof for Work performed or materials furnished was improperly made. The Authority 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, at law or equity.

F. FINAL PAYMENT AS RELEASE

The release provided by the Contractor shall be from any and all Claims arising from the Work under and in connection with the Contract, and shall release and waive any Claims against the Authority, its Member Agencies, the Engineering Services Consultant, the Construction Manager Consultant, and their respective agents, officers, members, and employees. The release shall be accompanied by a certification by the Contractor that (1) it has resolved any Claims made by Subcontractors, Suppliers, and others against the Contractor or the Project; (2) it has no reason to believe that any party has a valid Claim against the Contractor or the Project which has not been communicated in writing by the Contractor to the Authority; and (3) all warranties and guarantees are in full force and effect.

G. PAYMENT OF TAXES

The Contractor shall pay all taxes and duties applicable to and assessable against any Work, materials, services, processes, and operations incidental to or involved in the Contract, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The Contractor is responsible for ascertaining and acquainting itself with such taxes and making all necessary arrangements for payment. The prices established in the Contract Amount and Schedule of Values may include compensation for any taxes the Contractor is required to pay by laws and regulations in effect on the date the Bid was opened. The Contractor will maintain auditable records, subject to Authority reviews, confirming that tax payments are current at all times.

H. RETENTION ON PROGRESS PAYMENTS

The Authority shall retain from each progress payment ten percent (10%) of the progress payment as part security for the fulfillment of the Contract by the Contractor. However, after fifty percent (50%) of the Work has been completed, if in the sole discretion of the Authority progress on the Work is satisfactory, Authority will not make further deductions on the remaining progress payments, except that the amount of the retention withheld shall not at any time thereafter be less than five percent (5%) of the Contract Price, as amended, or as adjusted by Change Orders. However, if the Authority determines that the Work or progress of the Work is unsatisfactory, Authority may reinstate, continue or increase retentions in amounts necessary to increase the total retention to an amount not to exceed ten percent (10%) of the Contract Price.

1. Should the Contractor retain partial payment of Subcontractor's/Supplier's invoices for any reason allowable under the terms of this Contract and the Contractor's written agreement with the Subcontractor or Supplier, the

Contractor agrees to make payment of such retainage within ten (10) working days of satisfactory completion of the work or other obligation.

2. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Authority, or with a state or federally chartered bank in California as the escrow agent, which shall then pay those monies to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.
3. Alternatively, the Contractor may request and the Authority shall make payment of retentions 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, and the Contractor shall receive the interest earned on the investments under the same terms provided for in this section 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 the Authority, pursuant to the terms of this Section. The escrow contract used pursuant to this Section shall be substantially similar to the form set forth in the California Public Contract Code.
4. Securities eligible for investment under this Section shall include those listed in the Government Code, 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 the Authority.

I. STOP NOTICES

1. The Authority will retain and withhold from payment to the Contractor sufficient sums to cover stop notices filed pursuant to Section 3179 et seq. of the California Civil Code, including an amount to provide for the reasonable cost of any litigation thereunder.
2. In addition to other amounts properly withheld under this Section or under other provisions of the Contract, the Authority shall retain from Progress Payments otherwise due the Contractor an amount equal to 125% of the amount claimed under any Stop Notice under Civil Code §3179 et. seq. or other lien filed against the Contractor for labor, materials, supplies, equipment, and any other thing of value claimed to have been furnished to and/or incorporated into the Work; or for any other alleged contribution thereto. In addition to the foregoing and in accordance with Civil Code §3186, the Authority 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, the Authority 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 the Authority that the Contractor has resolved such claim by settlement.

GC-30 CHANGES

A. AUTHORITY DIRECTED CHANGES

1. The Authority may at any time order additions, deletions, or revisions (Changes) in the Work within the general scope of the Contract. These will be initiated by a Change Notice (CN) and authorized only upon the issuance of a written Change Order (CO) or, in unusual circumstances, by the issuance of a Work Authorization Change Notice (WACN). Upon receipt of any Change Order or WACN, the Contractor shall promptly proceed with the Work.
2. Except as expressly permitted herein, no order, statement, or conduct of the Authority or anyone purporting to represent the Authority shall be treated as a Change under the Contract or entitle the Contractor to an adjustment of compensation or time of performance under the Contract. The Contractor may request the initiation of a Change by a Request for Change (RFC). Regardless of how a Change is initiated or authorized, any compensation in money or time for a Change can only be authorized by a written Change Order or WACN. The Contractor's records pertaining to Changes pursuant to this Section are subject to audit as set forth in the Section herein titled AUDITS.
3. Changes in the Work within the general scope of the Contract may include, but are not limited to, material Changes resulting from any of the following:
 - a. Specifications, drawings, and designs
 - b. Method, manner, or timing of the performance of Work
 - c. Authority furnished facilities, equipment, materials, services, or Worksite
 - d. Contract milestones
 - e. Value engineering
 - f. Adding, deleting, or revising Work
4. The Change Notice: A Change Notice does not authorize a Contractor to commence performance of the changed Work. Nothing in the Contract will be construed to bind the Authority for acts of its employees and agents that exceed the delegation of authority specified under the General Conditions Section entitled "Authority of the Contracting Officer and Engineer," herein. The Contractor shall promptly notify the Authority in writing when it receives direction, instruction, interpretation, or determination from any source that

may lead to or cause any Change in the Work. Such written notification shall be given to the Authority before the Contractor acts on said direction, instruction, interpretation or determination.

5. Work Authorization Change Notice (WACN):

- a. The WACN issued by the Authority shall expressly specify:
 - i. The intention to treat such items as Changes in the Work;
 - ii. The kind, character, and limits of the Changes in Work as far as can be ascertained by the Authority; and
 - iii. The terms under which changes to the Total Contract Amount will be determined.
 - iv. Payment provisions
- b. The WACN shall be executed by the Authority and transmitted to the Contractor before any Work is started on the items covered thereby. The WACN shall contain a cost limitation that cannot be exceeded without a prior written additional approval from the Authority. The Authority and the Contractor shall negotiate the adjustment to the Contract Amount or time of performance and, thereafter, incorporate such into a subsequently issued Change Order.

6. The Change Order:

- a. The Change Order shall expressly state that the change in compensation, if any, includes all amounts to which the Contractor is entitled as a result of the events giving rise to the Change Order. The execution of a Change Order by both parties shall be deemed final without reservation of rights by either party for all costs and time of performance related to the Change.
- b. For all Change Orders greater than or equal to \$200,000, a certification of conflict of interest may be required from the Contractor and all Subcontractors and Suppliers who will perform Work included in the Change Order.
- c. In the event that the Contractor and the Authority are unable to agree on the amount of any Change or adjustment to be made for compensation or time, a unilateral Change Order may be issued by the Authority, in which case the Contractor may challenge the Change Order or any aspect of the Change Order only by strictly following the procedures described in the General Conditions Section entitled DISPUTES & CLAIMS. If the Contractor challenges the Change Order, the Contractor shall

nonetheless proceed diligently and timely with the Work to be performed under the Contract and the Change Order.

B. CONTRACTOR REQUESTED CHANGES

1. The Contractor may request additional compensation or time through a Request for Change (RFC). In order for an RFC to be considered timely, the Contractor must submit a RFC no later than 20 days after the Contractor first became aware, or should have become aware, of the event or occurrence giving rise to such request. Untimely requests are subject to denial by the Authority regardless of the merits of any RFC. The Contractor is not entitled to any compensation or time extension when an RFC is determined by the Authority to be untimely. The RFC must specify the particulars of such Change, including relevant dates and circumstances.
2. Any RFC that is approved by the Authority will be incorporated into a Change Notice. If the RFC is denied but the Contractor believes its request was timely and has merit, the Contractor may challenge the denial only by strictly following the procedure described in the General Conditions Section entitled DISPUTES & CLAIMS.
3. The Authority encourages the Contractor to submit Value Engineering Change Proposals (VECPs) whenever it identifies areas or instances in which improvements can be made, in order to avail the Authority of potential cost savings. The Contractor and the Authority will share any savings in the manner described in the contract general requirements.

C. CONTRACTOR'S CHANGE ORDER PROPOSAL

1. If directed by the Authority, the Contractor shall submit a Contractor's Cost and Schedule Proposal to the Authority within 15 days after receipt of a Change Notice or WACN. The proposal shall detail price and scheduling information showing all of the cost and time ramifications of the additions, deletions, or modifications shown in the Change Notice or WACN. If any prices or other aspects are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, the Contractor shall identify these conditions in its proposal. The components and allowed costs to be used by the Contractor in preparing the proposal shall be those set forth in this Section and shall be presented in such a manner that all cost and schedule information can be easily identified and certified upon request. The submittal shall include current cost or pricing data as described in this Section. Changes in the Work involving an item of Work covered by a Contract Unit Price will be priced at the Contract Unit Price subject to those provisions contained in the Subsection below entitled INCREASED OR DECREASED QUANTITIES.

2. If the Contractor does not submit the Contractor's Cost and Schedule Proposal by the required date, the Authority reserves the right to issue a unilateral Change Order utilizing the Authority's cost estimate. If the Authority issues such a unilateral Change Order, the Authority's cost estimate shall be final and the Contractor shall not be entitled to dispute the amount. In addition, the Authority reserves the right to withhold payment on a WACN if the requested Contractor's Cost and Schedule Proposal is not submitted by the required date.
3. The Authority, or its Authorized Representatives, may require that the Contractor supply appropriate documentation to support the prices proposed for Contract Changes and may refuse to complete negotiations until satisfactory documentation is submitted. Once a Contract Change Order is executed, the Contractor's records shall be subject to audit and inspection.
4. The Contractor shall maintain such records as the Authority deems sufficient to distinguish the direct cost of Changed Work on a WACN from the cost of other operations. When directed by the Authority, the Contractor shall submit daily and no later than each subsequent workday, to the Authority reports of Changed Work on forms approved by the Authority. The reports shall itemize all costs for labor, materials, and equipment and give the total of costs to date for the Changed Work. For labor, the reports shall include names, hours worked, and rates of pay for all classifications (up to but not including general foreman) that are engaged in the actual direct performance of the Work.
5. When the Authority determines that the method of payment for a WACN or Contract Change is to be on a time and material basis, the Contractor shall maintain and segregate cost and pricing data, books, records, documents, and any other accounting evidence sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred.
6. All records and reports shall be made immediately available to the Authority upon request. The cost of preparing such reports shall be included in the Contractor's overhead compensation. All Changed Work reports shall be signed daily by the Contractor or its Authorized Representative, and by the Authority. The Authority will compare its records with the Contractor's reports, make any necessary adjustments, and determine the costs of Changed Work. Such reports shall be the basis for final payment of the Change Order.
7. If the Contractor has submitted cost or pricing data in connection with the pricing of any Change to the Contract (unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation), the Authority and other authorized agencies shall have the right to examine and audit books, records, documents, and other

data of the Contractor (including computations and projections) related to negotiating, pricing or performing the Change in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.

8. Also subject to audit review by the Authority, or its Authorized Representatives, shall be the Contractor's Records relating to those items on a progress payment application that relate to (1) Work done under a Work Authorization Change Notice; (2) Materials or services not yet incorporated into the Work; and (3) Work done under a Change Order negotiated on a time and Materials, Unit Price, or lump sum basis. If the audit indicates that the Contractor has been overpaid under a previous payment application, that overpayment shall be credited against current progress payment applications.

D. CHANGED WORK COMPENSATION

1. Labor Costs

- a. Labor costs shall be based on the prevailing wage scale for each craft or type of work, as well as payroll tax Federal Insurance Contributions Act (FICA), Federal and State unemployment taxes (FUTA and SUTA), 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. Labor costs shall not include costs for assistant superintendents, office personnel, timekeepers, and maintenance mechanics unless authorized by the Authority prior to the start of Changed Work. For equipment, the reports shall include size, type, identification number, rental rate, and hours of operation
- b. Labor reports shall include names, hours worked, and rates of pay for all classifications up to but not including general foreman that are engaged in the actual direct performance of the Work. Labor costs shall not include costs for assistant superintendents, office personnel, timekeepers, and maintenance mechanics unless authorized by the Authority prior to the start of Changed Work.

2. Material Costs

- a. Material costs shall be the cost of all materials purchased by the Contractor and used in the Changed Work, including normal wastage allowance as per industry standards. The cost shall include freight, delivery, unloading, storage, and all other charges. If directed by the Authority, the Contractor shall obtain up to 3 material quotations from

reputable Suppliers for review by the Authority prior to issuing a purchase order.

- b. The Authority reserves the right to review and accept materials and sources of supply of materials to be furnished by the Contractor or its Subcontractor(s), as well as to furnish the materials to the Contractor if necessary to facilitate the progress of the Work.

3. Construction Equipment Costs:

The rates described in this subsection include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals.

- a. Construction equipment costs shall not include costs for items normally considered Contractor plant or fixed-cost items (such as buildings, trailers, office equipment, utilities, rail, piping, electrical distribution systems, processing plants, material handling facilities, work platforms, scaffolding, and concrete forms), unless such costs are occasioned by an extended duration of the Contract time for performance. Costs for these items may be considered on a cost-of-facilities capital basis if a WACN delays the Work and results in an extended duration of the Contract time for Performance. Construction equipment reports shall include size, type, identification number, rental rate (if applicable), and hours of operation.
- b. Construction equipment and tools having a replacement value of \$500 or less, whether or not consumed or used, shall be considered small tools and excluded from allowable Change costs.
- c. Fixed equipment ownership costs shall be limited to the following for multiple shift operations:
 - i. Overhead – at fifteen percent (15%) for one shift per day and
 - ii. Depreciation – Calculated at 100% of the hourly depreciation rate for the first shift each day, and at 50% of the hourly depreciation rate for the second and third shifts each day.
- d. The Contractor shall be paid for the use of Contractor-owned Construction Equipment at the suggested applicable rates (daily, weekly, or monthly) listed for such Construction Equipment in the *Cost Reference Guide for Construction Equipment* (published by Dataquest of San Jose), which edition shall be the latest edition in effect at the time the Changed Work is performed. For the purpose of determination of the rates to be applied under the Contract, working conditions shall be considered to be normal unless otherwise determined by the Authority. If it is deemed necessary by the Contractor to use Contractor-owned specialized equipment not

listed in the applicable edition of the *Cost Reference Guide for Construction Equipment*, the Contractor shall submit the necessary cost data to the Authority for its use in establishing the rate. If it is deemed necessary by the Contractor to use rental Construction Equipment due to the lack of availability of Contractor-owned Construction Equipment to perform the Changed Work, the Contractor shall submit the necessary cost data and paid invoices to the Authority for use in verification of such rental costs. Rates for Construction Equipment rented under lease-purchase or sale-leaseback arrangements, or rented from an organization under control of the Contractor (or under common control with the Contractor) shall be determined in accordance with the *Cost Reference Guide for Construction Equipment*. Compensation shall not be allowed while Construction Equipment is inoperative due to breakdown.

- e. Construction Equipment operators shall be paid for as stipulated in the Subsection entitled Labor Costs.
- f. Unless otherwise specified, manufacturer approved modifications shall be used to classify Construction Equipment for the determination of applicable rental rates. Construction Equipment that has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer of that Construction Equipment.
- g. Except as otherwise specified in this Section, equipment operation time will be computed in half and full hours. In computing the time for use of Construction Equipment, less than 31 minutes shall be considered one-half hour. Costs for Construction Equipment items on standby shall be limited to the sum of the hourly depreciation rates for 8 hours per 24-hour period, accrued after the Construction Equipment is idle for 16 hours in a 24-hour period. The time shall include the time required to move the Construction Equipment to the location of the Changed Work and return it to the original location (or to another location requiring no more time than that required to return it to its original location). Loading and transporting costs shall be allowed, in lieu of moving time, when the Construction Equipment is moved by means other than its own power. No payment for loading and transporting shall be made if the equipment is also used at the Worksite for other than the Changed Work.
- h. The Construction Equipment use period shall begin at the time the Construction Equipment is unloaded at the site of the Changed Work;
 - i. 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).

- ii. Terminate at the end of the day on which the Work is completed or the Authority instructs the Contractor to discontinue the use of such equipment.
 - i. All Construction Equipment shall be substantiated by Supplier's invoices submitted with the current reports; or, if not then available, shall be submitted with subsequent reports. If vendors' invoices are not submitted within 30 days after completion of the Changed Work, or if in the Authority's opinion the cost of such Construction Equipment is excessive, then the cost of such items shall be deemed to be the lowest current wholesale prices at which the items are available in the quantities required and delivered to the Worksite, less cash or trade discounts.
- 4. Overhead and Profit: In addition to the Cost of Work, the Contractor shall be allowed compensation for overhead and profit. Such Cost of Work and the fee shall be the sole and exclusive compensation payable to the Contractor for Work performed pursuant to a WACN or a Change Order unless otherwise agreed in writing by the Authority and the Contractor in the Change Order.

The Contractor shall be paid mark-ups of 20% for labor costs, 15% for material costs, and 15% for Construction Equipment use costs, subject to the following:

- a. These mark-ups are full compensation for all overhead and small tools and for all other indirect costs of the Changed Work (representing the profit thereon). The Contractor's mark-up percentages shall also be considered to include applicable taxes, incidental job burdens, general home office expenses, and all other overhead costs, regardless of the Change in Contract time for performance.
- b. When any of the Changed Work is performed by a Subcontractor, the mark-ups set forth above shall be applied to the Subcontractor costs.
- c. Only one such mark-up will be permitted through all tiers of Subcontractor and/or Suppliers.
- d. An additional fee for mark-up of 5% of the Subcontractor's compensation shall be allowed the Contractor. Only one such mark-up will be permitted, regardless of the actual number of intervening Subcontractors.
- e. For purposes of the foregoing mark-ups, suppliers of major materials/equipment specially fabricated or modified for use in the Contract (such as steel girders/precast concrete structural members, fully or partially fabricated equipment) shall be considered to be Subcontractors.

- f. No mark-up shall be paid to the Contractor for any material furnished by the Authority.
- g. No mark-up will be allowed if Unit Prices established in the Contract are utilized in the proposal preparation.
- h. Where the Contractor's or any tier Subcontractor's portion of a Change involves credit items, or the proposed Change is a fully deductible Change, the Contractor shall utilize the same mark-ups as defined in Subsections 4-a through 4-f above in computing the value of the credit.

E. DEFECTIVE COST AND PRICING DATA

For a period of three (3) years from the date of final payment under the Contract (and prior to the execution of any Change Order that exceeds \$100,000), the Authority, or its Authorized Representatives, shall have the right to examine all books, records, documents, and any other applicable data that relate to the negotiation or performance of any Change Order for the purpose of evaluating the accuracy and completeness of the cost or pricing data submitted by the Contractor. To the extent that the examination reveals inaccurate, incomplete, or non-current data, the data shall be considered defective; if the audit indicates the Contractor has been overpaid under a previous payment application such overpayment will be credited against current progress payment applications, and the Change Order price shall be adjusted to reflect corrected amount. Exceptions to this requirement are pricing for Change Orders based on Contract unit prices, adequate price competition, established catalog or marked prices for commercial items sold in substantial quantities to the public, or prices set by law or regulation.

The following applies to any Contract modification to the Contract involving aggregate increases or decreases in cost plus applicable mark-up, fee or profits:

1. Contractor Data:

- a. If any price, including profit, negotiated in connection with any Contract modification was increased by more than one hundred thousand dollars (\$100,000) and
 - i. The Contractor supplied certified cost or pricing data that were not complete, accurate, and current; or
 - ii. A Subcontractor or prospective Subcontractor supplied the Contractor certified cost or pricing data that were not complete, accurate, and current;
 - iii. A Supplier or prospective Supplier supplied the Contractor certified cost or pricing data that was not complete, accurate and current; or

iv. Any of these parties furnished data of any description that were not accurate, then the price shall be reduced accordingly and the Contract shall be modified to reflect the reduction.

- b. If Subcontractor substitutions are made, any reduction in the Contract Price under this Section due to defective data from a prospective Subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit mark-up, by which the actual subcontract, or the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- c. The Contractor may be required to certify in substantially the form prescribed in Subsection 406-2 of the Federal Acquisition Regulations that to the best of its knowledge and belief, the data submitted under this Article is accurate, complete and current as of the date of contract of the negotiated price of the Contract modification.

2. Subcontractor/Supplier Data

- a. Before awarding any Subcontract expected to exceed \$100,000 when entered into, or pricing any subcontract modification involving aggregate increases or decrease in costs, plus applicable profits, expected to exceed \$100,000, the Contractor shall require the Subcontractor to submit cost or pricing data, in writing unless the price is:
 - i. based on adequate competition;
 - ii. based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - iii. set by law or regulation.
- b. The Contractor shall require the Subcontractor to certify in substantially the form prescribed in Subsection 15.406-2 of the Federal Acquisition Regulations that to the best of its knowledge and belief, the data submitted under this Section were accurate, complete and current as of the date of contract on the negotiated price of the subcontract or subcontract modification.

F. CHANGED WORK COMPENSATION FOR AUTHORITY CAUSED DELAYS

If Contractor believes that the Authority has caused delays to the performance of their Contract scope to which it believes it is entitled to additional compensation, Contractor shall follow the following procedures as shown below:

1. Notice Requirements: If the Contractor or its Subcontractor encounter any issue, event, condition, circumstance or cause of a perceived or actual delay, disruption, interference, hindrance or acceleration to the Work, Contractor must provide a written notice to the Authority no later than three (3) days after encountering the issue, event, condition, circumstance or cause. The notice shall provide all information relative to the particulars of such Change, including relevant dates, circumstances and key elements. Untimely requests are subject to denial by the Authority regardless of the merits of any Request for Change. The Contractor is not entitled to any compensation or time extension when a Request for Change is determined by the Authority to be untimely.
2. Request for Change for Authority caused extensions of the Period of Performance: Within 30 days of Contractor's written notice as described above, Contractor must prepare and submit to the Authority a Request for Change in accordance with the provisions of this Section. The Change Order Request shall also identify all secondary or residual scopes of Work, if any, that will be impacted by the issue, event, condition, circumstance or cause for which the costs and time impacts could not be provided or estimated. Contractor shall state why and how such scopes of Work will or likely will be impacted and why the Contractor cannot provide actual or estimated costs and time impacts within the content of the Request for Change.
3. Compensation Basis: If the Authority determines that the Contractor is entitled to compensation for Authority caused delays to the Period of Performance, Contractor will be compensated by the Authority based on the cost associated with Overhead that are in proportion to the time required to complete the Work and shall not include costs of labor, materials and labor or any other costs directly related to the Work.

G. INCREASED OR DECREASED QUANTITIES

1. This Subsection applies to line items with estimated quantities shown in the Schedule of Quantities and Prices (as indicated in the Specification Section 01 29 73, Schedule of Values and Section 01 22 00, Unit Prices), and the measured and accepted quantities required to complete the Work and does not apply to lump sum items. Where the measured and accepted quantity of a pay item varies within 25% above or below the estimated quantity stated in the Contract, the Contract Unit Price shall be used to calculate the increase or decrease in the Contract Price. For variations above 125% or below 75% of the estimated quantity, Unit Price adjustments may be requested by the Authority or Contractor in accordance with this Section. The Contractor's actual cost (as verified by supplier invoice) will be the basis for the price adjustment, if any.

2. The Authority may make deletion(s) of estimated quantities in their entirety, without cause for equitable adjustment or penalty, when the Contract Price remains at no less than 75% of its original value. When and if the Contractor can substantiate that such a deletion results in termination costs (such as return shipping costs, restocking charge, or demurrage), the Contractor may make a request for these costs in accordance with this Section. No compensation for loss of anticipated profits, consequential damages, or administrative costs shall be allowed.

SPECIFICATIONS AND DRAWINGS

GC-31 AUTHORITY-PROVIDED INFORMATION AND REFERENCE MATERIALS

The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to describe a functionally complete project to be constructed. When the Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that the best general practice shall be followed and only materials and workmanship of the best standard quality shall be used. The Contract Drawings show such plans, elevations, sections, and details as are necessary to give a graphic and pictorial description of the contemplated construction. Any labor, materials, or equipment that are customarily provided, or that are reasonably inferable from the Contract Documents as being required to produce the intended result, shall be supplied by the Contractor, whether or not specified.

GC-32 ACCURACY OF PLANS AND SPECIFICATIONS

Omissions from the Contract Documents shall not relieve the Contractor from the responsibility of furnishing, making, or installing all items required by law or usually furnished, made, or installed in a project of the scope and character indicated by the Contract Documents. The Contract Documents show conditions as they are supposed or believed by the Authority to exist, but it is not intended or to be inferred that the conditions as shown thereon constitute a representation or warranty, expressed or implied, by the Authority that such conditions are actually existent, nor shall the Authority be liable for any loss sustained by the Contractor as a result of any variance between conditions as indicated in the Contract Documents, and the actual conditions revealed during progress of the Work or otherwise, except as indicated in "Differing Site Conditions" of these General Conditions.

GC-33 INTERPRETATION

- A. Drawings indicated as "For Information Only, Not For Construction" are provided to the Contractor for the purposes of information and coordination only, and shall not be interpreted otherwise. These drawings are subject to revision and the

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

- B. In case of differences between small- and large scale drawings, the large-scale drawings shall govern. In the event of a discrepancy between a figure written on a drawing and the scaled dimensions, the written figure shall govern. In the event of a conflict between Specifications or a conflict between drawings, the most restrictive or stringent requirement shall prevail. Authority assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Authority. The Authority also assumes no responsibility for any of the Contractor's conclusions or interpretations that are based on representations made by any officer, employee or agent of the Authority relative to conditions that could affect the Work, unless such representations and conclusions are expressly stated in the Contract.
- C. The Contractor shall carefully review all Contract Documents and verify all figures in the Contract Documents before laying out the Work. The Contractor shall promptly notify the Authority of all errors, inconsistencies, or omissions that it discovers; and, in instances where such non-conformities are discovered, shall obtain specific clarifications in writing from the Authority before proceeding with the Work. Any Work affected that is performed prior to the Authority's decision shall be at the Contractor's risk. The Authority shall be entitled to make such corrections and interpretations as it may deem necessary for the fulfillment of the intent of the Contract Documents. Omissions or inadequate descriptions of any Work that is clearly necessary to carry out the intent of the Contract Documents, or that is customarily performed, and of which the Contractor fails to advise the Authority, shall not relieve the Contractor from performing such Work at no additional expense or delay, and such Work shall be performed as if fully and correctly set forth in the Contract Documents.
- D. Before commencing Work, the Contractor shall verify all governing dimensions at the Worksite and shall examine all adjoining Work on which its Work is in any way dependent. The Contractor shall notify the Authority of any defective or non-conforming adjoining dimensions that are observed before the Contractor begins that part of the Work.
- E. Should it appear that the Work to be done is not sufficiently detailed or explained in the Contract Documents, the Contractor shall submit a written Request for Information (RFI) to the Authority for clarification. The Authority will interpret and decide matters concerning performance and requirements of the Contract Documents consistent with the intent of and reasonably inferable from the Contract Documents. The Authority's response will be in writing or in the form of drawings. Contractor shall submit RFIs in a timely manner to avoid delays in the progress of the Work. RFIs prepared and submitted by the Contractor shall be complete and shall include all information or references necessary for the Authority to respond.

- F. The Authority shall respond to RFIs as specified in the Specifications. In the event that there are numerous RFIs pending, Contractor shall cooperate with the Authority in establishing a priority for responding to the RFIs. Contractor shall not assert any claims for delay or interference against Authority if the Contractor fails to timely submit any RFI to the Authority. Should the Contractor submit RFIs where the information requested is indicated in the Contract Documents, the Authority retains the right to issue a deductive Change Order for costs incurred by responding to such unnecessary RFIs. The response to an RFI shall not, by itself, constitute authorization for Contractor to perform any Work that causes an adjustment to either the Contract Time or Contract Price.

GC-34 ELECTRONIC FILES

Contract Documents are those paper, mylar, or vellum documents delivered by the Authority to the Contractor which bear the appropriate seal and signatures. The Authority will provide one electronic copy on CD ROM of the following documents to the Contractor at no expense. The Contractor shall be responsible for supplying all Subcontractors or themselves with additional copies of documents at their own expense.

1. Conformed Contract (Except Attachments and Drawings)
2. Conformed Contract Drawings
3. Change Notice/Change Order Contract Documents (Except Drawings)
4. Change Notice/Change Order Contract Drawings

Prior to all electronic files provided by the Authority are provided only as an accommodation to Contractor for the production of the Contractor Shop Drawings, Working Drawings and other documents. Prior to their use, the Contractor shall confirm that all information on the electronic files is identical to the hardcopy Contract Drawings. All indications of design consultant's (and its subconsultants') involvement shall be removed by the Contractor from each electronic display and shall not be included in any prints produced from these documents.

Electronic files can be modified, either unintentionally or otherwise, and information contained in these files can be used in a manner for which they were not originally intended. The Authority makes no representation that the files, after delivery, will remain an accurate representation of the Contract Documents, or are suitable for any other purpose or use.

GC-35 SITE INVESTIGATION INFORMATION

Contractor shall take steps reasonably necessary to ascertain the nature and location of the Work, and shall investigate and include in the Contract Price, all general and local conditions that can affect the Work or its cost, including railroad facilities and traffic, the physical constraints of Worksites, as well as from the Contract drawings and specifications. Any failure of the Contractor to take the actions described in this Section shall not relieve the

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 cost to the Authority.

Investigations of surface topography or subsurface conditions are made for the purpose of study and design only, and neither the Authority nor those who conducted such investigations assumes any responsibility whatsoever in respect to the sufficiency or accuracy of the investigations or of the interpretations set forth therein. There is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations are (a) representative of those existing throughout such areas, or that (b) unforeseen developments or conditions may not occur, or that (c) materials other than or in proportions different from those indicated may not be encountered.

Contractor shall reach its own conclusions through its own investigations as to conditions to be encountered throughout the execution of the Work. Except as otherwise provided, the availability or use of existing information by the Authority shall not be construed to relieve the Contractor from any risk, or from properly examining the site and making such additional investigations as it may elect in order to execute the Work in accordance with the Contract Documents.

GC-36 RIGHTS IN SHOP DRAWINGS, WORKING DRAWINGS, TECHNICAL DATA, PATENTS, AND COPYRIGHTS

- A. Shop Drawings and Working Drawings submitted to the Authority by the Contractor, or by its Subcontractors or Suppliers of any tier pursuant to the Contract, are the property of the Authority, and the Authority may use and disclose, in any manner and for any purpose, Shop Drawings, Working Drawings or technical data delivered under the Contract (subject to the Section entitled PUBLIC RECORDS ACT).
- B. Technical data, as used herein, means any form or format of technical writing, pictorial reproductions, drawings or other graphic representations, and documents of a technical nature, including computer software and program listings, which are developed or required to be delivered pursuant to the Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Technical data includes, but is not limited to, the following:
 - 1. Manuals, instructional materials, or information prepared for installation, operation, maintenance, or training purposes
 - 2. Data pertaining to items, components, or processes that were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements
 - 3. Computer and microprocessor software documentation, including program design language or pseudo-code listings, fully annotated source code, and

machine-level listings, but excluding computer software required to be developed pursuant to the Contract.

The Authority shall have the right to use, duplicate, modify, or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so except as limited by the Section entitled PUBLIC RECORDS ACT.

- C. The Contractor shall agree to grant to the Authority, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, worldwide, non-exclusive license in perpetuity to publish, translate, reproduce, deliver, modify and use as it deems fit all technical data covered by copyright supplied for the Contract. No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Authority to use such in the manner herein described. The Contractor shall secure and deliver to the Authority the written permission for third parties claiming patent, copyright, or proprietary rights in technical data for the Authority to use such technical data in the manner herein described.
- D. The Contractor warrants that the equipment, materials, or devices used on or incorporated into the Work shall be delivered free of any rightful claim of any 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 any indemnified party, the Contractor shall defend, indemnify, and hold harmless the indemnified parties and shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by the Authority, and bear all damages and costs associated therewith. The Contractor shall promptly submit to the Authority a reasonably detailed written report on each claim of infringement, based on its knowledge of the performance of the Contract. In the event of any claim against an indemnified party on account of any alleged infringement arising out of the performance of the Contract, or out of the use of any materials or equipment furnished or Work performed hereunder, the Contractor shall submit to the Authority 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.
- E. The Contractor shall bear all costs arising from the use of patented equipment, materials, devices, or processes used on or incorporated into the Work. When use of such equipment, materials, devices, or processes is judged to be an infringement and such use is banned, the Contractor, at its own expense, shall, with the concurrence of the Authority, do one of the following:
 - 1. Secure for the Authority the right to continue using said equipment, materials, devices, or processes by suspension of the injunction or by procuring a license(s);

2. Replace said equipment, materials, devices, or processes with non-infringing equipment, materials, devices, or processes;
3. Modify said equipment, materials, devices, or processes so that they become non-infringing; or
4. Remove said equipment, materials, devices, or processes and refund the sum paid therefore without prejudice to any other rights of the Authority.

The preceding sub-section shall not apply to any equipment, materials, or devices manufactured to the detailed design of the Authority contained in the Contract Documents.

GC-37 AS-BUILT INFORMATION

The Contractor shall update the Contract Documents, drawings, specifications, and Shop Drawings as necessary, or as otherwise specified to record As-built conditions.

The Contractor shall record new information which is recognized to be of importance to the Authority's safe and effective operational use and maintenance of the Project, although not shown on either the Contract Drawings or on Shop Drawings. Throughout the duration of the construction work, this set of As-built documents shall be the responsibility of the Contractor to maintain as a record of (a) all field changes, including concealed work, which are installed in locations other than those indicated on the Contract Drawings; (b) those installations that have been indicated to be field run as located, and (c) as confirmation of all other installations that are placed in accordance with the Contract Drawings. Field information shall be located on the drawings dimensionally from a fixed point, such as a street-curb line, or centerline, milepost, or a permanent structure. The Contractor shall provide access to As-built documents for Authority reference and review throughout the duration of the Contract. The Contractor shall update the As-built documents and the Authority will review the As-built documents for progress and accuracy at regularly scheduled job progress meetings. Authority approval of the As-built documents shall be obtained prior to the Contractor submitting monthly progress invoices for payment by the Authority.

As-built documents shall be protected from deterioration and loss in a secure, fire- and water-resistive location. A complete set of As-built drawings shall be provided to the Authority within twenty (20) working days after substantial completion and prior to submittal of the Contractor's final invoice.

This set of As-built documents shall include the following:

1. Date of as-built change
2. Drawing (or specification) page number
3. Description of as-built change

4. Changed by whom
5. Document changed by whom

SITE CONDITIONS AND USE

GC-38 RESPONSIBILITY FOR WORKSITE

The Contractor shall carefully examine the Worksite and shall ascertain the nature and general and local conditions of the Worksite that can affect the performance of Work or its cost, including the location of railroad facilities, the nature of railroad traffic, and the physical constraints of Worksites.

The Contractor is in full charge of and responsible for the Worksite. No other operations of any nature shall be performed by the Contractor except as specifically authorized in the Contract Documents or as authorized by the Authority.

GC-39 DIFFERING SITE CONDITIONS

The Contractor shall immediately upon discovery, and before the conditions are further disturbed, notify the Authority in writing of the following: (1) subsurface or latent physical conditions at the Worksite differing materially from those indicated in the Contract Documents; (2) unknown physical conditions at the Worksite, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; or (3) material that the Contractor believes may be hazardous waste, as defined in California Health and Safety Code 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law which is not already identified as hazardous material in the Contract Documents. Such notification shall document the incident and subsequent action(s).

In the event conditions as described above are discovered, the Contractor shall continue to diligently prosecute the Work in the other portions of the Worksite not affected by such conditions. The Contractor shall also use its best efforts to prevent or minimize delays or disruptions to the affected portions of the Worksite.

If the Contractor discovers underground facilities not indicated in the Contract Documents and whose presence is not inferred from the presence of visible facilities, the Contractor shall immediately notify the Authority. The Authority will promptly investigate the purported differing site conditions. If in the sole discretion of the Authority, it finds that such conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made and the Contract will be modified in accordance with the change order procedures set forth herein. In the event of any dispute between the Authority and the Contractor over the significance or existence of the changed conditions, the Contractor shall not be relieved from completing the Work within the Contract Time

set forth herein, but shall retain such rights as provided elsewhere in these Contract Documents.

The Contractor shall not be entitled to a contract modification for conditions identified herein unless the Contractor has given the prompt notice required by the Contract Documents.

GC-40 HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL, AND SCIENTIFIC DISCOVERIES

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

GC-41 RIGHTS OF WAY

Rights of way, easements, or rights of entry for the Worksite will be provided by the Authority only as indicated in the Contract Documents. The Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of work areas and facilities temporarily required which are necessary in addition to those provided by the Authority. These agreements shall be written in accordance with the General Condition requirements that the Contractor indemnify and hold the Authority harmless for all claims for damages caused by use of such actions. The Contractor shall produce evidence that agreements are in place before the Contractor occupies those areas.

The Contractor shall make no arrangements with any person or entity to permit occupancy or use of any land, structure, or building within the limits of the Worksite shown on the Contract Drawings for any purpose whatsoever. The Contractor shall not occupy Authority-owned property outside the limits of the Worksite shown on the Contract Drawings without obtaining prior approval from the Authority.

GC-42 COORDINATION WITH OTHERS

The Contractor shall not have exclusive access to or use of Worksite areas shown on the Contract Drawings. The Authority may undertake or award other contracts for other work at or adjacent to the Worksite. The Authority may also require that certain facilities and areas be used concurrently by the Contractor and others. The Contractor shall afford access and cooperate with other contractors, including coordinating its Work with the work of these other labor forces and equipment, including employees of the Authority and its Authorized Representatives, other contractors and subcontractors, utilities working at or adjacent to the Worksite, operating trains, or personnel inspecting or maintaining the railroad during the Contractor's period of performance for execution of the Work. The

Contractor shall reviewed the Contract Documents and all other pertinent information made available by the Authority that relate to the nature and scheduling of other contracts that may be awarded and shall include in the Contract Price all costs necessary to coordinate its Work with that of other contractors.

The Authority will endeavor to advise the Contractor of the known schedules of others. However, the Contractor must anticipate that its Work may be interrupted or delayed from time to time on account of the concurrent activities of others. The Contractor shall fully cooperate with the Authority and others to avoid interrupting or delaying their activities and to promote the orderly completion of the Work as a whole. The Contractor shall provide a reasonable opportunity for delivery, handling, and storage of equipment and materials required for the performance of such other work as is necessary. The Contractor shall not be entitled to a Contract Modification for coordination or concurrent use of any Worksite.

The Contractor shall cooperate and communicate with any Contractor performing work that may connect, complement, or interfere with the Contractor's Work, and make a good-faith effort to resolve any disputes or coordination problems with such contractor. If any part of the Contractor's Work depends on the work of any other contractor or the Authority for proper execution or results, the Contractor shall promptly notify the Authority of any discrepancies or defects in said other work that would render its Work unsuitable for proper execution or results. This notification shall be provided prior to the Contractor proceeding with its own Work. At the Authority's sole discretion, the Authority may intervene to resolve coordination and access problems.

GC-43 PROTECTION OF EXISTING VEGETATION

The Contractor shall preserve and protect existing vegetation (such as trees, shrubs, and grass on or adjacent to the Worksite) which is not indicated to be removed and which does not unreasonably interfere with the Work. Any vegetation, shrubs, and grass damaged by Contractor or by anyone acting on behalf of Contractor shall be replaced at Contractor's sole expense, and to the satisfaction of the Authority.

GC-44 PROTECTION OF UTILITIES, STRUCTURES AND IMPROVEMENTS

- A. The Contractor shall protect from damage utilities, foundations, walls, or other parts of adjacent, abutting, or overhead buildings, railroads, bridges, structures, and surface and subsurface structures at or near the Worksite, and shall be responsible for the repair or restoration of any such facilities when damage results from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the Work. If the Contractor fails or refuses to repair any such damage promptly, the Authority may have the Work performed and issue a deductive Change Order to the Contractor for all related costs.

- B. In order to avoid damage that might result in expense, loss, disruption of service, or other undue inconvenience to the public or to the Authority, the Contractor shall not commence Work where the Contractor's operations are adjacent to utility facilities until all arrangements necessary for their protection are in place. This protection shall include maintenance of all utility facilities placed by the Contractor in temporary locations, and all utilities that are shored or supported by the Contractor during construction. The Contractor shall be solely and directly responsible to the Authority and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay caused by the Contractor's operations. Unless there are exigent circumstances, the Contractor shall not repair or attempt to repair utility damage caused by the Contractor, but shall immediately contact the utility and the Authority.
- C. The Contractor shall obtain the name, address, and telephone number of each utility company that the Work will affect, and the person in such utility company to contact, and provide the Authority said names, addresses, and telephone numbers.
- D. The Contractor shall be responsible for determining the exact location of aboveground utilities and facilities that may affect or be in conflict with the Work. The Contractor shall survey all utilities and facilities, including power, telephone, communication, and cable television facilities, where the location or height may affect the Contractor's construction operations. At a minimum, the Contractor shall survey the location, height, and alignment of overhead utility lines where any construction equipment will be operated within 30 feet of the overhead utility lines. Contractor shall comply with overhead utility Authority's clearance and other requirements for safety and protection of overhead lines.
- E. The Contractor shall maintain access to fire hydrants and fire alarm boxes throughout the prosecution of the Work. Hydrants, alarm boxes, and standpipe connections shall be kept clear and visible unless approved in writing otherwise. If visibility cannot be maintained, the Contractor shall provide clearly visible signs showing the location of fire hydrants, alarm boxes, and standpipe connections.
- F. The Contract Price shall include all costs which may be caused by the need to remove or relocate existing public utilities or other structures, including public utilities or other structures identified at the time of bid. Except as provided in the California Government Code specifically relating to existing main or trunk line utility facilities, the Contractor's sole remedy resulting from any unreasonable delay or removal and/or relocation of such utilities will be an adjustment in accordance with the provisions of Section entitled CHANGES.

GC-45 PRESERVATION AND PROTECTION OF PROPERTY

The Contractor shall be responsible for the protection of public, private, and Authority property adjacent to and within the Worksite, and shall be responsible for bearing the cost and performing the repair work necessary to restore or repair damaged areas.

Due care shall be exercised to avoid injury to existing improvements or facilities on and adjacent to Authority property. The Contractor shall provide and install suitable safeguards to preserve and protect properties adjacent to the Worksite from injury or damage. If such properties are injured or damaged by reason of the Contractor's operations, they shall be immediately restored at the Contractor's sole expense to a condition as good as when the Contractor entered upon the Worksite. The Authority may make or cause to be made such temporary repairs as are necessary to restore to service any damaged property, and the cost of such repairs shall be included in a deductive Change Order.

CONTRACTOR'S DUTIES AND PERFORMANCE OF WORK

GC-46 SERVICES PROVIDED BY THE CONTRACTOR; FAMILIARITY WITH CONTRACT DOCUMENTS

The Contractor shall be responsible for coordinating the Work as described in the Contract Documents. Related Work interfaces as described in individual sections of the Specifications are for the Contractor's guidance and assistance only, and shall not relieve the Contractor from identifying and coordinating all the related Work items and interfaces that are required for the execution of all Work. Similarly, the lack of any such descriptions shall not relieve the Contractor from the responsibility of identifying and coordinating the related Work.

It shall be the responsibility of the Contractor to be thoroughly familiar with all details of the Work, including the work of the Contractor's forces and all Subcontractors of any tier. The Contractor shall notify the Authority in writing within twenty-four (24) hours of discovery and before any Work is performed of the following:

- A. Errors, in adequate descriptions, or omissions in the Contract Documents, including, but not limited to, code violations, typographical errors, and notational errors where ambiguity or inadequate description exists;
- B. Required Work which, if so constructed, could result in a conflict or interference with other Work or the Work of other trades, including the location of fixtures and equipment;
- C. Existing improvements visible at the job site, for which no existing disposition is made in the Contract Documents but which could reasonably be assumed to interfere with the satisfactory completion of the improvements contemplated by the Contract Documents.

D. Differing Site Conditions as described herein.

Failure to notify shall constitute a waiver by the Contractor of any claim for delay or other damages resulting from such defect. If the Contractor proceeds with the Work without instructions from the Authority, the incorrect Work shall be removed and corrections made to comply with the Authority's instructions, at no cost to the Authority.

The Contractor shall furnish and maintain on-site reference material, including at least one copy of all applicable codes referenced in the Contract Documents necessary for the performance of the Work specified.

GC-47 INDEPENDENT CONTRACTOR

The Contractor shall be an independent contractor. The Contractor is not an agent of the Authority in the performance of the Contract, and shall maintain complete control over its employees and its Subcontractors and Suppliers of any tier. Nothing contained in the Contract or any subcontract awarded by the Contractor shall create any contractual relationship between any Subcontractor and the Authority. The Contractor shall perform the Work in accordance with its own methods and in compliance with the terms of the Contract.

GC-48 EXECUTION OF WORK

- A. The Contractor represents that it is fully experienced and properly qualified to perform the class of Work required for the Contract and that it is properly licensed, equipped, organized, and financed to perform the Work. The Contractor shall be solely responsible for the selection and implementation of all construction means, methods, techniques, sequences, and procedures, and for coordination and supervision of all portions of the Work under the Contract. The Contractor shall be solely responsible for the safety of its employees and third parties.
- B. The Contractor shall furnish materials, tools, equipment, incidentals, facilities, and sufficient labor (including extra crews), and shall work such hours (including extra shifts and overtime operations) so as to prosecute the Work to completion in accordance with requirements of the Contract Documents. Except as specifically authorized in writing by the Authority, the Contractor is not authorized to perform Work until the effective date of the Notice to Proceed or if applicable, the Limited Notice to Proceed, at which time the Contractor shall commence Work and diligently prosecute the Work to completion within the time limits specified.
- C. Contractor shall be responsible to Authority for acts and omissions of Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees and other persons performing portions of the Work under direct or indirect contract with Contractor or any of its Subcontractors.

- D. When the Contractor has more than one Contract with the Authority, each Contract shall be independent of all others as to field offices, field staff, and superintendence. The interchange or transfer of equipment to other Contracts within the SCRRRA projects must not interfere with on-time performance of the Work of all affected Contracts. The Authority reserves the right at all times, to limit or discontinue the Contractor's interchange or transfer of equipment between Contracts, and may require that prior written approval be obtained.
- E. The Contractor represents and warrants that its prices do not violate the anti-dumping or countervailing duty laws of the United States, including but not limited to 19 U.S.C. 1671 et seq., as amended, and agrees to pay any duties or other penalties assessed under such laws. The Contractor agrees to defend, indemnify and hold harmless the Authority from any loss or expense, including but not limited to attorneys' fees that the Authority may incur from any Claim, demand, or investigation of alleged violation of said laws.
- F. If the Contractor anticipates using any vehicles or equipment over 20,000 pounds (loaded) during the performance of the Work, dimensions and weights of such equipment shall be submitted to SCRRRA for approval prior to use.

GC-49 CONTRACTOR'S PROJECT MANAGER

- A. The Contractor shall designate in writing a Project Manager at the Worksite, who shall provide competent supervision of the Work until its completion. The Contractor's Project Manager or alternate shall be present at the Worksite at all times while Work is in progress. Failure to observe this requirement constitutes a suspension of the Work by the Contractor, until such time the Contractor's Representative or alternate is again present at the Worksite. Whenever the Work is defined as being suspended under the provisions of this Section, any such suspension shall constitute just cause for the Authority to terminate the Contract under the provisions of "Termination of Contract for Cause" of these General Conditions.
- B. Before starting Work, the Contractor shall designate in writing the name, qualifications, experience, per Project Specific Specifications 01 43 23 and any limits of authority of its proposed Project Manager. Upon approval by the Authority, the Contractor's Project Manager shall be empowered to represent, act for, and sign for the Contractor in all matters related to the Contract. The Contractor shall provide the Authority with a written statement identifying this Contract authority, and signed by an officer or a person otherwise authorized by the Contractor's owner or Board of Directors to bind the firm. In the case of a joint venture, an officer of each firm shall sign this statement of Contract authority. All directions given by the Authority to said Contractor Project Manager or alternate shall be considered as having been given to the Contractor.

- C. The Authority reserves the right to remove the Contractor's Project Manager or alternate, who in the sole opinion of the Authority, has demonstrated incompetence, lack of ability, or other unsuitability to perform supervision of the Work. If the Contractor's Project Manager leaves the employ of the Contractor, the Contractor will be required to immediately replace the individual and fulfill the requirements of this Section within fifteen (15) calendar days. In no event shall any Work proceed in the absence of an approved representative.
- D. Should the Contractor wish to reduce the Contractor's Representative's level of effort to part-time, it may do so only with prior written approval of the Authority. The Authority at its sole discretion may rescind such acceptance of reduction in level of effort for any reason.

GC-50 DAMAGE TO WORK AND REPAIRS

The Contractor is solely responsible for loss or damage to any and all parts of the Work from whatever cause, whether arising from the execution or from the non-execution of the Work. The Contractor at its sole expense shall properly rebuild, repair, or restore work, equipment, and materials that have been damaged or destroyed from any causes prior to issuance of the Certificate of Final Acceptance, whichever occurs first. The suspension of the Work from any cause whatever shall not relieve the Contractor of responsibility for protection and maintenance of the Work as specified herein. The Contractor shall be responsible for Materials not delivered to the Worksite for which any progress payment has been made to the same extent as if the Materials were so delivered.

GC-51 EMERGENCIES AND EXTRAORDINARY WORK

The Contractor shall notify the Authority and the Engineer immediately of any emergency creating an imminent hazard to persons, or threatening the loss of or damage to property. In the absence of specific instructions from the Authority, Engineer or an Authority Representative, as to the manner of dealing with the emergency, the Contractor shall take appropriate action at its own discretion and immediately notify the Engineer of the emergency action taken. As emergency work proceeds, the Authority, Engineer or Authority Representative may issue specific instructions, which the Contractor shall follow. Failure to comply with written direction from the Engineer or Authority Representative may result in additional costs incurred by the Authority to respond to the emergency. Such additional costs, including mobilizing other forces or contractors, will be included in a deductive Change Order to the Contract.

SUBCONTRACTING

GC-52 SUBCONTRACTORS AND SUPPLIERS

- A. The Contractor with its own forces shall perform a minimum of 30% of all Work under this Contract. Where a percentage of the Work is to be subcontracted, the

dollar value shall be based on the estimated cost of such Work, determined from information submitted by the Contractor and subject to written acceptance by the Authority. The labor, materials, and construction equipment furnished by other than the Contractor's forces shall be considered as being subcontracted, with the exception of Work performed under an equipment rental contract and for direct purchase of materials through vendors/suppliers.

- B. The organization of the Contract into divisions and sections, as well as the arrangement and titles of 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.
- C. The Contractor shall be fully responsible to the Authority for all acts and omissions of its own employees and of Subcontractors, Suppliers and their employees. The Contractor shall also be responsible for coordinating the Work performed by Subcontractors and Suppliers.
- D. When a portion of the subcontracted Work is not performed in accordance with the Contract, or if a Subcontractor commits or omits any act that would constitute a breach of the Contract, the Subcontractor shall be replaced at the request of the Authority and shall not again be employed on the Work.
- E. Contractor shall not allow a Subcontractor to perform Work at the Worksite until the Contractor has supplied satisfactory evidence of required insurance to the Authority, in compliance with the Special Conditions Section entitled INSURANCE REQUIREMENTS.
- F. The Authority may determine that it is in the best interest of the Authority (e.g., to enhance system-wide maintenance and operational reliability), for materials and equipment of a specific type or manufacture to be required, or that a portion of the Work requires the expertise of a specific Subcontractor. When such determination is made, said materials and equipment shall be employed, or said Subcontractor shall be retained, for the construction and completion of the Work by the Contractor. Such actions will be reflected in the Article of the Special Conditions entitled "Approved Subcontractors and Suppliers."
- G. The Contractor shall incorporate the following into each Subcontract and require insertion of same into all lower-tier Subcontracts:
 - 1. All Sections, subsections, or portions of the Contract shall be included in all Subcontracts of any tier.
 - 2. All provisions required by law, regulation, rule, or the Contract to apply to Subcontractors shall apply to all Subcontracts of any tier.
- H. By virtue of signing the Subcontract, the following apply:

1. The Subcontractor acknowledges and agrees that the Subcontractor shall assume toward the Contractor all of the obligations and responsibilities that the Contractor assumes toward the Authority under the Contract between the Contractor and the Authority ("Prime Contract"), and shall perform all Work to be performed by the Subcontractor under this subcontract in accordance with the Prime Contract, which is incorporated by reference into and made part of this subcontract. Nothing contained in the Prime Contract shall create any Contractual relationship between the Subcontractor and the Authority.
2. The Subcontractor agrees that it shall have the same duties and obligations to the Contractor with respect to its performance of its own Work as the Contractor has to the Authority under its Contract.
3. The Contractor and the Subcontractor agree that the Authority is the third-party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the subcontract for its own benefit. All guarantees and warranties, express or implied, shall inure to the benefit of both the Authority 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 the Authority.
4. The Contractor and the Subcontractor agree that nothing contained in the subcontract shall be deemed to create any privity of Contract between the Authority and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of the Authority to the Subcontractor except those allowed under California law. In the event of any claim or dispute arising under the subcontract or the Contractor's Contract with the Authority, the Subcontractor shall look only to the Contractor for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against the Authority arising out of the subcontract.

GC-53 SUBSTITUTION AND APPROVAL OF SUBSTITUTIONS OF SUBCONTRACTOR

The Contractor shall notify the Authority in writing of any request to substitute a Subcontractor in place of a Subcontractor listed in the Contractor's Bid. Any substitution of a Subcontractor by the Contractor whose bid has been accepted by the Authority will follow the procedures described in California Public Contract 4107 and all other applicable statutory requirements, if any.

Contractor shall submit at least the following information as part of its request for any substitution of a Subcontractor:

1. Name of the Subcontractor
2. Location and phone number of place of business

3. Contact person
4. Contractor's license(s) number and expiration date
5. DBE/MBE/WBE/Local Owned status (if applicable)
6. The portion of the Work that will be performed by each Subcontractor and its dollar value
7. Reason(s) for the proposed substitution

Substitution of a DBE subcontractor, supplier or broker will require the Contractor to follow DBE Substitution procedures and cannot be finalized until approval is provided in writing from the Authority.

GC-54 DEBARMENT

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

In accordance with Public Contracts 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 Authority. 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.

EMPLOYMENT PRACTICES

GC-55 LABOR COMPLIANCE AND PAYMENT OF PREVAILING WAGES

- A. Contractor shall comply with all provisions of the Labor Code of the State of California, including, without limitation, employment and training programs established by the State of California Department of Industrial Relations – Division of Apprenticeship Standards, pursuant to California Labor Code, Part 7, Chapter 1, Article 2, Sections 1773 and 1773.1. However, if any Work is federally assisted, then Federal labor standards, including the Davis-Bacon requirements, must also be complied with and will also be enforced.
- B. Under the provisions of said Labor Code, the State Department of Industrial Relations will ascertain the prevailing hourly rate in dollars and details pertinent thereto for each craft, classification, or type of workers or mechanic needed to execute any Contract which may be awarded by the awarding entity. For the purpose of the Contract, the wages required to be paid for all classifications will be the prevailing wage rate for the County in which the Work is located. If federally assisted, then the U.S. Department of Labor will ascertain the prevailing hourly

rate. However, if Federal and State wage rates are applicable, then the higher of the two will prevail.

- C. Particulars of the current prevailing wage scale, which are applicable to the Work contemplated under these specifications, are filed with the awarding entity and the Department and must be posted at the Worksite.
- D. The Contractor and any Subcontractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Contractor and any Subcontractor shall, as a penalty, forfeit to the state or political subdivision not more than \$50 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the Director of Industrial Relations for the work or craft in which the worker is employed under the contract. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of whether the failure to pay the correct rate of per diem wages was due to the Contractor's good-faith mistake, and on the previous record of the Contractor or Subcontractor in meeting their respective prevailing wage obligations. In addition to said penalty, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or Subcontractor.
- E. If a worker employed by a Subcontractor on a public works project, as defined by Labor Code Section 1720, is not paid at least the general prevailing per diem wages by the Subcontractor, the Contractor shall not be liable for the penalties described above unless the Contractor had knowledge of that failure of the Subcontractor to pay the specified prevailing rate of wages to those workers, or unless the Contractor fails to comply with all of the following requirements:
 - 1. The contract executed between the Contractor and the Subcontractor for the performance of Work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
 - 2. The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the Subcontractor to its employees, by periodic review of the certified payroll records of the Subcontractor.
 - 3. Upon becoming aware of a Subcontractor's failure to pay at least the specified prevailing rate of wages to the Subcontractor's workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the Subcontractor for work performed on the public works project.
- F. Prior to making final payment to the Subcontractor for work performed on the public works project, the Contractor shall obtain an affidavit signed under penalty of

perjury from the Subcontractor that the Subcontractor has paid at least the specified general prevailing rate of per diem wages to the Subcontractor's employees on the public works project, and any amount due pursuant to Section 1813 of the Labor Code.

- G. Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify the Contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a Subcontractor on that public works project to pay workers at least the general prevailing rate per diem wages. If the Division of Labor Standards Enforcement determines that the employees of a Subcontractor were not paid at least the general prevailing rate of per diem wages, and if the Authority did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Contractor shall withhold an amount of money due the Subcontractor sufficient to pay those employees the general rate of per diem wages if required by the Division of Labor Standards Enforcement. The Contractor shall pay any money retained from and owed to a Subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wages complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the Contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, the Contractor shall pay all money retained from the Subcontractor to the Authority. This money shall be retained by the Authority pending the final decision on an enforcement action.
- H. Prevailing wage rates for this project are available at the Department of Industrial Relations (DIR's) Web site www.dir.ca.gov/dlsr/pwd/index.htm. If federally funded, the federal wage determinations are available at www.wdol.gov. In the event that the Contractor intends to utilize categories of workers different from, or in addition to, those anticipated by the Authority, it shall be Contractor's responsibility to bring such categories of workers to the Authority's attention immediately, and to obtain the appropriate wage rates (Refer to Title 8, California Code of Regulations, Section 16202.)
- I. The Contractor shall post general prevailing wage rates at a prominent place at the site of the work.
- J. Pursuant to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204, changes in general prevailing wage determinations shall apply to the project only if issued by the Director of Industrial Relations prior to the date of the Authority's invitation for bids.
- K. Contractor and all Subcontractors shall submit certified labor compliance reports during the course of the Contract in accordance with California and Federal statutes and regulations. The Authority reserves the right to modify reporting forms/requirements as it deems appropriate.

GC-56 COORDINATION WITH CALIFORNIA PREVAILING WAGES

When both California and Federal prevailing wage rates apply, the Contractor and any Subcontractors shall pay their workers the higher of the two rates. To the extent that Federal contract requirements and provisions and California law are inconsistent, the Contractor is responsible for complying with the more comprehensive or stricter requirements. The Contractor and any Subcontractors shall insert this clause in any lower-tier contract. Federal prevailing wages, if applicable, are contained in the Special Conditions.

GC-57 PREVAILING RATES FOR SIGNAL WORK

The Work may require the performance of Railroad signal work. There are currently no general prevailing wage determinations for railroad signalmen issued by the California Department of Industrial Relations (DIR), as this is not a separately recognized category of work. The DIR has advised that railroad signal work should be paid the prevailing wage rates applicable to electricians. In particular, work involving the installation of conduit and track switches should be compensated at no less than the rate of pay for Electrician: Inside Wireman, and the installation of conduit less than ten (10) feet in length should be compensated at no less than the rate of pay for Electrician: Communication and System Installer. In addition, finishing of structural concrete in connection with signal work should be paid in accordance with the prevailing wage rates for Cement Mason, and excavation and trenching in connection with signal work should be paid in accordance with the prevailing wage rates for either Operating Engineer (Heavy and Highway Work) or Laborer.

GC-58 APPRENTICESHIP REQUIREMENTS

The Contractor shall fully comply with the requirements of Sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with Section 1777.5, the Contractor shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. The Contractor shall require each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work to comply fully with Sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

GC-59 LABOR DISPUTE

Should a labor dispute directed primarily or secondarily at the Contractor occur on, at, or near the Worksite, the Contractor shall take all necessary steps to ensure that such labor dispute does not disrupt, interfere with, hamper, interrupt, or delay the progress of the Work. Such steps shall include but not be limited to seeking and obtaining legal relief from

any and all appropriate federal, state, or local agencies, and from any and all appropriate federal or state courts.

The Contractor shall be responsible for complying with any and all of the foregoing at its sole cost and expense, without any increase in compensation or time for performance of Work on account of such compliance, and regardless of whether such compliance would require additional labor, equipment, or materials not expressly provided for in the Contract Documents.

For purposes of this provision, a "labor dispute" is defined as any concerted or non-concerted activity that does or could potentially disrupt, interfere with, hamper, interrupt, or delay the progress of the Work. Such term includes but is not limited to a refusal to work; strike; inter- or intra-union jurisdictional dispute; sympathy strike; slowdown; work stoppage; withholding of labor; honoring of picket line; picketing; hand billing or other notice to the public that a labor dispute exists; interference with the progress of the Work of any kind for any labor-related reason; or boycotts for any purpose or reason, including a dispute between an employer and a labor organization.

The Contractor shall make the obligations of this provision applicable to Contracts entered into with all of its Subcontractors; all Subcontractors of all tiers shall make the obligations of this provision applicable to all of their Subcontractors. Nothing in these clauses shall be interpreted to preclude the Authority from independently exercising all lawful remedies.

GC-60 PAYROLL RECORDS

- A. The contractor shall fully comply with the provisions of Labor Code Section 1775 and the Contractor shall be responsible to ensure and all Subcontractors meet the labor compliance requirements of this section. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the

registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

1. The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5. This information shall be submitted in the form specified by the Authority. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors.
 2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - a. That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
 - b. That each Laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR 3;
 - c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
 3. The weekly submission of a properly executed certification as set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section. The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- B. The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by Authorized Representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as

may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- C. The Contractor shall maintain and furnish to the Authority, on a monthly basis with the application for progress payment, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury, as required by the California Labor Code. Contractor shall be responsible for the submission of copies of payrolls of any Subcontractors.

GC-61 EQUAL EMPLOYMENT OPPORTUNITY

This section details the requirements for ensuring compliance with equal employment opportunity requirements.

- A. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract.
 - 1. The Contractor shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of employment, education, or contracting.
 - a. The Contractor shall not discriminate, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, age, religion, color, ethnicity, sex, national origin, ancestry, physical disability, mental condition or marital status.
 - b. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, ethnicity, physical disability, 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 and other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

- B. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§623 and federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.
- C. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.
- D. The Contractor shall provide to the Authority, by the fifteenth (15th) day of each month, the Monthly Employment Utilization Report (MEUR) covering the preceding month's construction activity. This report shall contain information on all personnel on each Authority Contract. Subcontractors shall also provide the same reports, through Contractor, by the fifteenth (15th) day of the month subsequent to the reporting period.

GC-62 LABOR NON-DISCRIMINATION

The Contractor shall comply with Section 1735 of the Labor Code, which states that the Contractor shall not discriminate against any employee who is employed upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age of such persons, except as provided in Section 12940 of the Government Code.

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, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements the FTA may issue.

GC-63 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS

- A. Overtime Requirements. No Contractor or Subcontractor contracting for any part of the Contract Work which may require or involve 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 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 hours in such workweek.

- B. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph A of this section, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such 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 clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for Unpaid Wages and Liquidated Damages. The Authority 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 moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this section.
- D. Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this section.

SUSPENSION OR TERMINATION OF THE WORK

GC-64 SUSPENSION OF WORK

The Authority reserves the right to stop or suspend all or any portion of the Work for such period as the Authority deems necessary. The Contractor shall comply immediately with any written order suspending the Work that it receives from the Authority, and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of Work stoppage. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension or upon direction of the Authority.

Contractor may submit a Request for Change (RFC) for an adjustment in compensation or the time to perform Work. The Contractor may be compensated (not including any anticipatory profit for unperformed Work) or an extension of time granted or both, for

Contractor's costs directly attributable to any suspension issued hereunder, provided that the Contractor makes an approved claim therefore as provided in the Section entitled DISPUTES AND CLAIMS. However, no adjustment shall be made under this Section for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including an act or omission of the Contractor, or for which an equitable adjustment or extension of time is provided for or excluded under any other term or condition of the Contract.

GC-65 TERMINATION FOR CONVENIENCE OF THE AUTHORITY

- A. The performance of the Work under the Contract may be terminated at any time, in whole or in part, as determined by the Authority, at its sole discretion. Such termination will be accomplished by delivery of a Notice of Termination to the Contractor, specifying the extent to which performance of the Work under the Contract shall be terminated and the date upon which such termination shall become effective.
1. After receipt of a Notice of Termination for convenience, except as otherwise directed by the Authority, the Contractor shall take the following steps:
 2. Stop Work under the Contract on the date and to the extent specified in the Notice of Termination.
 3. Terminate all orders and subcontracts of any tier to the performance of the Work terminated by the Notice of Termination.
 4. Place no further orders or subcontracts for construction equipment, materials, or services, except as may be necessary for completion of that portion of the Work that has not been terminated.
 5. Assign to the Authority in the manner, at the times, and to the extent directed by the Authority all of the rights, titles, and interests of the Contractor under the orders and subcontracts so terminated; in which case the Authority will have the right, at its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 6. Transfer title and deliver to the Authority in the manner, at the times, and to the extent directed by the Authority (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies and other material procured as a part of, or acquired in connection with, the performance of the Work terminated; and (ii) the completed or partially completed plans, drawings, information, and other items that would have been required to be furnished to the Authority if the Contract had been completed.
 7. Use its best efforts to sell the property of the types referred to above in the manner, at the times, to the extent, and at the price(s) directed or authorized

by the Authority, providing that (i) the Contractor is not required to extend credit to any purchaser, (ii) the Contractor may acquire any such property under the prescribed conditions, or (iii) the proceeds of any such transfer or disposition are applied or otherwise credited to reduce payments made by the Authority to the Contractor under the Contract.

8. Take any action that may be necessary, or that the Authority 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 the Authority has or may acquire an interest.
 9. Complete performance of that portion of the Work that has not been terminated by the Notice of Termination, as applicable and in accordance with the Contract.
 10. Submit its termination claim to the Authority, in the form and with the certification(s) prescribed by the Authority. The termination claim shall be submitted promptly but in no event later than six (6) months from the effective date of termination, unless one or more extensions are granted in writing by the Authority upon written request of the Contractor during such six-month period or authorized extension thereof. However, the Authority may receive and act upon any termination claim at any time after the six-month period (or any extension thereof) if it determines that the facts justify such action. Upon failure of the Contractor to submit its termination claim within the time specified, the Authority will determine the amount due the Contractor, if any, on the basis of information available, and will pay the Contractor the amount so determined. Such payment shall be in full settlement for Work performed under the Contract.
- B. Subject to the above provisions, the Contractor and the Authority may agree upon the total or partial amount to be paid to the Contractor by reason of the total or partial termination of the Work pursuant to this Section. In the event of failure of the Contractor and the Authority to agree on the total amount to be paid the Contractor by reason of the termination of Work pursuant to this Section, the Authority shall pay the Contractor the amounts determined by the Authority, based on the Unit Prices of Work performed by the Contractor less any amount owed by the Contractor to the Authority.
- C. Under no circumstances shall the Contractor be entitled to anticipatory or unearned profits or consequential or incidental damages as a result of a termination or partial termination by the Authority. The payment to the Contractor determined in accordance with this Section shall constitute the exclusive remedy of the Contractor for a termination hereunder.

- D. A termination under this Section shall not waive any right or Claim to damages that the Authority may have against the Contractor; the Authority may pursue any cause of action that it may have under the Contract, at law or equity.

GC-66 TERMINATION FOR CAUSE

- A. The Authority may terminate the Contractor's Work, in whole or in part, for cause under any of the following circumstances:

1. Failure of the Contractor to perform any obligation required under the Contract or violation of any duty required of the Contractor under the Contract.
2. Bad faith or fraud by the Contractor
3. Violation of an authorized order or requirement of the Authority by the Contractor
4. Abandonment of the Contract
5. Assignment or subcontracting of the Contract or any Work hereunder without the prior written approval of the Authority
6. A filing by or against the Contractor of a petition in bankruptcy, reorganization, insolvency, conservatorship or similar proceeding
7. Failure of the Contractor to pay any of its debts owing to any parties performing Work on behalf of the Contractor as they become due, providing that such failure continues for a period of ten (10) working days after written notice to the Contractor by the Authority.
8. The attachment, levy, execution, or other judicial seizure of any portion of the Contractor's property, or any substantial portion of the other assets of the Contractor, which is not released, expunged, or discharged within a period of ten (10) working days.
9. Material failure to comply with any federal, state, or local law, ordinance, rule, regulation, or order of a legal authority applicable to the Contractor, the Work, or the Contract.
10. Failure to indemnify, defend, or hold harmless any party that the Contractor is obligated to indemnify under the Section entitled LIABILITY AND INDEMNIFICATION herein and elsewhere under the Contract.
11. Failure to promptly replace rejected material or correct rejected workmanship.
12. Conviction of the Contractor or any of its officers, partners, principal, or employees for a violation of any federal, state, or local safety law or

regulation, or for a crime arising out of, or in connection with, the Work to be done or payment to be made under the Contract.

13. The Contractor's refusal or failure to diligently prosecute the Work, or any separable part thereof, to ensure its completion within the time specified in the Contract or any extension thereof, or refusal or failure to complete such Work within such time.
- B. If the Contractor is in default of the Contract as determined by the Authority, the Authority will so notify the Contractor and the performance bond surety by issuing a Notice of Termination for Contractor's default. If the Contractor fails to remedy or commence to remedy the default within the time stated by the Authority in the Notice of Termination, the Authority may terminate the Contractor's right to proceed with the Work, or that portion of the Work as the Authority determines is most directly affected by the default, at its sole discretion. Whether or not the Contract is terminated, the Contractor and its surety shall be liable for any damage to the Authority resulting from the Contractor's refusal or failure to complete the Work in conformance with this Contract.
- C. Immediately upon receipt of a Notice of Termination for Contractor's default from the Authority, the Contractor shall:
1. Stop all Work under the Contract on the date and to the extent specified in the Notice of Termination.
 2. Place no further orders or subcontracts for construction equipment, materials, or services except as may be necessary for completion of such portions of the Work expressly excluded from the Notice of Termination.
 3. Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and other parties at any tier.
 4. Terminate all orders and subcontracts to the extent that they relate to the performance of Work covered by the Notice of Termination.
 5. Comply with all other requirements of the Authority as may be specified in the Notice of Termination.
- D. Upon the Authority's termination of the Contractor's right to proceed with the Work because of the Contractor's default under the Contract, the Authority shall have the right to complete the Work by whatever means and methods it desires. The Authority shall have the right to take possession of and use any or all the Contractor's materials, plant, tools, equipment, and property of any kind at the Worksite, provided by or on behalf of the Contractor for the purpose of accomplishing the Work, or any portion thereof, without being responsible to the Contractor for wear and tear. The Contractor shall have no rights in such property during its use by the Authority. The Contractor shall not be hired by the surety to

complete the work for which the Contractor was defaulted. The Authority will not be required to obtain the lowest prices for completing the Work, but shall make such expenditures that, in the Authority's sole judgment, best accomplish such completion.

- E. The expense of completing the Work, together with a charge for engineering, managerial, and administrative services, may be charged to the Contractor and the surety. The Authority may deduct said amount out of such monies that may be due or may at any time thereafter become due the Contractor. In case such expense is in excess of the sum that would otherwise have been payable to the Contractor under the Contract, the Contractor or its surety shall promptly pay the amount of said excess to the Authority upon notice thereof. The Authority may, at its sole discretion, withhold all or any part of any progress payments or other monies otherwise due the Contractor until completion and final settlement of the Work covered by the Notice of Termination.
- F. 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 Section, except with the written consent of the Authority.
- G. If the Contract is terminated as specified in this Section, the resulting damage owed by Contractor to Authority may include, but not be limited to, any and all direct, consequential, or incidental damages; any increased costs incurred by the Authority in completing the Work; and amounts paid to third parties by the Authority on account of any claims made against the Authority relating to the Work.
- H. The Authority may require that the Contractor transfer title to and deliver the following items to the Authority as directed: any Work in progress, supplies, materials, installations, parts, tools, dies, jigs, fixtures, plans, drawings, information, Contract rights, and other items that the Contractor has specifically produced or acquired for the terminated portion of the Contract and that would have been required to be furnished to the Authority if the Contract had been completed. The Contractor also shall, at its sole expense, protect and preserve property in its possession in which the Authority has an interest.
- I. If, after Notice of Termination for Contractor's default, it is determined for any reason that the Contractor was not in default under the provisions of this Section, or that the Contractor was entitled to an extension of time under the Section entitled Period of Performance, the rights, obligations, and remedies of the parties shall be the same as if the Notice of Termination had been issued pursuant to the Section entitled Termination for Convenience by the Authority.
- J. The right to terminate for default and any other rights and remedies of the Authority specified in this Section are in addition to any other rights and remedies allowed under the Contract, at law or by equity.

GC-67 COOPERATION IN THE EVENT OF TERMINATION

Contractor understands and agrees that the Authority has obligations that it cannot satisfy without use of the completed Work, and that a failure to satisfy its obligations under this Contract could result in irreparable damage to the Authority 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 the Authority in the transition of the Work to the Authority or to a new contractor or provider of goods and services, so that there be no interruption of day-to-day operations due to the unavailability of the completed Work, or due to related or existing facilities to the extent they are affected by the termination of this Contract during such transition.

DISPUTES AND CLAIMS

GC-68 NOTICE OF CLAIMS

In order to dispute, challenge, or receive any recovery or relief under or in connection with the Contract, the Contractor must submit a written notice of intent to claim to the Authority through the Engineer in accordance with the provisions of this Section. Contractor shall strictly follow the provisions of this Section in order to pursue a claim for a time extension, payment of money, or damages arising from Work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or an amount the payment of which is disputed by the Authority. Failure to comply strictly with these requirements shall constitute a waiver by the Contractor of any right, equitable or otherwise, to bring any claim or action against the Authority. All claims shall be filed on or before the date of the Contractor's application for final payment.

The written notice of intent to Claim shall set forth:

1. The reasons for which the Contractor believes additional compensation or time will or may be due, including specific detail of all events, witnesses and facts involving the Claim.
2. The nature of the costs involved.
3. The Contractor's plan for mitigating such costs, and
4. The Contractor's best estimate of the amount of the potential Claim

The notice shall be submitted within fifteen (15) days after the event or occurrence first giving rise to the potential Claim, or the denial of a Request for Change or the issuance of a unilateral Change Order by the Authority. However, if the event or occurrence is claimed to be an act or omission of the Authority, a notice of intent shall be given by the Contractor prior to the time for performance of that portion of the Work to which such alleged act or omission relates.

The Contractor shall continue to work during the claim resolution process in a diligent and timely manner, as directed by the Authority and pursuant to the provisions of the Contract. The Contractor shall maintain cost records of all Work that is the basis of any claim, in the same manner as is required for changed work.

GC-69 SUBMISSION OF CLAIMS

- A. All claims shall be submitted in writing to the Authority within 30 days after the notice of intent to claim the event or occurrence first giving rise to the potential claim. All claims shall include the following information:
 - 1. Detailed factual statement of the basis for the claim, with all necessary facts, dates, locations, and affected Work
 - 2. Date on which the facts arose giving rise to the claim
 - 3. Name of all Authority and Contractor personnel knowledgeable about the claim
 - 4. Specific provision(s) of the Contract supporting the claim, clearly describing the justification for approval
 - 5. Identification of all documents and oral communication supporting the claim
 - 6. Detailed analysis of a request for an extension of time, if applicable
 - 7. Detailed breakdown of request for additional compensation, if applicable
- B. All claims related to a delay shall include a revised construction schedule reflecting the effects of the delay and proposals to minimize these effects. The Contractor shall maintain cost records of all Work that is the basis of any Claim, in the same manner as is required for changed work in the Section entitled CHANGES.
- C. Contractor shall not submit a claim based in whole or in part on claims of its Subcontractors or Suppliers of material or equipment until after Contractor itself has fully evaluated such claims and determined that they are bona fide under the Contract, and that Contractor is legally bound to pay such claims. Contractor shall identify in its claim any and all portions of the claim based on claims of the Contractor's Subcontractors or Suppliers of material or equipment, and affirmatively state in the claim that such portion of the claim is warranted and justifiable under the Contract and that Contractor is legally bound to pay such claims.
- D. The Authority shall respond in writing to a claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, additional documentation supporting the claim or relating to defenses to the claim the Authority may have against the Contractor. If the Authority requests additional documentation, the Authority shall respond in writing to the claim within 15 days

after receipt of the additional documentation, or within a period no longer than that taken by the Contractor to provide the additional documentation, whichever is greater.

- E. If the Contractor disputes the Authority's written response, or the Authority fails to respond within the time prescribed, the Contractor may demand an informal conference to meet and confer for settlement of the dispute. The Contractor shall give written notice of its demand for the conference to the Authority, either within 15 days of receipt of the Authority's response or within 15 days of the Authority's failure to respond. The Authority shall schedule the conference within 30 days of receiving the Contractor's notice.
- F. If the claim is resolved, it shall be documented pursuant to the Section entitled CHANGES. If a claim or portion thereof remains in dispute following completion of the claims process specified in this Section, the Contractor may continue to pursue the claim only by strictly following the claims procedure detailed in the following Public Contract Code Claim Procedure Section.

GC-71 PUBLIC CONTRACT CODE CLAIM PROCEDURE

In the event the Authority and Contractor cannot resolve claims of \$375,000 or less, the claims provisions of California Public Contract Code Sections 20104–20104.6 shall apply. For claims over \$375,000, the Authority shall respond in writing within 90 days of receipt of the claim, or request additional documentation supporting the claim within 45 days of receipt of the claim. If additional documentation is requested, the Authority will respond in writing to the claim within 30 days of the additional documentation, or within a period of time no greater than that taken by the claimant in providing the additional information, whichever is greater. If the Contractor disputes the Authority's response, or the Authority fails to respond within the time prescribed, the Contractor may demand an informal conference to meet and confer on settlement of the issues in dispute within 15 days of the Authority's response (or failure to respond). In the event that the "meet and confer" conference is unsuccessful, Contractor must file a government claim pursuant to Government Code Section 910 et seq. in order to initiate a civil action.

If a Claim or portion thereof remains in dispute following completion of the Claims process specified in this Section, the Contractor may continue to pursue the Claim only by strictly following the Claims procedure detailed in the California Government Code.

GC-71 DISPUTE RESOLUTION

- A. Settlement of Disputes - Both of the parties hereto shall make every reasonable effort to settle any dispute arising out of this Agreement by discussion between the parties' representatives. The parties shall make every reasonable effort to meet within thirty (30) days to discuss disputes arising under the preceding Sections. If the parties so agree, they may involve a disinterested person experienced in railroad operations, or an accountant if appropriate, to render his or her objective

advice and opinions, which shall be advisory only and not binding unless the parties agree in writing to be bound by his or her judgment in a particular instance.

- B. Controversies Subject to Mediation or Independent Audit - any claim or controversy between Authority and the Consultant which cannot be resolved by the parties concerning the interpretation, application, or implementation of this Contract shall be submitted to a mediator or independent auditor pursuant to the provisions of this Section, provided, however, that no such claim or controversy shall be submitted to a mediator or independent auditor until it has first been submitted to the Authority's Contracting Officer and the Contractor's Project Manager for resolution between them.
- C. Mediator/Independent Auditor - Authority and Consultant shall jointly select a mediator or independent auditor within twenty-one (21) calendar days after the submittal of a dispute. The mediator or independent auditor shall be properly qualified in the required areas of public sector finance or the surface transportation industry, and have experience in the analysis of transportation operating and capital costs and revenues and in transportation operational issues.

The mediator or independent auditor shall meet with the parties within twenty-one (21) calendar days after his or her selection in order to attempt to mediate and resolve the dispute. If mediation efforts are unsuccessful after sixty (60) days, the mediator or auditor shall, after consideration of the parties' positions and written submittals (if so requested), issue written recommendations for resolution of the dispute. Any such written submittals shall be postmarked by the tenth calendar day after the parties' last meeting with the mediator or auditor. The recommendations of the mediator or independent auditor shall be issued within thirty (30) calendar days after the conclusion of mediation or the submittal of written positions (if so requested), whichever ever occurs later. All meetings and proceedings shall be held in Los Angeles County, California, at a time and location acceptable to both parties.

- D. Pending Resolution - Except as provided specifically in other sections of this Agreement, while such mediation is proceeding, the business, the operations to be conducted, physical plant to be used, and compensation for Services under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid , in the manner and form existing prior to the arising of such controversy, unless the mediator/independent auditor shall make a preliminary ruling to the contrary.
- E. Cost of Mediation - Each party hereto shall bear the costs and expenses incurred by it in connection with such mediation. The cost of the mediator or independent auditor shall be shared equally between the parties.
- F. Enforcement - If a dispute is not resolved through mediation, either party may pursue available legal/ remedies in a civil action filed and venued in any court

located in the Superior Court of the State of California for the County of Los Angeles, Central District, or in the United States District Court for the Central District of California, Western Division. Each of the parties hereto hereby consents to personal jurisdiction in these courts for any such controversy, claim, action or cause of action. Further, this Contract shall be governed by and construed in accordance with the laws of the State of California. No conflicts of law rules of any state or country shall be applied to result in the application of any substantive or procedural laws of any state or country other than California. Each of the parties hereto further acknowledges that the laws and courts of California were freely and voluntarily chosen to govern this Contract and to adjudicate any claims or disputes hereunder. The Authority may however; in its sole discretion, waive this dispute resolution requirement upon providing written notice to the Contractor of such decision.

SPECIAL CONDITIONS

Table of Contents

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
SC-1	DEFINED TERMS.....	1
SC-2	APPROVED SUBCONTRACTORS AND SUPPLIERS.....	1
SC-3	INSURANCE REQUIREMENTS.....	4
SC-4	TRAIN SERVICES.....	7
SC-5	SITE ACCESS DATES.....	7
SC-6	CLASSIFICATION OF CONTRACTOR'S LICENSE.....	7
SC-7	PERMITS AND LICENSES.....	8
SC-8	COMMENCEMENT OF THE WORK.....	8
SC-9	LIQUIDATED DAMAGES.....	9
SC-10	RAIL SERVICE INTERRUPTION & DISRUPTION.....	9
SC-11	SPECIAL EVENTS.....	11
SC-12	CONTRACTOR'S MEDIA & PUBLIC INTERACTION.....	12
SC-14	APPLICABILITY OF FEDERAL GRANT CONTRACT.....	12
SC-15	INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS.....	13
SC-16	FEDERAL FUNDING LIMITATION.....	13
SC-17	NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES.....	13
SC-18	FEDERAL CHANGES.....	13
SC-19	INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS.....	14
SC-20	FEDERAL LOBBYING RESTRICTIONS.....	14
SC-21	DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.....	15
SC-22	FLY AMERICA.....	25

Table of Contents

		PAGE
<u>SECTION</u>	<u>DESCRIPTION</u>	<u>NO.</u>
SC-23	CARGO PREFERENCE	25
SC-24	BUY AMERICA	26
SC-25	ACCESS TO RECORDS	26
SC-26	PREFERENCE FOR RECYCLED PRODUCTS	27
SC-27	DAVIS BACON ACT REQUIREMENTS	27
SC-28	COMPLIANCE WITH COPELAND ACT REQUIREMENTS.....	34
SC-29	LABOR COMPLIANCE PROGRAM.....	34
SC-30	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	35
SC-31	WORK PLACE DRUG AND ALCOHOL TESTING PROGRAMS	36
SC-32	PRIVACY	36

SC-1 DEFINED TERMS

All terms identified in these Special Conditions are as defined throughout the Contract Documents, including the General Conditions Section 2 and Specification 01 11 15.

SC-2 APPROVED SUBCONTRACTORS AND SUPPLIERS

Supplier

Ace Fence Company
727 Glendora Avenue
La Puente, CA 91744
Name: Lilibeth Ecalla
T/ 626-333-0727
F/ 626-333-7813

Crown Fence Company
12118 Bloomfield Avenue
Santa Fe Springs, CA 90670
Name: Carlos Punzalan
T/ 562-864-5477
F/ 562-864-2529

Gerdau Reinforcing Steel
5425 Industrial Parkway
San Bernardino, CA 92407
Name: Bryan Folsom
T/ 909-713-1160
F/ 909-713-1131

Deco Pave Inc
PO Box 2084
Irwindale, CA 91706
Name: Ferry Soendjojo
T/626-337-9580
F/ 626-480-1557

Global Electric
140 E. Commonwealth Avenue #104
Fullerton, CA 92832
T/ 800-272-1765
F/ 888-377-1221

Material Supplied

Fencing & Gates

Fencing

Furnish and Install Rebar

Asphalt Paving & Grinding

Electrical, Low Voltage, Signals

Hanson Agregates
13550 Live Oak Avenue
Irwindale, CA
Name: Doug Bennett
T/ 909-913-2586

Rock & Sand Supplier

McPrinting
2525 Ramona Drive
Vista, CA 92084
Name: Brad Sabol
T/ 760-599-8000
F/ 760-599-8775

Printing

Metro Builders and Engineers
2610 Avon Street
steel Newport Beach, CA 926603
Name: Cameron Kosbab
T/ 949-515-4350
F/ 949-515-4351

Fabrication and installation of
structural and miscellaneous
components.

RailWorks Signals & Communications
9250 Baymeadows Road, Suite 200
Jacksonville, FL 32256
Name: Brett Yancy
T/ 904-666-5086
F/ 904-296-5056

Installation Railroad Signals

Progress Rail
1600 Progress Drive
Albertville, AL 35950
Name: Shawn Moraeu
T/ 800-332-2457

Track Products: Manufacture and
Supplier

Summit Environmental Contracts
33161 Camino Capistrano
San Juan Capistrano, CA 92675
Name: Cathy Partsch
T/ 949-370-5799
F/ 949-542-4331

Environmental Contractor
Removal of Contaminated Soil

VCI Construction LLC
1921 W. 11th Street
Upland, CA 91786
Name: Joe Claveau
T/ 909-946-0905
F/ 909-946-0924

Fiber Relocation

Voestalpine Nortrack, Inc.
1740 Pacific Avenue
Cheyenne, WY 82007
Name: Linnea Pray
T/ 206-255-4134
F/ 307-778-8777

Special Trackwork Manufacturer

Benito Trucking
PO Box 341098
Arleta, CA 91334
Name: Yvette Pena
T/ 818-768-3608; F/ 818-768-1371

Haul Material – Jobsite to Landfill

Talequah Steel, Inc.
2750 N. Bellflower Blvd., Suite 210 E.
Long Beach, CA 90815
Name: Guy Barton
T/ 562-421-9333
F/ 562-421-4330

Rebar Installation

Trussworks International
2850 E. Coronado Street
Anaheim, CA 92806
Name: Lisa Staln
T/ 714-630-2772
F/ 714-630-1155

Metals

J. Torres Co. Inc.
5810 S Union Ave
Bakersfield, CA 93307
Name:
T/ 661-832-2635

Environmental Contractor
Removal of Contaminated Soil

The above information is to be incorporated at time of award.

SC-3 INSURANCE REQUIREMENTS

Throughout the duration of the Contract, Contractor shall maintain the following insurance, which shall be full-coverage insurance not subject to self-insurance provisions. Contractor shall not of its own initiative cause such insurance to be canceled or materially changed during the course of the Contract. Prior to commencement of any work hereunder, the Contractor shall furnish to the Authority's Contract Administrator an endorsement showing the required insurance coverages for the Contractor are in place, and further providing that

- A. The Authority, its officers, directors, employees, and member agencies and agents are named as an additional insured via endorsement on Commercial General Liability and Automobile Liability insurance with respect to performance hereunder.
- B. The coverage shall be primary and noncontributory as to any other insurance with respect to liability hereunder.
- C. Thirty (30) days' prior written notice of cancellation or of material change in coverage will be given to the Authority by endorsement. "Occurrence," as used herein, means any event or related exposure to conditions that result in bodily injury or property damage.

Any deductibles or self-insured retentions must be declared to and approved by the Authority. At the option of the Authority, either the Contractor shall reduce or eliminate such deductibles or self-insured retentions with respect to this Contract to be awarded, or shall procure a bond guaranteeing the amount of the deductible or self-insured retention. If the Authority agrees in writing to a deductible or self-insured retention, then the Contractor shall be responsible for the full cost of such deductible or self-insured retention.

Minimum Limits of Insurances: The Contractor shall maintain limits no less than the following:

- A. Commercial General Liability to include Products/Completed Operations, Independent Contractor, Contractual Liability, and Personal Injury Liability; with at least the following limits of liability:
 - 1. Primary Bodily Injury Liability Limits of \$4,000,000 per occurrence, and
 - 2. Primary Property Damage Liability Limits of \$4,000,000 per occurrence, or
 - 3. Combined single limits of liability for Primary Bodily Injury and Primary Property Damage of \$4,000,000 per occurrence \$8,000,000 annual aggregate.
- B. Automobile liability with the following limits:

1. Primary Bodily Injury with limits of \$1,000,000 per occurrence; and
 2. Primary Property Damage with limits of \$1,000,000 per occurrence; or
 3. Combined single limits of Liability for Primary Bodily and Primary Property Damage \$2,000,000 per occurrence.
- C. Workers' Compensation Insurance with the limits established and required by the State of California.
- D. Environmental Liability Insurance with limits of \$4,000,000 per occurrence.
- E. Builder's Risk with limits of \$4,000,000 per occurrence.
- F. Railroad Protective Liability Insurance as follows:
1. Contractor shall provide, with respect to the operations they or any of their Subcontractors perform on any property of the Authority, coverage as per the criteria shown in "Rules and Requirements for Construction on Railway Property."
 2. The policy shall have limits of liability of not less than \$5,000,000 per occurrence, combined single limit, for coverage and for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. A \$20,000,000 annual aggregate shall apply.
 3. Contractor shall include the following as insured under its Railroad Protective Liability Insurance:

Insured:
Southern California Regional Rail Authority (Authority)

Additionally Insured:
BNSF Railway Company (BNSF)
Los Angeles County Metropolitan Transportation Authority (MTA)
National Railroad Passenger Corporation (Amtrak)
Orange County Transportation Authority (OCTA)
Riverside County Transportation Commission (RCTC)
San Bernardino Associated Government (SANBAG)
Union Pacific Railroad Company (UPRR)
Ventura County Transportation Commission (VCTC)
Others at Request of Authority
- G. Course of Construction policies shall contain the following provisions:

1. The Authority and Member Agencies shall be named as loss payees.
2. The insurer shall waive all rights of subrogation against the Authority and Member
3. Agencies.

Endorsements and Other Provisions. The general liability, environmental liability, and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- H. The Authority, its Member Agencies, directors, officials, and employees are to be covered as insureds as respects any liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied, or used by the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Authority, its members, directors, officials, and employees.
- I. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the Authority, its members, directors, officials, and employees. Any insurance or self-insurance maintained by the Authority, its members, directors, officials, and employees shall be excess to the Contractor's insurance, and shall not contribute with it.
- J. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Authority, its members, directors, officials, and employees.
- K. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- L. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail (return receipt requested) has been given to the Authority.

Subcontractors. Contractor shall include all Subcontractors as insured under its policies, or shall furnish separate certificates and endorsements for each Subcontractor. All coverage for Subcontractors shall be subject to all of the requirements stated herein.

Failure to provide Insurance. In the event the Contractor fails either to obtain or to have in force the required insurance, said failure to procure or maintain required insurance will constitute a material breach of this Agreement. At its option, the Authority may hold the Contractor in default, or may furnish such insurance until the Contractor provides

evidence satisfactory to the Authority that the required insurance coverage and amounts have been obtained. However, in no event shall the Authority-furnished insurance coverage extend beyond the completion of the Contract. The purchase of insurance by the Authority will be for the account of the Contractor and the Contractor shall be liable for the entire cost thereof. The Authority may deduct said cost from monies due and owing to the Contractor under the Contract. In the event monies due and owing to the Contractor are insufficient to cover said costs, the Contractor shall remain liable for the difference. The Contractor shall cooperate with the Authority in furnishing information and executing documents necessary for the purchase of insurance coverage by the Authority.

Payment. The cost of insurance will not be paid for separately, unless the Contract Schedule of Quantities and Prices allows for such payment. If an insurance pay item is part of the Schedule of Quantities and Prices, that item(s) will be paid based on actual costs, and the Contractor's invoice from the insurance carrier/broker must be submitted to the Authority for approval.

SC-4 TRAIN SERVICES

The site is located on the Ventura Subdivision. Train traffic is approximately 45 trains per day and the Authority's approximate daily train traffic is 33 passenger trains.

SC-5 SITE ACCESS DATES

Worksites will be available at the Notice to Proceed, unless otherwise specified. All other access requirements shall be requested by the Contractor five calendar days in advance in order to allow coordination with other contractors.

SC-6 CLASSIFICATION OF CONTRACTOR'S LICENSE

- A. The Contractor must possess and maintain the following California State license throughout the duration of the Work: Class A, General Engineering License.
- B. All Subcontractors must possess and maintain the appropriate licenses throughout the duration of the Work.
- C. The Contractor or Subcontractor must possess and maintain throughout the duration of the Work any and all licenses, registrations, and certifications required by existing law to perform the Work within the scope of the Contract, including, without limitation, a Class A license in accordance with §7028.15 A-E of the California Business and Professions Code, and certification for performance of Hazardous Substance Removal (with the exception of "Asbestos-Related work") in accordance with §7058.7 of the California Business and Professions Code, if any.

SC-7 PERMITS AND LICENSES

The Contractor shall be fully responsible for identifying and obtaining, at its sole expense, all necessary permits and licenses required unless identified below as Authority provided for the timely prosecution of the Work in accordance with all applicable federal, state, and local laws, codes, rules, and regulations, as well as the conditions of any required licenses and permits that are legally required when bids are received for the construction of the Work. See Permit Matrix (Exhibit C).

If required, the Authority will obtain right-of-entry permit(s) from the railroads (e.g., BNSF and UPRR) for the Contractor to work in their property. Within thirty (30) days after the Notice to Proceed, or within ten (10) days of the Authority's written request, the Contractor shall submit its proposed plans of operation for transport, loading, and unloading of materials to the Authority for approval of the plan(s) by the railroads.

SC-8 COMMENCEMENT OF THE WORK

The Authority will issue a Notice to Proceed after execution of the Contract. The Contractor is not authorized to perform any work until the Contractor has received the Notice to Proceed from the Authority. Should the Contractor begin Work in advance of receiving these notices, such Work shall be considered as having been done at the Contractor's own risk. The Notice to Proceed, will initiate the Contract Period of Performance and will specify the Contract Work that the Contractor is authorized to perform. The Notice to Proceed will authorize the following activities:

- Obtain permits and licenses as required for Work

- Secure the Project site and mobilize temporary facilities as necessary to perform Work

- Attend Pre-Construction and Multi-Prime Contractor meetings

The Notice to Proceed will specify that the following submittals are required to be approved by the Authority prior to issuance of a Notice to Proceed by the Authority:

- Mobilization and staging plan

- Schedule of Values

- Baseline Construction Schedule

- Submittal Schedule

- Safety Plan

- Quality Control Plan

- Storm Water Pollution Protection

- Individual critical Work execution plans demolition plan, emergency plan, utility disconnection plan, plan, and construction waste management and disposal plan.

The Notice to Proceed will not be issued prior to the Authority's acceptance of Work specified in the Limited Notice to Proceed.

SC-9 LIQUIDATED DAMAGES

When the Contractor fails to complete the Work within the time permitted in the Contract, damages which the Authority may sustain include, but are not limited to, the following:

1. Delays in the operation of the Authority's METROLINK system
2. Inconvenience to the public or private users of the METROLINK system
3. Loss of revenue
4. Increased costs for Contract administration

The Authority and the Contractor agree the Authority will be damaged if Contractor fails to complete Work within the time allowed, or if Contractor's acts or omissions disrupt the operations of the Authority. It is impractical and difficult to ascertain the exact damage that the Authority will sustain. For each day the Contractor is late in completing Work under the Contract, the Authority, at its sole discretion, may assess the liquidated damages, but not as a penalty, those amounts as indicated in the appendix to these Special Conditions entitled Exhibit A - WORK COMPLETION SCHEDULE.

The Authority may deduct the sum of liquidated damages from any monies due or that may become due the Contractor; or, if such monies are insufficient, the Contractor or its surety shall pay to the Authority any deficiency. Nothing in this article shall preclude the Authority from terminating this Contract if, in the Authority's sole discretion, Contractor fails to perform satisfactorily.

SC-10 RAIL SERVICE INTERRUPTION & DISRUPTION

A. In addition to its obligation to pay liquidated damages in the event of delay in the substantial completion of the Work or parts thereof, the Contractor shall be responsible for payment to the Authority or operating railroads, the sums specified below for unauthorized delays to the Authority or operating railroads for any disruption to train operations caused by the Contractor's construction operations. The unauthorized delays include delays due to slow orders that the Owner must place on the tracks resulting from the Contractor not returning the track to the authorized class and track speed. In the event of unauthorized delays the Authority may incur the following types of damages:

1. Additional train crew labor costs
2. Additional Authority inspector costs
3. Costs of establishing bus bridges
4. Lost passenger revenues

5. Customer rebate costs

- B. Contractor acknowledges and agrees that it is and will be impracticable and extremely difficult to ascertain and determine the actual amount of damages that the Owner will sustain; accordingly in the event of such delays, assessments will be levied as prescribed below. The Contractor shall pay said assessments, and further agrees that the Owner may deduct the amount thereof from any monies due or that may become due the Contractor under the Contract if the Contractor has not paid within seven (7) days any demand from the Owner for the assessments.
- C. The actual time of delay will be determined and recorded by the Authority's representative at the worksite, and shall only include that time that the Contractor's actions or inactions result in a delay to the scheduled running time. The Authority's representative will notify the Contractor as soon as possible after the start time of the assessments specified herein.
- D. The computation for delay is to be made on the difference in running time for a 570-foot passenger train operated at the original speed and the reduced speed of the Work location(s), for the distance of the Work location(s). No computation of acceleration or deceleration times will be made.
- E. Slow Order – When train speed is restricted to a lower speed than the operating maximum timetable speed allowed in accordance with the SCRRA operating rules because of an unplanned or unapproved slow order, the damages are calculated in accordance with the formulas and example below:
1. Operating maximum timetable (unrestricted) speed: 25 MPH (144 sec per mile).
 2. Slow Order speed restriction: 15 mph (240 sec per mile).
 3. Length of restriction: 1.5 miles (distance between green flags of speed restriction).
 4. Distance train operates at restricted speed: 1.6 miles (1.5 miles length of train).
 5. Time of unrestricted train: 1.6 miles x 144 sec per mile = 230 seconds.
 6. Time of restricted train: 1.6 miles x 240 sec per mile = 384 seconds.
 7. Slow Order delay: $384 - 230 = 154$ seconds = 2.57 minutes, rounded up to 3 minutes.
 8. Slow Order damages: 3 minutes x \$50.00 per minute = \$150.00 for subject train.

Note that a separate calculation may be required for each train due to its allowable maximum timetable speed and the length of train.

- F. Rail Service Interruption: \$50.00 per minute, or portion thereof, for each minute of delay for each train delayed as determined by SCRRA. The maximum cost for rail service interruption will be \$1,000.00 for each train per day, and a cumulative daily maximum of \$20,000.00 per day. Example: 55 minute delay x 2 trains x \$50.00 = \$5,500.00.
- G. Rail Service Disruption – Actual cost of alternative passenger transportation. Estimated cost can be calculated as \$500.00 per bus trip for each bus trip required to transport passengers around the out-of-service track as determined by SCRRA. The maximum cost for rail service disruption will be \$50,000.00 for one day. The cost will be reduced to \$25,000.00 if at least one track is put in operation. Example: 500 passengers / 50 passengers per bus = 10 bus trips x \$500.00 per bus trips = \$5,000.00.

SC-11 SPECIAL EVENTS

Special events should be considered to be those construction activities and events that constitute exposing the general public to danger, inconvenience, or risk. The Contractor shall submit a Special Events listing covering the duration of the Contract. The listing shall be submitted within 30 days of the NTP to the Authority for approval. If the Contractor determines that there are no construction activities or events that require this Special Events Listing, then the Contractor shall notify the Authority of this determination. Failure of the Contractor to have a Special Events Listing approved by the Authority will be considered cause for withholding progress payments until such Special Events Listing is approved by the Authority.

The Special Events Listing shall be in a format that includes the following:

- A. Special Event description, listed in date order
- B. Duration of the special event, in days
- C. Detailed description of the construction methodology to be used to carry out the Special Event, including protection techniques, materials and machinery applicable, and planned action to mitigate risks
- D. Nature of the impact to the general public
- E. Experience of supervisory personnel relating to the Special Event

The Contractor shall schedule a meeting with the Authority one week prior to a Special Event in order to confirm all aspects of the plan to carry out the Special Event.

SC-12 CONTRACTOR'S MEDIA & PUBLIC INTERACTION

The Contractor shall not allow any Project related publications, copy, photographs or electronic images to be published, displayed on the internet, or used in the Contractor's advertisements or public relations programs without prior written approval from the Authority.

The Contractor shall immediately refer all inquiries from the news media to the Engineer. All contacts with the media relating to the Project shall be the sole responsibility of the Authority. The Contractor and all its labor forces including Subcontractors shall refrain from any communication with the news media.

In the event of any anticipated evening or weekend work or closures impacting businesses or residents in the vicinity of Contractor's area of work, Contractor's project manager must request Authority approval in writing, at least two weeks in advance of schedule work, if the impact of the closure or disruption is expected to be five working days or less. If the impact of the closure or disruption is expected to be greater than five (5) days duration, Contractor is required to request Authority approval thirty days in advance. Should the Contractor's operations require utility shut-offs, emergency road closures, etc. that could not be anticipated, the Contractor shall immediately notify the Authority and provide notice to the community or general public as approved by the Authority.

If the Contractor receives a complaint or a notice of alleged damages from a member of the public or property owner/tenant(s), the Contractor shall, but in no event later than start of the next business day, inform the Authority of the complaint and what action will be taken to address or alleviate the complaint. All correspondence or communications relating to a complaint, including written notes of oral conversations shall be transmitted to the Authority within one business day of receipt or transmission by the Contractor.

SC-14 APPLICABILITY OF FEDERAL GRANT CONTRACT

This Contract may be subject to one or more financial assistance contracts between the Authority and the U.S. Department of Transportation (DOT), which incorporate the current FTA Master Agreement and Circular 4220.1F. The Contractor and its Subcontractors are required to comply with all terms and conditions prescribed for third-party contracts in these documents. Federal laws, regulations, policies, and administrative practices may be modified or codified after the date this Contract is established and may apply to this Contract. To ensure compliance with changing federal requirements, acceptance of Contract award indicates that the Contractor agrees to accept all changed requirements that apply to this Contract.

SC-15 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and the Master Grant Agreement, are 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. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority request that would cause the Authority to be in violation of the FTA terms and conditions.

SC-16 FEDERAL FUNDING LIMITATION

Contractor understands that funds to pay for Contractor's performance under this Contract are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by the FTA. A portion of the Authority's obligation hereunder may be payable from funds that are appropriated and allocated by the FTA for the performance of this Contract. If funds are not allocated, or ultimately are disapproved by the FTA, Authority may terminate or suspend Contractor's services without penalty. Authority shall notify Contractor promptly in writing of the non-allocation, delay, or disapproval of funding.

SC-17 NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

- A. The Contractor acknowledges and agrees that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying 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 the Contractor or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
- B. The Contractor agrees to include the above clause in each Subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

SC-18 FEDERAL CHANGES

In the event local, state, or federal laws or regulations that were not announced or enacted at the time of the Contract award are enacted before performance of the Work and such laws or regulations make standards more stringent or compliance more costly under this Contract, the Contractor shall notify the Authority in writing of such laws or regulations, and their effects on the pricing or delivery schedule promptly after the Contractor first becomes aware of the laws and regulations and prior to incurring any such expenses.

The Authority will make a determination as to whether the Contractor should be reimbursed for any such expenses or if any time extensions should be granted. The Contractor shall be deemed to have had notice of any federal law or regulation announced or enacted at the time of Contract award, even though such law or regulation did not take effect or become operative until some date after the Contract award. The Contractor shall, immediately upon becoming aware of any such imposition or change of requirement, provide the Authority with full and detailed particulars of the changes required in the Work and of the costs involved therein, or shall be deemed to have waived any rights under this article. In the event any governmental requirements are removed, relaxed, or changed in any way after the date of Contract award so as to make the Contractor's performance less expensive, or less difficult, then the Authority shall have the option either to require the Contractor to perform pursuant to the more rigorous requirements or to receive a reduction in the price of the Work affected for all savings in direct costs that may be realized by the Contractor by reason of such change, and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Contractor. The Authority shall give the Contractor notice of the Authority's determination, and of the anticipated savings.

SC-19 INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this Contract or to any benefit arising therefrom.

SC-20 FEDERAL LOBBYING RESTRICTIONS

Contractor certifies that it has not and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, or a member of Congress, in connection with obtaining any federal Contract, grant, or any other award covered by 31 U.S.C. §1352. Each and every Subcontractor at all tiers shall certify to the tier above that it will not and has not used federal appropriated funds for such purpose. Each Contractor and Subcontractor at all tiers 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 are forwarded from tier to tier up to the Authority.

In addition, if the Contractor has engaged in any lobbying activities to influence or attempt to influence the awarding of this Contract, the Contractor must disclose these activities. In such a case, the Contractor shall complete and submit to the Authority Standard Form SF-LLL, "Disclosure of Lobbying Activities." The Contractor and Subcontractors at all tiers 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 a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes the following:

- A. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Contract; or
- B. A change in the person(s) influencing or attempting to influence this federally funded Contract; or
- C. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Contract.

SC-21 DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Southern California Regional Rail Authority (Authority) has adopted a Disadvantaged Business Enterprise (DBE) Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs."

This DOT-assisted project is subject to these stipulated regulations and the Authority's DBE program, which are hereby incorporated in their entirety by this reference. In order to ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

Pursuant to the intent of these Regulations, the Authority's policy objectives are to:

- 1. Ensure non-discrimination in the award and administration of all the Authority's DOT-assisted contracts and subcontracts;
- 2. Create a level playing field by which DBEs can compete fairly for and perform on the Authority's DOT-assisted contracts;
- 3. Ensure the Authority's DBE Program meets legal standards for unique and narrow program tailoring;
- 4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- 5. Assist in the removal of procurement and contracting barriers which may inadvertently impede DBE participation;
- 6. Offer assistance to firms to enable them to compete successfully in the market place outside of the DBE Program;
- 7. Comply with federal regulations and financial assistance agreements;

8. Disseminate timely and accurate information regarding Authority's contracting opportunities to DBE Program participants and potential participants; and
9. Monitor and enforce contractor compliance with meeting established DBE goals and/or exercising Good Faith Efforts to do so as defined in 49 CFR 26.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of federal law. 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 Authority deems appropriate.

Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, must have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to DOT-assisted contracts, the Regulations must prevail.

A. DBE Goal

In conformance with 49 CFR Part 26 the Authority established an overall triennial DBE goal of 10% for Federal Fiscal Years (FFY) 2016/18. Contractor's DBE participation on this contract will assist the Authority in meeting its overall triennial DBE goal for the 2016/18 Federal Fiscal period.

The Authority establishes contract-specific DBE goals to meet any portion of the overall DBE goal that the Authority does not project being able to meet using race-conscious means. The Authority establishes contract-specific goals only on those DOT-assisted contracts that have subcontracting opportunities.

The Authority may establish a DBE contract goal that is higher or lower than its overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

The Authority established a 19% DBE contract-specific goal on this project and the Contractor has committed to 19% DBE participation. The Contractor is required to demonstrate DBE responsiveness towards meeting the 19% DBE contract-specific goal on this project and their original DBE commitments.

B. DBE CERTIFICATION AND ELIGIBILITY

1. The Authority requires all DBEs listed for participation to be DBE certified by a California Unified Certification Program (CUCP) certifying member agency. The Authority is a non-certifying member agency of the CUCP. Therefore, the Authority will accept DBE certifications from member agencies which certify the eligibility of DBEs in accordance with 49 CFR Part 26.81, under the

CUCP. Listings of DBEs certified by the CUCP are available at www.dot.ca.gov/hq/bep/find_certified.htm.

2. It is the responsibility of the Contractor to verify the DBE certification status of all listed DBEs prior to listing the firm as a DBE participant.
3. It is also the responsibility of the Contractor to ensure that each DBE is certified in the NAICS code that corresponds to the DBE's contract scope of work. The Authority's evaluation of the "Disadvantaged Business Enterprise (DBE) Participation Listing" form requires DBEs to be certified for the scope listed in accordance with the regulatory requirements.
4. A DBE may participate as a prime Contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or trucking company.
5. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
6. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55.
7. A DBE performs a commercially useful function when it is responsible for execution of work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
8. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume that it is performing a commercially useful function.
9. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

C. DBE "FRAUDS" AND "FRONTS"

Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, Contractor are cautioned against knowingly and willfully using "fronts" to meet DBE goals.

The use of “fronts” and “pass through” subcontracts to non-disadvantaged firms constitutes criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General (OIG), U.S. Department of Transportation, via the online hotline at <https://www.oig.dot.gov/dot-oig-hotline-complaint-form>, toll-free hotline at 800-424-9071, email at hotline@oig.dot.gov, online complaint form at <https://www.oig.dot.gov/dot-oig-hotline-complaint-form> or U.S. mail at DOT Inspector General, 1200 New Jersey Ave SE, West Bldg. 7th Floor, Washington, DC 20590. The hotline is open 24 hours per day, seven days per week. Additional information can be found on www.oig.dot.gov/hotline.

D. Submission of DBE Information and On-going Reporting Requirements (Post-Award)

If there is a DBE goal on the contract or a DBE firm has been listed by the Contractor, the Contractor must complete and submit the following DBE forms and/or documentation:

1. “Monthly DBE Subcontractor Commitment and Attainment Report/Payment Verification Summary” (Form 103)

If the Contractor is a DBE and/or has proposed to utilize DBEs, the Contractor will be required to complete and submit Form 103 to the Authority by the 15th of each month until completion of the Contract, following the first month of contract activity. Upon completion of the contract, the Contractor must clearly mark the last Form 103 submission “Final” to facilitate reporting and capturing actual DBE attainments. Failure to submit these reports in a timely manner shall result in a penalty of \$10 per day, per report. Failure to submit required reports may also result in additional administrative sanctions pursuant to the Authority’s DBE Policy and 49 CFR Part 26.

The purpose of this form is to ensure Contractor DBE commitments are attained, properly reported and credited in accordance with DBE crediting provisions based on the capacity the DBE performs the scope of work. This form further serves to collect DBE utilization data required under 49 CFR Part 26.

The Authority Form 103 Report must include the following information:

- a. General Contract Information – Including Contract Number and Name, Prime Contractor and the following:
 - i. Original Contract Amount
 - ii. Running Total of Change Order Amount
 - iii. Current Contract Amount
 - iv. Amount Paid to Contractor during Month

- v. Amount Paid to Contractor from Inception to Date
 - vi. Date of last progress payment
 - vii. DBE Contract Goal
 - viii. Total Dollar Amount of DBE Commitment
 - ix. DBE Commitment as Percentage of Prime Current Contract Amount
- b. Listed and/Proposed Contractor/Subcontractor Information – For All DBE participation being claimed either Race Neutrally or Race Consciously, regardless of tier:
- i. DBE Firm Name, Address, Phone Number, DBE Type of Operation, Certification, and Type and Certification Number.
 - ii. DBE Firm Contract Value Information:
 - iii. Original contract amount, running total of change order amount, Current contract amount, Amount paid to Contractor during month and Amount paid to Contractor to date.
2. Contractor signature under penalty of perjury that it has complied with all requirements of 49 CFR, Part 26 and prompt payment requirements of the California Public Contract Code.

Contractor to sign the prompt payment assurance statement of compliance contained within the Form 103. Contractor is to further maintain and submit a detailed running tally of related invoices submitted by DBE(s) and Non DBE(s), including dates of invoice submission, dates accepted and corresponding dates and amount of payments made on the Payment Verification Form. The Payment and Retention Reporting tally must also include:

DBE(s) and Non DBE(s) Invoice Number, Invoice Amount, Invoice Date, Prime Contractor's Invoice Number that incorporated the corresponding DBE and Non DBE invoice(s) for billing purposes, Date of Invoice submission to Authority, date and amount Authority paid on Prime Contractor's Invoice. The report must also reflect a breakout of retention withheld (including retention as specified in subcontract agreement(s) and disputed invoice retention) and retention payments made, check number and date paid to DBE and Non DBE.

Contractor is advised not to report the participation of DBE(s) toward the Contractor's DBE attainment until the amount being claimed has been paid

to the DBE. Verification of payments and/or a signed Verification of Payment by the applicable DBE or Non DBE must be submitted with Form 103 to authenticate reported payments.

3. DBE Subcontract Agreements

The Contractor must submit to the Authority copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten working days of award. The Contractor must immediately notify the Authority in writing of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

4. "Monthly DBE Trucking Verification" Form

Prior to the 15th of each month, the Contractor must submit documentation on the "Monthly DBE Trucking Verification" Form to the Authority showing the amount paid to DBE trucking companies. The Contractor must also obtain and submit documentation to the Authority showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor must also obtain and submit documentation to the Authority showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month.

5. "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors"

Upon completion of the contract, a summary of these records must be prepared on the: "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors" and certified correct by the Contractor or the Contractor's authorized representative, and must be furnished to the Engineer. The form must be furnished to the Authority within 90 days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted.

6. "Disadvantaged Business Enterprises (DBE) Certification Status Change"

If a DBE Subcontractor is decertified during the life of the project, the decertified Subcontractor must notify the Contractor in writing with the date of decertification. If a Subcontractor becomes a certified DBE during the life of the project, the Subcontractor must notify the Contractor in writing with

the date of certification (Attach DBE certification/Decertification letter). The Contractor must furnish the written documentation to the AUTHORITY.

Upon completion of the contract, the "Disadvantaged Business Enterprises (DBE) Certification Status Change" must be signed and certified correct by the Contractor indicating the DBEs' existing certification status. If there are no changes, please indicate "No Changes". The certified form must be furnished to the Authority within 90 days from the date of contract acceptance.

E. DBE Crediting Provisions

Credit for DBE participation is determined according to the following provisions:

- When a DBE is proposed to participate in the Contract, either as a prime Contractor or subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted toward DBE participation.
- If the Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.
- If a DBE intends to subcontract part of the work of its subcontract to a lower tier subcontractor, the value of the subcontracted work may be counted toward DBE participation only if the DBE subcontractor is a certified DBE and actually performs the work with its own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's DBE attainment.
- Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward DBE attainment, as follows:
 1. Sixty percent (60%) of expenditure(s) for equipment, materials, and supplies required under the Contract, obtained from a regular dealer; or
 2. One hundred percent (100%) of expenditure(s) for equipment, materials, and supplies required under the Contract, obtained from a DBE manufacturer.
- The following types of fees or commissions paid to DBE subcontractors, brokers, and packagers may be credited toward DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
 1. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;

2. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
 3. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
- Contractor may count the participation of DBE trucking companies toward DBE attainment, as follows:
 1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract.
 2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
 3. 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.
 4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
 5. The DBE may also lease trucks from a non-DBE firm, 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.
 6. For purposes of this paragraph, 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.
 - If the Contractor listed a non-certified DBE 1st tier subcontractor to perform work on this Contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower-tier DBE certified subcontractor or Vendor, the value of work performed by the lower-tier DBE firm's own forces can be counted toward DBE participation on the Contract.

- The Contractor is advised not to count the participation of DBEs toward the Contractor's DBE attainment until the amount being counted has been paid to the DBE.

F. Performance of DBE Subcontractors

The following requirements govern the performance of DBE subcontractors:

- DBEs listed by the Contractor in its "DBE Participation Listing" Form submitted with the executed Contract documents shall perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization from the Authority to perform the work with other forces or to obtain the materials from other sources.
- Contractor shall provide written notification to the Authority in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

G. Additional DBE Subcontractors

In the event that the Contractor identifies additional DBE subcontractors or suppliers not previously identified for DBE participation under the Contract, Contractor shall notify the Authority by completing and submitting a **"Request for Additional DBE" form** to enable Contractor to capture all DBE participation. Contractor shall also submit, for each DBE identified after Contract execution, a written confirmation from the DBE acknowledging that it is participating in the Contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

H. DBE Substitutions and Terminations

Contractor shall be required to comply with 49 CFR § 26.53 regarding DBE subcontractor terminations, including the following:

- A Contractor shall not terminate a listed DBE subcontractor without the Authority's prior written consent.
- Prior to the termination request, the prime Contractor must notify the DBE, in writing, of the intent to terminate, allowing for five days of response time in opposition of the rejection.
- A Contractor may only terminate a DBE subcontractor for "good cause," as defined in 49 CFR § 26.53.
- Good cause does NOT exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor (e.g., failure of the Contractor to make timely payments or

the unnecessary placing of obstacles in the path of the DBE's work). Good cause also does NOT exist if the Contractor seeks to terminate a DBE so that it can self-perform the work of the terminated DBE.

- In the event that the Contractor needs to substitute or terminate a DBE firm and if the substitution/termination request meets the definition of "good cause," the Contractor shall notify the Authority by completing and submitting a **"DBE Substitution/Termination Request" form** for the Authority's written approval prior to actualizing any changes.
- The Contractor must make a Good Faith Effort (GFE) to replace the terminated DBE with another DBE. The Contractor's GFE shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the established DBE contract goal and/or the Contractor's DBE participation commitment approved by the Authority prior to award of the Contract.
- Failure by the Contractor to adhere to these requirements may constitute a material breach of contract, which may result in the termination of the contract or such other remedy as the Authority deems appropriate.

I. Non-Compliance and Administrative Sanctions

A Contractor determined to be non-compliant with DBE Program requirements may be subject to administrative sanctions as outlined below:

- A non-compliant Contractor may be notified by the DBELO or designee, that administrative remedies shall be imposed for failure to: (a) meet the contractor's DBE commitment by contract end, (b) submit documentation of Good Faith Efforts, (c) submit required DBE utilization reports, (d) submit verification of prompt payment to DBE subcontractors, and/or (e) comply with proper DBE termination procedures. The notice shall state the specific administrative remedies to be imposed.
- The Contractor shall be given ten (10) working days from the date of the notice to file a written appeal to the Authority's Executive Director. Failure to respond within the ten (10) day period shall constitute a waiver of appeal.
- The Executive Director or his designee may schedule a hearing to gather additional facts and evidence, and shall issue a final written determination on the matter within thirty (30) working days following receipt of the written appeal. The written decision of the Executive Director or designee is final and there is no further appeal.
- Administrative remedies shall be determined by the DBELO and/or designee and may include, but will not be limited to:

1. Suspension of progress payments to the Contractor or of any monies held by the Authority as retention on the contract until the Contractor is brought into compliance; and/or
2. Termination of the contract in part or in whole.

J. Contractor's Assurance Clause Regarding Non-Discrimination

Contractor shall ensure that the following clause is placed in every Subcontract agreement:

"The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of federal law. 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 Authority deems appropriate."

SC-22 FLY AMERICA

The federal government will not participate in the cost of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC §40018, in accordance with U.S. General Accounting Office (GAO) regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 CFR Part 52, and U.S. GAO guidelines for Implementation of the "Fly America Act," B-138942, 1981 US Comp. Gen LEXIS 2116, March 31, 1981.

SC-23 CARGO PREFERENCE

Pursuant to 46 CFR Part 381, the Contractor shall utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels. In addition, the Contractor shall furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, commercial ocean bill of lading in English for each shipment of cargo to the Authority (through the prime Contractor in the case of Subcontractor bills of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street SW, Washington, D.C. 20590, marked with appropriate identification of the Contract.

SC-24 BUY AMERICA

The Contractor shall comply with 49 U.S.C. §5323(j) and 49 CFR Part 661. Contractor is bound by its original certification and is not permitted at any point during the duration of the Contract to change its certification (as required by 49 CFR 661.13(c)) and is not eligible for waiver of these requirements other than any waivers granted by the FTA prior to the execution of this agreement.

SC-25 ACCESS TO RECORDS

- A. Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. Contractor also agrees, pursuant to 49 CFR 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 into through other than competitive bidding, the Contractor shall make records related to this Contract available to the Authority, the Secretary of Transportation, and the Comptroller General, or any authorized officer or employee of any of them, for the purposes of conducting an audit and inspection.
- D. Contractor shall permit any of the foregoing parties to reproduce without any cost by any means whatsoever, or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

SC-26 PREFERENCE FOR RECYCLED PRODUCTS

To the extent practicable and economically feasible, the Contractor agrees to provide a competitive preference for recycled products to be used in the work pursuant to the U.S. Environmental Protection Agency Guidelines at 40 CFR Part 247-253, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962. The Contractor should use both sides of paper sheets for copying and printing where practicable. Credit for sale of scrap materials will be the actual amount, without markup or fee.

SC-27 DAVIS BACON ACT REQUIREMENTS

A. Minimum Wages

1. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- 2a. The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the "age determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- i. The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - ii. The classification is utilized in the area by the construction industry; and
 - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- 2b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an Authorized Representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- 2c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the Contracting Officer, or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- 2d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A.2.(a) or (b) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
3. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an

hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

4. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. Withholding

The Authority 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 the Contractor under this Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program

is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- 2a. The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5. This information shall be submitted in the form specified by the Authority. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors.
- 2b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - i. That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
 - ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR 3;
 - iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- 2c. The weekly submission of a properly executed certification as set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

- 2d. The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
3. The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by Authorized Representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

1. Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the

apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3. Equal Employment Opportunity

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR 30.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR 3, which are incorporated by reference in this contract.

F. Subcontracts

The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility

1. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

SC-28 COMPLIANCE WITH COPELAND ACT REQUIREMENTS

Contractors shall comply with the Copeland "Anti-Kickback Act," 18 USC §3145, as supplemented in U.S. Department of Labor regulations, 29 CFR Part 3. The Contractor shall comply with the requirements of 29 CFR 3, which are incorporated by reference in this contract. Under state and federal law, it is a violation for Contractor, or Subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.

"Kickback" as defined by Federal Acquisition Regulations (FAR), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime Contractor, prime Contractor employee, Subcontractor or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract, or in connection with a subcontract relating to a prime contract.

SC-29 LABOR COMPLIANCE PROGRAM

A. SCRRA's Labor Compliance Program (LCP)

1. Approval

This contract will be subject to the Authority's Labor Compliance Program (LCP). The Authority's LCP was granted approval by the Department of Industrial Relations on July 2nd, 2012.

The Authority's LCP will not be subject to the limited exemption pursuant to Labor Code Section 1771.5(a). For questions and assistance with regards to the Authority's LCP, please contact Sonny Ibrahim, Sr. Contract & Compliance Administrator, at (213) 452-0436.

2. Compliance.

Contractor and all Subcontractors must comply with the requirements of the Authority's Labor Compliance Program (LCP). The LCP includes, without limitation, provisions requiring the Contractor to comply with prevailing wage rates, maintenance and submission of weekly certified payroll records, employment of apprentices, and compliance with legal hours of work, as well as provisions set forth in the ***Labor Compliance and Payment of Prevailing Wages*** section of this contract.

Such requirement shall not result in an increase to the contract time or the contract amount. Contractor and all Subcontractors, of every tier, are required to comply with the requirements of the Labor Compliance Program, at no additional cost to the Authority.

B. Notice

Contractor shall post a "Notice of Initial Approval" of the Labor Compliance Program at the job site in accordance with Title 8 California Code of Regulations Section 16429.

C. Subcontractors.

Contractor shall include, and shall require all Subcontractors, of every tier, to include contractual provisions in all contracts entered into for the performance of the Work requiring each Subcontractor, of every tier, who furnishes any labor for the performance of Work to comply with those provisions of this Section at the Contractor's/Subcontractor's own expense.

SC-30 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

A. **Overtime Requirements.** No Contractor or Subcontractor contracting for any part of the Contract Work which may require or involve 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 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph A of this section, the Contractor and any Subcontractor responsible shall be liable for the unpaid wages. In addition, such 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 clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. **Withholding for Unpaid Wages and Liquidated Damages.** The Authority 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 moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety

Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this section.

- D. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this section.

SC-31 WORK PLACE DRUG AND ALCOHOL TESTING PROGRAMS

The Contractor whose employees are performing safety-sensitive functions (as defined by Federal Transit Administration (FTA) rules for the Authority shall comply with the FTA drug and alcohol testing 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). Noncompliance may result in suspension or termination of contract and/or nonpayment of invoices.

For purposes of this compliance program, safety-sensitive employees are defined as follows:

Those employees whose job functions are, or whose job descriptions include the performance of functions, related to the safe operation of mass transportation service.

The following are categories of safety-sensitive functions:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's License (CDL);
3. Controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service;
4. Maintaining revenue service vehicles or equipment used in revenue service; and
5. Carrying a firearm for security purposes.

Any supervisor who performs or whose job description includes the performance of any function listed above is also considered a safety-sensitive employee.

SC-32 PRIVACY

Should the Contractor, or any of its Subcontractors, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC

§552a, imposes information restrictions on the party administering the system of records. For purposes of the Privacy Act, when the Contract includes the operation of a system of records on individuals to accomplish a government function, Authority and any Contractors, third-party Contractors, Subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved. Failure to comply with the terms of the Privacy Act or this provision of this contract will make this contract subject to termination. The Contractor agrees to include this clause in all subcontracts awarded under this Contract that require the design, development, or operation of a system of records on individuals subject to the Privacy Act.

**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM
CONTRACT NO. C3135-17
VAN NUYS NORTH PLATFORM PROJECT**

**ATTACHMENT A
TECHNICAL SPECIFICATIONS**

EXHIBIT A - WORK COMPLETION SCHEDULE

Contractor shall commence performance of the Work upon the date specified in the formal Notice to Proceed issued to 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 milestone dates:

MILESTONE	SCHEDULE	DESCRIPTION	LIQUIDATED DAMAGES AMOUNT PER CALENDAR DAY*
1	120 Working Days After SSWP Approval	Installation and Cutover of New Comm Shelter, Install Temporary Fencing 60 Days after SSWP Approval, Completion and Cutover of Universal Crossover -- ADD, Completion of overhead communications poles removal, MT-1 trackwork, Limited work window.	\$7,186
2	120 Working Days After SSWP Approval	Fiberoptic Relocation, LADWP Yard Grading & Trackwork Complete 60 Days after SSWP Approval, Installation and completion of shoring.	\$7,186
3	120 Working Days After SSWP Approval	Installation and Completion of Concrete Access Ramps and Shoring, Amtrak Canopy Removal, Completion of Temporary platform, Completion of LACFCD Retrofit.	\$7,186
4	60 Working Days After SSWP Approval	Completion and cutover of MT-2 Trackwork and signal work Limited Track Window, Completion of all LADWP construction.	\$7,186
5	140 Working Days After SSWP Approval	Completion of Middle Platform Staircase Ramp & Wall and Underpass, Installation and completion of shoring, Completion of Center platform and all amenities, Completion of LACFCD connection.	\$7,186

MILESTONE	SCHEDULE	DESCRIPTION	LIQUIDATED DAMAGES AMOUNT PER CALENDAR DAY*
6	62 Working Days After SSWP Approval	Restoring of Parking Area Approval, Completion of fencing south of MT-2, Completion of site construction	\$7,186
Total Project	Construction Completion	720 Calendar Days from the Notice To Proceed. The Period of performance can only be adjusted through a written Change Order to this Contract	\$7,186

* The maximum liquidated damages for which the Contractor shall be liable shall be \$7,186.00 per day for failure to meet any or all milestones. See *also*: General Conditions, Articles entitled "Liquidated Damages" and "Prosecution and Completion of Work."

EXHIBIT B – DBE COMPLIANCE FORMS

EXHIBIT C – PERMIT MATRIX

(SCRRA FORM 103)

RACE-CONSCIOUS MONTHLY DEE SUBCONTRACTOR COMMITMENT AND ATTAINMENT REPORT SUMMARY AND PAYMENT VERIFICATION (Form 103)

Reporting Period (month) 10

Contract Number:	Form 303 Report No.:	Report prepared by:
Contract Award Date:	Original Contract Award Amount:	Title:
Prime Name:	Prime Current Contract Value:	Report reviewed by:
	% of Project Complete:	Signature:
Address:	(B) divided by (D)	Title:
	Total Paid to Prime this Month:	
	Total Paid to Prime to Date	Prime's Current DBE Attainment
	Total Paid to DBE this Month:	(A/B):
Telephone No.:	Total Paid to DBE to Date:	Prime's Current DBE Commitment
	Date of Last Progress Payment to Prime	(C/D):
Prime Commitment at Award:		Total Dollars Paid to DBEs divided by Prime Current Contract Value
		Total DBE Current Eligible DBE Subcontract Value divided by Prime Current Contract Value

1		2		3		4		5		6		7		8		9		10		11		12		13		14		
SUBCONTRACTOR				Type of Work Performed (Scope)		Original \$ Amount Committed at Award	\$ +/- Encumbering from Change Order Activity	\$ Amount of Current Commitment	\$ Amount of Eligible DBE Participation Claimed	\$ Amount Paid to DBE this month	\$ Amount paid to lower tier(s) of DBE this month	Eligible \$ Amount Paid to DBE this month = (Column 7 minus Column 9) x DBE Capacity	\$ Amount paid to lower tier(s) of DBE to Date	Eligible \$ Amount Paid to DBE to Date minus Payments to lower tier(s)	% of Retention Withheld	% of Work Complete	Notes/Comments											
				Applicable NAICS Code(s)																								
Name:																												
Address:																												
City, State, Zip Code:																												
Telephone Number:																												
TYPE: Subcontractor Broker																												
Supplier: Regular Dealer or Manufacturer																												
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Address:																												
City, State, Zip Code:																							</					

COMMENTS/ISSUES:

By Signing below the Contractor hereby certifies under penalty of perjury that the information provided on or in connection with this form is true, accurate and complete. Additionally, the Contractor hereby certifies it has complied with all requirements of 49 CFR, Part 26 and properly prepared requirements of the California Public Contract Code.

Authorized Binding Name _____
Authorized Binding Title _____
Authorized Binding Signature _____

DBE ADDITION / SUBSTITUTION / TERMINATION REQUEST FORM

DBE ADDITION/SUBSTITUTION/TERMINATION REQUEST FORM

INSTRUCTIONS TO PRIME Contractor

1. Prime Contractor shall provide the Authority with the information requested below upon identification of an additional DBE not previously listed to perform under this Contract.
2. Prime Contractor shall provide written confirmation from the DBE, that it is participating in this Contract for a specified dollar value and specified work item(s) (a signed subcontract agreement may serve as written confirmation).
3. Any DBE substitutions or terminations require written justification from the prime Contractor and shall only be permitted for "good cause."
4. All requests for DBE additions/substitutions/terminations shall be in accordance with the Contract Specifications and are subject to prior written approval by the Authority.

SCRRA Contract #:		Contract Name/Title:		
Prime Contractor:		Date of Contract Award:	Initial Contract \$ Value:	Current Contract \$ Value:
Name of Person Completing this Form:		Phone #: Email Address:	Email Address:	
Business Address, City, State and Zip:				
Please provide the following information for each proposed ADDITIONAL DBE:				
DBE Firm Name:			Proof of DBE certification attached? (REQUIRED) <input type="checkbox"/> YES	
Business Address, City, State and Zip:			Phone #:	
Contact Name:		Email Address:	Is the Additional DBE Replacing Another DBE? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Summary of Proposed Scope of Work:				
Proposed DBE Subcontract Amount:	% of Current Prime Contract Value:	Type of Firm: <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Broker <input type="checkbox"/> Regular Dealer <input type="checkbox"/> Manufacturer <input type="checkbox"/> Trucker		
Please provide the following information for any DBE SUBSTITUTIONS/TERMINATIONS:				
Name of DBE to be Substituted/Terminated:		Type of Firm: <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Broker <input type="checkbox"/> Regular Dealer <input type="checkbox"/> Manufacturer <input type="checkbox"/> Trucker		
State Reason(s) for Substitution/Termination (attach all supporting documentation):				
Original DBE Subcontract Amount:	% of Current Prime Contract Value:	\$ Value Paid to Date:		
Prime Contractor Signature:			Date:	

FOR SCRRA USE ONLY:

If NOT approved, state reason(s):			
Reviewed by (PM):	Name: _____	Signature: _____	Date: _____
Reviewed by (CA):	Name: _____	Signature: _____	Date: _____
Approved by (DBELO):	Name: _____	Signature: _____	Date: _____

VERIFICATION OF PAYMENT

			DATE
PROJECT	CONTRACT NO.	SUPPL. NO.	DBE STATUS:
			<input type="checkbox"/> Yes <input type="checkbox"/> No
CONTRACTOR	SUBCONTRACTOR	ADDRESS:	

[illegible]

CUMULATIVE AMOUNT INVOICED		0.00
CUMULATIVE AMOUNT PAID		0.00
RETENTION TOTAL		0.00

COMMENTS:

LIST OF SUBTITLES:

Purchaser to Authority (attached in case) hereby certifies that this payment verification is correct and proper. Execution of this form by the subcontractor certifies that the amounts listed are correct as stated, and that the payment has been received for services rendered at the agreed rate.

.....

Case

DBE Trucking Verification Form

MONTHLY TRUCKING UTILIZATION FORM (DBE and Non-DBE)

Contract No.:			Month:				Year:				
Trucking Company or Owner Operator	DBE Cert. No. (if certified)	Company Name and Address Telephone Number	# of Trucks Owned and Operated	CA No.	Amount paid to All Truckers	Full DBE/DBE Eligibility or With Own Workforce	Broker Fees	Total Credit	Date Paid	Transportation Arrangement (X all that apply)	Comments/Justification
					\$ -	\$ -		\$ -		Lease	
					\$ -	\$ -		\$ -		Non-DBE	
					\$ -	\$ -		\$ -		DBE	
					\$ -	\$ -		\$ -		Lease	
					\$ -	\$ -		\$ -		Non-DBE	
					\$ -	\$ -		\$ -		DBE	
					\$ -	\$ -		\$ -		Lease	
					\$ -	\$ -		\$ -		Non-DBE	
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					\$ -	\$ -		\$ -		Lease	
					\$ -	\$ -		\$ -		Non-DBE	
					\$ -	\$ -		\$ -		DBE	
PAGE SUBTOTAL								\$ -			
MONTHLY OVERALL TOTAL								\$ -			
PRIME CONTRACTOR:			BUSINESS ADDRESS:					BUSINESS PHONE NUMBER:			

A copy of all lease agreements should be attached.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT.

Pursuant to Authority vested in me, I certify under penalty of perjury that this trucking utilization form submitted is correct and proper. Execution of this form certifies that the amounts and data provided herein is correct as stated.

CONTRACTOR REPRESENTATIVE'S NAME, AND SIGNATURE	TITLE	DATE

ATTACHMENT C
REFERENCE DOCUMENTS – DRAWINGS
UNDER SEPARATE COVER