

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)

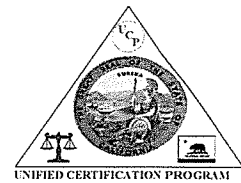


SERVICES

I7010 HOTELS & MOTELS
 I7020 ROOMING & BOARDING HOUSES
 I7030 CAMPS & RECREATIONAL VEHICLE PARKS
 I7040 MEMBERSHIP-BASIS ORG. HOTELS
 I7210 LAUNDRY, CLEANING, & GARMENTS
 I7220 PHOTOGRAPHIC STUDIOS, PORTRAIT
 I7230 BEAUTY SHOPS
 I7240 BARBER SHOPS
 I7250 SHOE REPAIR & SHOESHINE PARLORS
 I7260 FUNERAL SERVICE & CREMATORIES
 I7290 MISC PERSONAL SERVICES
 I7291 TAX RETURN PREPARATION SERVICES
 I7310 ADVERTISING
 I7320 CREDIT REPORTING & COLLECTION
 I7330 MAILING, REPRODUCTION, STENOGRAPHIC
 I7336 COMMERCIAL ART AND GRAPHIC DESIGN
 I7340 SERVICES TO BUILDINGS
 I7341 JANITORIAL SERVICES
 I7342 DISINFECTING AND PEST CONTROL
 I7349 BUILDING MAINTENANCE SERVICES
 I7350 MISC EQUIPMENT RENTAL & LEASING
 I7360 PERSONNEL SUPPLY SERVICES
 I7370 COMPUTER & DATA PROCESSING SERVICES
 I7371 COMPUTER PROGRAMMING
 I7372 PREPACKAGED SOFTWARE
 I7373 INTEGRATED SYSTEMS & CAD/CAM SYSTEMS
 I7375 INFORMATION RETRIEVAL SYSTEMS
 I7377 COMPUTER RENTAL AND LEASING
 I7378 COMPUTER MAINTENANCE & REPAIR
 I7380 MISC BUSINESS SERVICES
 I7381 DETECTIVE & ARMORED CAR SERVICES
 I7382 SECURITY SYSTEMS SERVICES
 I7388 INTERIOR DECORATING & DESIGN
 I7510 AUTOMOTIVE RENTALS, NO DRIVERS
 I7520 AUTOMOBILE PARKING
 I7530 AUTOMOTIVE REPAIR SHOPS
 I7540 AUTOMOTIVE SERVICES, EXCEPT REPAIR
 I7550 TOWING
 I7620 ELECTRICAL REPAIR SHOPS
 I7630 WATCH, CLOCK, & JEWELRY REPAIR
 I7640 REUPHOLSTERY & FURNITURE REPAIR
 I7690 MISC REPAIR SHOPS
 I7698 LOCKSMITH
 I7810 MOTION PICTURE & VIDEO TAPE PRODUCTION
 I7820 MOTION PICTURE & VIDEO TAPE DISTRIBUTION
 I7830 MOTION PICTURE THEATERS
 I7840 VIDEO TAPE RENTAL

I7850 MISCELLANEOUS AUDIO VISUAL SERVICES
 I7910 DANCE STUDIOS, SCHOOLS, & HALLS
 I7920 PRODUCERS, ORCHESTRAS, ENTERTAINERS
 I7930 BOWLING CENTERS
 I7940 COMMERCIAL SPORTS
 I7990 MISC AMUSEMENT, RECREATION SERVICES
 I8010 OFFICES & CLINICS OF MEDICAL DOCTORS
 I8020 OFFICES & CLINICS OF DENTISTS
 I8030 OFFICES OF OSTEOPATHIC PHYSICIANS
 I8040 OFFICES OF OTHER HEALTH PRACTITIONERS
 I8050 NURSING & PERSONAL CARE FACILITIES
 I8060 HOSPITALS
 I8070 MEDICAL LABORATORIES
 I8073 DRUG TESTING
 I8080 HOME HEALTH CARE SERVICES
 I8090 HEALTH & ALLIED SERVICES, NEC
 I8110 LEGAL SERVICES
 I8210 ELEMENTARY & SECONDARY SCHOOLS
 I8220 COLLEGES & UNIVERSITIES
 I8230 LIBRARIES
 I8240 VOCATIONAL SCHOOLS
 I8290 SCHOOLS & EDUCATIONAL SERVICES, NEC
 I8320 INDIVIDUAL & FAMILY SERVICES
 I8330 JOB TRAINING & RELATED SERVICES
 I8350 CHILD DAY CARE SERVICES
 I8360 RESIDENTIAL CARE
 I8390 SOCIAL SERVICES, NEC
 I8410 MUSEUMS & ART GALLERIES
 I8420 BOTANICAL & ZOOLOGICAL GARDENS
 I8610 BUSINESS ASSOCIATIONS
 I8620 PROFESSIONAL ORGANIZATIONS
 I8630 LABOR ORGANIZATIONS
 I8640 CIVIC & SOCIAL ASSOCIATIONS
 I8650 POLITICAL ORGANIZATIONS
 I8660 RELIGIOUS ORGANIZATIONS
 I8690 MEMBERSHIP ORGANIZATIONS, NEC
 I8720 ACCOUNTING, AUDITING, & BOOKKEEPING
 I8730 RESEARCH & TESTING SERVICES
 I8734 LABORATORY TESTING AND ANALYSIS
 I8740 MANAGEMENT & PUBLIC RELATIONS
 I8810 PRIVATE HOUSEHOLDS
 I8990 SERVICES, NEC
 I8991 RECYCLING

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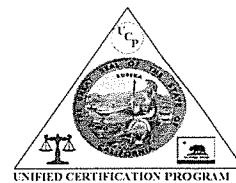


PUBLIC ADMINISTRATION

J9110 EXECUTIVE OFFICES
J9120 LEGISLATIVE BODIES
J9130 EXECUTIVE & LEGISLATIVE COMBINED
J9190 GENERAL GOVERNMENT, NEC
J9210 COURTS
J9220 PUBLIC ORDER & SAFETY
J9410 ADMIN. OF EDUCATIONAL PROGRAMS
J9430 ADMIN. OF PUBLIC HEALTH PROGRAMS
J9440 ADMIN. OF SOCIAL & MANPOWER PROGRAMS

J9450 ADMINISTRATION OF VETERANS' AFFAIRS
J9510 ENVIRONMENTAL QUALITY
J9530 HOUSING & URBAN DEVELOPMENT
J9610 ADMIN. OF GENERAL ECONOMIC PROGRAMS
J9620 REGULATIONS, ADMIN. OF TRANSPORTATION
J9630 REGULATION, ADMIN. OF UTILITIES
J9640 REGULATION OF AGRICULTURAL MARKETING
J9650 REGULATION MISC COMMERCIAL SECTORS
J9660 SPACE RESEARCH AND TECHNOLOGY
J9710 NATIONAL SECURITY
J9720 INTERNATIONAL AFFAIRS

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



ROSTER OF CERTIFYING AGENCIES

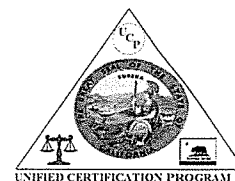
Note: Underlined website includes the California Unified Certification Program Application Package.

If firm has its principal place of business in another state and is certified in that state, please contact the California Department of Transportation in Cluster 4.

Area	Counties	Certifying Agencies	
Riverside, Imperial & San Diego (RIS) <i>Cluster 1</i>	Imperial Riverside San Diego	SAN DIEGO UNIFIED PORT DISTRICT Equal Opportunity Management P.O. Box 120488 San Diego, CA 92112-0488 Phone: (619) 686-6420 or (800) 854-2757 Fax: (619) 686-6413 www.portofsandiego.org CITY OF SAN DIEGO Equal Opportunity Contracting Program 1010 Second Avenue, #500 San Diego, CA 92101 Phone: (619) 533-4492 Fax: (619) 533-4474 www.sannet.gov	SUNLINE TRANSIT AGENCY Contracts and Compliance 32-505 Harry Oliver Trail Thousand Palms, CA 92276-3501 Phone: (760) 343-3456, Ext. 167 Fax: (760) 343-3845 www.sunline.org
Los Angeles Area <i>Cluster 2</i>	Kern Los Angeles Orange San Bernardino San Luis Obispo Santa Barbara Ventura	CITY OF LOS ANGELES Office of Contract Compliance 600 South Spring St., Suite 1300 Los Angeles, CA 90014 Phone: (213) 847-6480 Fax: (213) 847-5566 www.lacity.org/bca COUNTY OF ORANGE JOHN WAYNE AIRPORT 3160 Airway Avenue Costa Mesa, CA 92626 Phone: (949) 252-5175 Fax: (949) 252-5225 www.ocair.com	LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (MTA) Small Business Diversity and Labor Compliance One Gateway Plaza Los Angeles, CA 90012 Phone: (213) 922-2600 Fax: (213) 922-7660 www.mta.net

Roster of Certifying Agencies (Continued)

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



Area	Counties	Certifying Agencies	
BayArea Central Valley <i>Cluster 3</i>	Alameda	SANTA CLARA VALLEY	SAN MATEO COUNTY TRANSIT DISTRICT (SAMTRANS)/
	Amador	TRANSPORTATION	PENINSULA CORRIDOR JOINT
	Calaveras	AUTHORITY (VTA)	POWERS BOARD (JPB)
	Contra Costa	Small & Disadvantaged	DBE Office
	Fresno	Businesses	1250 San Carlos Avenue
	Kings	3331 North First Street	San Carlos, CA 94070
	Madera	San Jose, CA 95134-1906	Phone: (650) 508-7939
	Marin	Phone: (408) 321-5962	Fax: (650) 508-7738
	Mariposa	Fax: (408) 955-9729	www.samtrans.com
	Merced	www.vta.org	
	Monterey	BAY AREA RAPID TRANSIT	CENTRAL CONTRA COSTA
	Napa	DISTRICT (BART)	TRANSIT AUTHORITY (CCCTA)
	San Benito	Office of Civil Rights	Office of Civil Rights
	San Francisco	1330 Broadway, #1702	2477 Arnold Industrial Way
	San Joaquin	Oakland, CA 94612	Concord, CA 94520-5327
	San Mateo	Phone: (510) 464-6195	Phone: (925) 676-1976
	Santa Clara	Fax: (510) 464-7848	Fax: (925) 686-2630
	Santa Cruz	www.bart.gov	www.cccta.org
	Solano	SAN JOAQUIN REGIONAL	ALAMEDA-CONTRA COSTA
	Sonoma	RAIL COMMISSION	TRANSIT DISTRICT
	Stanislaus	DBE Liaison Officer	(AC TRANSIT)
	Tulare	5000 S. Airport Way, #102	DBE Program Compliance
	Tuolumne	Stockton, CA 95206	Administrator
		Phone: (209) 468-5600	1600 Franklin Street, 6th Floor
		Fax: (209) 468-5613	Oakland, CA 94612
		www.acerail.com	Phone: (510) 891-7176
		CITY OF FRESNO	Fax: (510) 891-4724
		DBE Program	www.actransit.org
		2101 G Street, Building A	SAN FRANCISCO PUBLIC
		Fresno, CA 93706	TRANSPORTATION DEPT.
		Phone: (559) 498-4071	Accessible Services and
		Fax: (559) 488-1069	Contract Compliance
		www.ci.fresno.ca.us	1145 Market Street, 7th Floor
		CITY OF OAKLAND	San Francisco, CA 94103
		Contract Compliance Office	Phone: (415) 934-3987
		250 Frank H. Ogawa Plaza,	Fax: (415) 934-3980
		#3341	www.sfmuni.com
		Oakland, CA 94612	AIRPORT CONCESSIONS ONLY:
		Phone: (510) 238-3970	SF INTERNATIONAL AIRPORT
		Fax: (510) 238-3363	Airport Minority/Women Opportunity
		www.oaklandnet.com	P.O. Box 8097
			San Francisco, CA 94128
			Phone: (650) 821-5021
			Fax: (650) 821-5146
			www.flysfo.com

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Roster of Certifying Agencies (Continued)

Area	Counties	Certifying Agencies	
Northern California <i>Cluster 4</i>	Alpine	CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)	YOLO COUNTY TRANSPORTATION DISTRICT
	Butte	Civil Rights MS 79	DBE Programs
	Colusa	1823 14th Street	350 Industrial Way
	Del Norte	Sacramento, CA 95814	Woodland, CA 95776
	El Dorado	Phone: (916) 324-1700 or (866) 810-6346	Phone: (530) 661-0816
	Glenn	Fax: (916) 324-1862	Fax: (530) 661-1732
	Humboldt	www.dot.ca.gov	www.yctd.org
	Inyo		
	Lake		
	Lassen		
	Mendocino		
	Modoc		
	Mono		
	Nevada		
	Placer		
	Plumas		
	Sacramento		
	Shasta		
	Sierra		
	Siskiyou		
	Sutter		
	Tehama		
	Trinity		
	Yolo		
	Yuba		

SECTION VI: AGREEMENT

AUTHORITY's right to such performance by CONTRACTOR or to future performance of such terms or conditions and CONTRACTOR's obligation in respect thereto shall continue in full force and effect. CONTRACTOR shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions, which can affect the work or the cost thereof. Any failure by CONTRACTOR to do so will not relieve it from responsibility for successfully performing the work without additional expense to AUTHORITY.

C. AUTHORITY assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, employees or agents prior to the execution of this Agreement, unless such understanding or representations by AUTHORITY are expressly stated in this Agreement.

D. Time shall be of the essence hereunder; but CONTRACTOR shall perform work hereunder only to the minimum extent consistent with requirements herein.

E. Changes to any portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by an authorized representative of AUTHORITY and issued in accordance with the provisions of this Agreement.

ARTICLE 2. AUTHORITY DESIGNEE

The Chief Executive Officer of AUTHORITY, or designee, shall have the authority to act for and exercise any of the rights of AUTHORITY as set forth in this Agreement.

ARTICLE 3. SCOPE OF WORK

CONTRACTOR shall provide all labor, equipment, materials and facilities necessary for all work related to Construction of the Laguna Niguel to San Juan Capistrano Passing Siding Project at AUTHORITY's Laguna to San Juan Capistrano in strict compliance with all the requirements specified herein and in:

Attachment A entitled "DBE CONTRACT PROVISIONS FOR FTA-ASSISTED CONTRACTS WITH DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS";

Attachment A-1 entitled "DBE Commitment Form";

Exhibit A, entitled "General Provisions"; Addendum No's ;

Exhibit B, entitled "Specifications";
 Exhibit C, entitled "List of Drawings";
 Exhibit D, entitled "List of Subcontractors";
 Exhibit E, entitled "Performance Bond";
 Exhibit F, entitled "Payment Bond"; and
 Exhibit G, entitled "Guaranty";
 Exhibit H, entitled "Level III Safety Specifications";
 Exhibit I, entitled "Contract Change Order";
 Exhibit J, entitled "Cal Trans Encroachment Permits, Applications, and Certifications";
 Exhibit K, entitled "Draft Stormwater Pollution Prevention Plan";
 Exhibit L, entitled "SRCCA Excavation Support Guidelines"

all of which documents are attached to and, by this reference, incorporated in and made a part of this Agreement. By this reference, also incorporated in and made a part of this Agreement are all applicable provisions of IFB and all representations made by CONTRACTOR in its original bid to AUTHORITY, including, but not limited to, CONTRACTOR's certifications relative to Workers' Compensation Insurance, and compliance with Section 7028.15 of the State of California Business and Professions Code.

ARTICLE 4. DELIVERY / RECOVERY SCHEDULE

A. CONTRACTOR shall fully complete the herein above described work within () calendar days from the effective date of written Notice to Proceed (NTP) issued by AUTHORITY. CONTRACTOR shall give AUTHORITY not less than seventy-two (72) hours advance notice of the start of any work. Within five (5) calendar days after said notice, CONTRACTOR shall provide any construction schedules as may be requested by AUTHORITY.

B. If at any time, the critical path schedule reflects -30 or a greater negative number of days of total float, then CONTRACTOR, within ten (10) days after CONTRACTOR first becomes aware of such schedule delay, shall prepare and submit to AUTHORITY for review and approval a Recovery Schedule demonstrating CONTRACTOR's proposed plan to regain lost schedule progress and to achieve the

original contractual milestones in accordance with the Contract. AUTHORITY shall notify CONTRACTOR within ten days after receipt of each such Recovery Schedule whether the schedule is deemed accepted or rejected. Within five (5) days after AUTHORITY's rejection of the schedule, CONTRACTOR will resubmit a revised Recovery Schedule incorporating AUTHORITY's comments. When AUTHORITY accepts CONTRACTOR's Recovery Schedule, CONTRACTOR shall, within five (5) days after AUTHORITY's acceptance, incorporate and fully include such schedule into the Project Schedule and deliver it to AUTHORITY.

C. All costs incurred by CONTRACTOR in preparing, implementing and achieving the Recovery Schedule shall be borne by CONTRACTOR and shall not result in a change to the contract price.

D. In the event that CONTRACTOR fails to provide an acceptable Recovery Schedule within 30 days of CONTRACTOR's receipt of a notice to do so, CONTRACTOR shall have no right to receive progress payments until CONTRACTOR has prepared and AUTHORITY has approved such Recovery Schedule.

ARTICLE 5. START OF WORK

CONTRACTOR shall incur no costs, and shall not perform or furnish any work, services, materials or equipment under this Agreement, unless and until a written Notice to Proceed has been given to CONTRACTOR by AUTHORITY. Conditions precedent to AUTHORITY issuing said Notice to Proceed are CONTRACTOR furnishing the Exhibit E "Performance Bond," Exhibit F "Payment Bond," Exhibit G "Guaranty," and certificates of insurance as set forth in Article 11 hereunder. CONTRACTOR shall furnish said documents within ten (10) calendar days (excluding Saturdays, Sundays and legal holidays) after notification of contract award from AUTHORITY. Upon receipt of acceptable bonds, guaranty, and insurance certificates, AUTHORITY will within ten (10) working days thereafter, issue the written Notice to Proceed.

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ARTICLE 6. PAYMENT

A. For CONTRACTOR's full and complete performance of its obligations under this Agreement, and subject to the maximum cumulative payment obligation provision set forth in Article 8, AUTHORITY shall pay CONTRACTOR the firm fixed sum of Dollars (\$.00).

B. Progress payments and the final payment will be made by AUTHORITY to CONTRACTOR in accordance with the terms as set forth in Exhibit A, "General Provisions," under the "Progress Payments" and "Final Payment and Claims" sections therein. The acceptance by CONTRACTOR of AUTHORITY's final payment hereunder shall constitute a waiver of all claims against AUTHORITY under or arising out of this herein Agreement, as such may from time to time be amended.

C. Failure by AUTHORITY to pay amount in dispute shall not alleviate, diminish or modify in any respect the CONTRACTOR's obligation to achieve final acceptance of and all work in accordance with the contract documents, and CONTRACTOR shall not cease or slow down its performance under this Agreement on account of any such amount in dispute. CONTRACTOR shall proceed as directed by AUTHORITY pending resolution of dispute. Upon resolution of dispute, each party shall promptly pay any amount owing.

ARTICLE 7. PROMPT PAYMENT CLAUSE

A. Upon receipt of payment by AUTHORITY, CONTRACTOR agrees to promptly pay each subcontractor for the satisfactory work performed under this Agreement, no later than seven (7) calendar days. CONTRACTOR agrees further to return retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. AUTHORITY reserves the right to request the appropriate documentation from CONTRACTOR showing payment has been made to the subcontractors. Any delay or postponement of payment from the above referenced time frames may occur only for good cause following written approval by AUTHORITY. In accordance with 49 CFR Section 26.29 "Prompt Payment Provisions" (DBE Final Rule) AUTHORITY, at its discretion, may elect to utilize the following method to comply with the prompt payment of retainage requirement:

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1. Hold retainage from CONTRACTOR and provide for prompt and regular incremental acceptances of portions of the Agreement, pay retainage to CONTRACTOR based on these acceptances, and require a contract clause obligating the CONTRACTOR to pay all retainage owed to the subcontractors for satisfactory completion of the accepted work within thirty (30) days after payment to the CONTRACTOR.

B. Failure to comply with this Article or delay in payment without prior written approval from AUTHORITY will constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to a penalty of two percent (2%) of the invoice amount due per month for every month that payment is not made.

C. These prompt payment provisions must be incorporated in all subcontract agreements issued by CONTRACTOR under this Agreement. Each subcontract shall require the subcontractor to make payments to sub-subcontractors and suppliers in a similar manner.

ARTICLE 8. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CONTRACTOR mutually agree that AUTHORITY's maximum cumulative payment obligation hereunder (including obligation for CONTRACTOR 's profit), shall be Dollars (\$.00), which shall include all amounts payable to CONTRACTOR for its subcontracts, leases, materials and costs arising from, or due to termination of, this Agreement.

ARTICLE 9. NOTICES

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid and addressed as follows:

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To CONTRACTOR:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION:

ATTENTION: Venita Anderson

Title:

Title: Senior Contract Administrator

Tel:

Tel: (714) 560 - 5427

E-Mail:

E-Mail: vanderson@octa.net

AUTHORITY will provide timely notification to CONTRACTOR of the receipt of any third-party claim relating to the Agreement, and CONTRACTOR agrees to timely reimburse AUTHORITY for its reasonable costs incurred in providing such notice in accordance with Public Contract Code Section 9201.

ARTICLE 10. INDEPENDENT CONTRACTOR

CONTRACTOR's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. CONTRACTOR's personnel performing work under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of AUTHORITY. CONTRACTOR shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation insurance, and similar matters.

ARTICLE 11. INSURANCE

A. CONTRACTOR shall procure and continuously maintain in full force and effect through contract completion, insurance coverages specified herein. Coverages shall not be subject to self-insurance provisions. CONTRACTOR shall provide the following insurance coverage:

1 1. Commercial General Liability, to include Products/Completed Operations,
2 Independent Contractors', Contractual Liability, and Personal Injury with a minimum limit of \$1,000,000
3 per occurrence and \$2,000,000 general aggregate.

4 2. Automobile Liability to include owned, hired and non-owned autos with a combined
5 single limit of \$1,000,000 each accident;

6 3. Workers' Compensation with limits as required by the State of California, including
7 waiver of subrogation, in favor of AUTHORITY, its officers, directors, employees and agents.

8 4. Builders All Risk policy or course of construction including earthquake and flood
9 coverage with minimum limits of \$1,000,000.

10 5. Employers' Liability with minimum limits of \$1,000,000.

11 B. Prior to commencement of any work hereof, CONTRACTOR shall furnish to AUTHORITY's
12 Contract Administrator broker-issued insurance certificate, including an insurance company issued
13 endorsement showing the required insurance coverages and further providing that:

14 1. AUTHORITY, its officers, directors, employees and agents must be named as
15 additional insured on Commercial General Liability and Automobile Liability certificates and on the
16 insurance policy endorsement with respect to performance hereunder; and

17 2. The coverage shall be primary and noncontributory as to any other insurance with
18 respect to performance hereunder; and

19 3. Thirty (30) days prior written notice of cancellation or material change be given to
20 AUTHORITY.

21 C. "Occurrence," as used herein, means any event or related exposure to conditions, which
22 result in bodily injury or property damage.

23 D. The Certificate of Insurance shall reference Agreement Number C-7-2018; and, the Contract
24 Administrator's Name, Venita Anderson.

25 E. Upon AUTHORITY's request, certified, true and exact copies of each of the insurance policies
26 shall be provided to AUTHORITY.

F. AUTHORITY shall notify CONTRACTOR in writing of any changes in the requirements to insurance required to be provided by CONTRACTOR. Except as set forth in this Article, any additional cost from such change shall be paid by AUTHORITY and any reduction in cost shall reduce the contract price pursuant to a change order.

G. CONTRACTOR shall also include in each subcontract the stipulation that subcontractors shall maintain coverage in the amounts required as provided in this Agreement.

H. CONTRACTOR shall be required to immediately notify AUTHORITY of any modifications or cancellation of any required insurance policies.

ARTICLE 12. BONDS

A. By submitting Exhibit E, entitled "Performance Bond," and Exhibit F, entitled "Payment Bond," CONTRACTOR shall satisfy AUTHORITY's requirements that CONTRACTOR deposit with AUTHORITY bonds with values in the sum of 100 percent of this Agreement's price to cover CONTRACTOR's failure to fully perform hereunder and CONTRACTOR's failure to pay its labor, material or failure to comply with Article 39 of this Agreement, in performing hereunder. If the contract price is increased in connection with a Change Order, AUTHORITY may, in its sole discretion, require a corresponding increase in the amount of the Performance and Payment bonds or new bonds covering the Change Order work.

B. Notwithstanding any other provision set forth in this Agreement, performance by a Surety or Guarantor of any obligations of CONTRACTOR shall not relieve CONTRACTOR of any of its obligations thereunder.

ARTICLE 13. ORDER OF PRECEDENCE

To the extent there are any conflicts or inconsistency arising between any provisions or documents incorporated in this Agreement, the order of precedence for conflict resolution in descending order shall be as follows: (1) the provisions of this Agreement, including its Exhibits; (2) the provisions of IFB including all Addendums; (3) the bid submitted to AUTHORITY by CONTRACTOR in response to said IFB; and (4) any other documents, cited herein or incorporated by reference. In the event of

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conflicting provisions of Exhibit B ("Specifications"), and Exhibit C ("List of Drawings"), the Specifications (Exhibit B) shall take precedence.

ARTICLE 14. CHANGES

A. By written notice or order, AUTHORITY may, from time to time, order work suspension and/or make any change in the general scope of this Agreement, including, but not limited to, changes in the drawings, specifications, schedules (either deceleratory or acceleratory) or any other particular of the specifications or provisions of this Agreement. If any such work suspension or change causes an increase or decrease in the price or time required for performance, CONTRACTOR shall promptly notify AUTHORITY thereof and assert its claim for adjustment within ten (10) calendar days after the change or work suspension is ordered, and an equitable adjustment shall be negotiated. However, nothing in this clause shall excuse CONTRACTOR from proceeding immediately with the Agreement as changed. Changes will be made in accordance with the terms as set forth in Exhibit A, "General Provisions," paragraph F, Extra Work and Changes, by written Change Order.

B. No claims by CONTRACTOR for equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

C. Any work performed beyond the technical provisions specified in this Agreement, or any extra work performed without AUTHORITY's written authority, will be considered unauthorized work and the cost thereof will not be paid for. Upon order of AUTHORITY's Engineer or its designee, unauthorized work shall be remedied, removed or replaced at CONTRACTOR's expense.

D. Any changes under this Article will be made using Authority's Contract Change Order form, set forth in Exhibit I, "Contract Change Order."

E. Any changes which constitute a "Claim" as defined by Public Contract Code Section 9204 (hereinafter "Section 9204") will be processed in accordance with Section 9204 and Exhibit A, "General Provisions."

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ARTICLE 15. MODIFICATION PROPOSALS-PRICE BREAKDOWN

CONTRACTOR, in connection with any proposal it makes for a change order, shall furnish a price breakdown, itemized as required by AUTHORITY. Unless otherwise directed, the price breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any expense claimed by subcontractors shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by AUTHORITY.

ARTICLE 16. DISPUTES

A. Except as otherwise provided in this Agreement, when a dispute arises between CONTRACTOR and AUTHORITY, the project managers shall meet to resolve the issue. If project managers do not reach a resolution, the dispute will be decided by AUTHORITY's Director of Contracts Administration and Materials Management (CAMM), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of the Director, CAMM, shall be the final and conclusive administrative decision.

B. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMM. Nothing in this Agreement, however, shall be construed as making final the decision of any AUTHORITY official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

ARTICLE 17. TERMINATION FOR CONVENIENCE

A. AUTHORITY may terminate this Agreement for its convenience at any time in whole or in part, by giving CONTRACTOR written notice thereof. AUTHORITY shall terminate by delivering to CONTRACTOR a written Notice of Termination for Convenience specifying the extent of termination and its effective date. Upon termination, AUTHORITY shall pay CONTRACTOR its allowable costs incurred

to date of that portion terminated. The rights, duties and obligations of the parties shall be construed in accordance with the applicable provisions of the Code of Federal Regulations (CFR) Title 48, Chapter 1, part 49, of the Federal Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination for convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be given to CONTRACTOR in accordance with the provisions of the FAR referenced above and Article 9, herein. Upon receipt of said notification, CONTRACTOR shall immediately proceed with all obligations, regardless of any delay in determining or adjusting any amounts due under this Article, and agrees to comply with all applicable provisions of the FAR pertaining to termination for convenience.

ARTICLE 18. TERMINATION FOR DEFAULT-DAMAGES FOR DELAY-TIME EXTENSIONS

A. If CONTRACTOR refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete said work within such time, AUTHORITY may, by written notice to CONTRACTOR that specifies the nature of the default, terminate CONTRACTOR's right to proceed with the work or such part of the work as to which there has been delay. In such event, AUTHORITY may take over the work and prosecute the same to completion, by Agreement or otherwise, and may take possession of and utilize in completing the work such materials, appliances and plant as may be on the site of the work and necessary therefore. Whether or not CONTRACTOR's right to proceed with the work is terminated, CONTRACTOR and its sureties shall be liable for any damage to AUTHORITY resulting from its refusal or failure to complete the work within the specified time.

B. If AUTHORITY so terminates CONTRACTOR's right to proceed, the resulting damage will consist of such liquidated damages as set forth in the Article 38 in this Agreement entitled "Liquidated Damages," until such reasonable time as may be required for final completion of the work together with any increased costs occasioned AUTHORITY in completing the work. If AUTHORITY does not so terminate CONTRACTOR's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

C. CONTRACTOR's right to proceed shall not be so terminated nor the CONTRACTOR charged with resulting damage if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR, including but not restricted to, acts of God, acts of the public enemy, acts or omissions of AUTHORITY, acts of another CONTRACTOR in the performance of an Agreement with AUTHORITY, fires, floods, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both CONTRACTOR and such subcontractors or suppliers; and

2. CONTRACTOR, within ten (10) calendar days from the beginning of any such delay, notifies AUTHORITY in writing of the causes of delay. AUTHORITY shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in its judgment, the findings of fact justify such an extension, and its findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this Agreement. Any such time extensions will not become effective until approved by AUTHORITY's Engineer in writing. AUTHORITY's Engineer will furnish CONTRACTOR a weekly statement showing the number of calendar days charged to the Agreement for the preceding week, the number of calendar days of time extensions being considered or approved, the number of calendar days originally specified for the completion of this Agreement and the number of calendar days remaining to complete this Agreement, and the extended date for completion thereof.

3. Should at any time extensions be included by AUTHORITY's Engineer on the Weekly Statement of Contract Calendar Days, a change order covering the sum total of the time extensions will be issued to CONTRACTOR at periodic intervals during the project.

D. If, after notice of termination of CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of

the parties shall be the same as if the notice of termination had been issued pursuant to Article 17, entitled "Termination for Convenience."

E. The rights and remedies of AUTHORITY provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

F. As used in paragraph C.1 of this Article, the term "subcontractors or suppliers," means subcontractors or suppliers at any tier.

ARTICLE 19. INDEMNIFICATION

CONTRACTOR shall indemnify, defend and hold harmless AUTHORITY, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct of CONTRACTOR, its officers, directors, employees, agents, subcontractors or suppliers, in connection with or arising out of the performance of this Agreement.

ARTICLE 20. ASSIGNMENTS AND SUBCONTRACTS

A. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONTRACTOR either voluntarily or by operation of law. CONTRACTOR shall not have the right to make any substitutions of any subcontractor listed in Exhibit D, entitled "List of Subcontractors," except in accordance with the provisions of the Subletting and Subcontractors Fair Practices Act, Public Contract Code Section 4100 et seq. AUTHORITY's consent shall not be deemed to relieve CONTRACTOR of its obligation to fully comply with the requirements of this Agreement.

B. CONTRACTOR shall be fully responsible to AUTHORITY for all acts and omissions of its own employees, and of subcontractors and their employees. CONTRACTOR shall coordinate the work performed by any subcontractor.

C. AUTHORITY shall have the right, but not the obligation, to review the form of any subcontract used by CONTRACTOR for the project and to require modifications thereto to conform to the requirements set forth herein.

ARTICLE 21. ACCESS TO RECORDS AND REPORTS

CONTRACTOR shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, and their respective representatives, and any other agents of AUTHORITY, such access to CONTRACTOR's accounting books, records, payroll documents and facilities of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. CONTRACTOR shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONTRACTOR's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case CONTRACTOR agrees to maintain same until AUTHORITY, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors. CONTRACTOR shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary. CONTRACTOR agrees to include these requirements in all subcontracts at any tier.

ARTICLE 22. CONFLICT OF INTEREST

CONTRACTOR agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the CONTRACTOR is unable, or potentially unable to render impartial assistance or advice to AUTHORITY; CONTRACTOR's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or CONTRACTOR has an unfair competitive advantage. CONTRACTOR is obligated to fully disclose to AUTHORITY in writing Conflict of Interest issues as soon as they are known to CONTRACTOR. All disclosures must be submitted in writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for the entire term of this Agreement.

ARTICLE 23. CODE OF CONDUCT

CONTRACTOR agrees to comply with AUTHORITY's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. CONTRACTOR agrees to include these requirements in all of its subcontracts.

ARTICLE 24. PROHIBITION ON PROVIDING ADVOCACY SERVICES

CONTRACTOR and all subcontractors performing work under this Agreement, shall be prohibited from concurrently representing or lobbying for any other party competing for a contract with AUTHORITY, either as a prime contractor or subcontractor. Failure to refrain from such representation may result in termination of this Agreement.

ARTICLE 25. FEDERAL, STATE AND LOCAL LAWS

CONTRACTOR warrants that, in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

ARTICLE 26. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, CONTRACTOR agrees as follows:

A. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

C. CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONTRACTOR's legal duty to furnish information.

D. CONTRACTOR will send to each labor union or representative of workers with which CONTRACTOR has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of CONTRACTOR's commitments under this Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to CONTRACTOR's books, records, and accounts by the DOT and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of CONTRACTOR's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further

Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

H. CONTRACTOR will include the portion of the sentence immediately preceding Paragraph (A) and the provisions of Paragraphs (A) through (H) of this Article in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the DOT may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the DOT, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 27. FINISHED AND PRELIMINARY DATA

A. All of CONTRACTOR's finished technical data, including but not limited to illustrations, photographs, tapes, software, software design documents, including without limitation source code, binary code, all media, technical documentation and user documentation, photoprints and other graphic information required to be furnished under this Agreement, shall be AUTHORITY's property upon payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary restriction except as elsewhere authorized in this Agreement. CONTRACTOR further agrees that it shall have no interest or claim to such finished, AUTHORITY-owned, technical data; furthermore, said data is subject to the provisions of the Freedom of Information Act, Title 5 of the United States Code (U.S.C.) Section 552.

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B. It is expressly understood that any title to preliminary technical data is not passed to AUTHORITY but is retained by CONTRACTOR. Preliminary data includes roughs, visualizations, software design documents, layouts and comprehensives prepared by CONTRACTOR solely for the purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given for preparation of finished artwork. Preliminary data title and right thereto shall be made available to AUTHORITY if CONTRACTOR causes AUTHORITY to exercise Article 17, and a price shall be negotiated for all preliminary data.

ARTICLE 28. NONDISCRIMINATION

A. Nondiscrimination: In accordance with Federal transit law at 49 U.S.C. Section 5332, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex disability, or age. CONTRACTOR agrees to comply with all applicable regulations and other implementing requirements the Federal Transit Administration (FTA) may issue.

B. Race, Color, Creed, National, Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e et seq.; and Federal transit laws at 49 U.S.C. Section 5332; CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor;" 41 CFR part 60; and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. Section 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. Section 2000e. CONTRACTOR further agrees to comply with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d et seq.; 49 CFR part 21; the most recent version of FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients;" DOT Order 5610.2(a) to Address Environmental Justice in Minority Populations and Low Income Populations;" Executive Order No. 13166 and DOT Policy Guidance concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005);

and the most recent version of FTA Circular 4704.1 "Equal Employment Program Guidelines for Grant Recipients," as applicable. CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

C. Age: In accordance with the Age Discrimination in Employment Act, 29 U.S.C. Sections 621-634; U.S. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625; the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq.; U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR part 90; and Federal transit law at 49 U.S.C. Section 5332; CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. CONTRACTOR agrees to comply with implementing requirements FTA may issue.

D. Disabilities: In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. Section 12101 et seq.; the Architectural Barriers Act of 1968, as amended, 42 U.S.C. Section 4151 et seq., and Federal transit law at 49 U.S.C. Section 5332; CONTRACTOR agrees that it will not discriminate against individuals on the basis of disability. CONTRACTOR agrees to comply with all applicable implementing regulations and requirements FTA may issue, including 49 CFR parts 27, 37, 38, and 39 and the most recent version of FTA Circular 4710.1 "Americans with Disabilities Act: Guidance."

E. CONTRACTOR agrees to include these requirements in all subcontracts at any tier.

ARTICLE 29. DISADVANTAGED BUSINESS ENTERPRISES

A. At the time of contract execution, CONTRACTOR committed to utilize Disadvantaged Business Enterprise(s) ("DBE") in the performance of this DOT-assisted contract and further agrees to ensure that any DBE subcontractor listed on the "DBE Participation Commitment Form Attachment A-1" will perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by AUTHORITY prior to CONTRACTOR effectuating any changes to its race-conscious DBE participation commitment(s). CONTRACTOR shall comply with all the requirements set

forth in Attachment "A" titled, "DBE CONTRACT PROVISIONS FOR FTA-ASSISTED CONTRACTS WITH DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS," which is attached to and, by this reference, incorporated in and made a part of this Agreement.

B. CONTRACTOR and any subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. CONTRACTOR shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying CONTRACTOR from future bidding as non-responsible.

C. CONTRACTOR agrees to include these requirements in all of its subcontracts at any tier.

ARTICLE 30. PRIVACY ACT

A. CONTRACTOR shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. Section 552(a). Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

B. CONTRACTOR agrees to include this requirement in all of its subcontracts.

ARTICLE 31. OWNERSHIP OF REPORTS AND DOCUMENTS

A. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made

for CONTRACTOR's records but shall not be furnished to others without written authorization from AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by AUTHORITY.

B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to CONTRACTOR in connection with the performance of this Agreement shall not, without prior written approval of AUTHORITY, be used for any purposes other than the performance under this Agreement, nor be disclosed to an entity not connected with the performance of the project. CONTRACTOR shall comply with AUTHORITY's policies regarding such material. Nothing furnished to CONTRACTOR, which is otherwise known to CONTRACTOR or is or becomes generally known to the related industry shall be deemed confidential. CONTRACTOR shall not use AUTHORITY's name, photographs of the project, or any other publicity pertaining to the project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without the express written consent of AUTHORITY.

C. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be released by CONTRACTOR to any other person or agency except after prior written approval by AUTHORITY, except as necessary for the performance of services under this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be handled only by AUTHORITY unless otherwise agreed to by CONTRACTOR and AUTHORITY.

ARTICLE 32. INCORPORATION OF FTA TERMS

All contractual provisions required by the DOT, whether or not expressly set forth in this document, as set forth in FTA Circular 4220.1F, 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 Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any AUTHORITY requests, which would cause AUTHORITY to be in violation of the FTA terms and conditions.

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ARTICLE 33. FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between AUTHORITY and FTA, as they may be amended or promulgated from time to time during this Agreement. CONTRACTOR's failure to comply shall constitute a material breach of contract.

ARTICLE 34. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

AUTHORITY and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to AUTHORITY, CONTRACTOR, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the underlying Agreement. CONTRACTOR agrees to include this requirement in all of its subcontracts.

ARTICLE 35. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND ACTS

A. CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sections 3801 et seq. and DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. By execution of this Agreement, 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 Agreement of the FTA assisted project for which this Agreement's work is being performed. In addition to other penalties that may be applicable, CONTRACTOR 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 penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

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B. CONTRACTOR also acknowledges that if CONTRACTOR makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5323 on the CONTRACTOR, to the extent the Federal Government deems appropriate. CONTRACTOR agrees to include this requirement in all of its subcontracts.

ARTICLE 36. CONVICT LABOR

In connection with the performance of work under this Agreement, CONTRACTOR agrees not to employ any person undergoing sentence of imprisonment at hard labor. This does not include convicts who are on parole or probation.

ARTICLE 37. NOTICE OF LABOR DISPUTE

Whenever CONTRACTOR has knowledge that any actual or potential labor dispute may delay its performance under this Agreement, CONTRACTOR shall immediately notify and submit all relevant information to AUTHORITY. CONTRACTOR shall insert the substance of this entire clause in any subcontract hereunder as to which a labor dispute may delay performance under this Agreement. However, any subcontractor need give notice and information only to its next higher-tier subcontractor.

ARTICLE 38. LIQUIDATED DAMAGES

If CONTRACTOR fails to complete the work within the time specified in Article 4 of this Agreement, or any AUTHORITY authorized extension thereof, the actual damage to AUTHORITY for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, CONTRACTOR shall pay to AUTHORITY as fixed, agreed-to liquidated damages for each calendar day of delay the sum of Dollars (\$.00). Alternatively, AUTHORITY may terminate this Agreement in whole or in part as provided in Article 17 of this Agreement, and in that event, CONTRACTOR shall be liable, in addition to the excess costs provided in Article 17 of this Agreement, for such liquidated damages accruing until such time as AUTHORITY may reasonably obtain delivery or performance of similar supplies or services from

a different source. CONTRACTOR shall not be charged with liquidated damages when the delay is determined to be excusable in accordance with Article 59 hereunder. AUTHORITY shall ascertain the facts and extent of the delay and shall extend the time for performance of the Agreement when in its judgment, the findings of fact justify an extension.

ARTICLE 39. WARRANTY

A. In addition to any other warranties set forth in this Agreement, whether expressed or implied, CONTRACTOR warrants that (1) all work performed and all equipment and material provided under this Agreement by CONTRACTOR or any of its subcontractors or suppliers at any tier, conforms to the requirements herein and is free of any defects; (2) equipment furnished by CONTRACTOR or any of its subcontractors or suppliers at any tier, shall be of modern design, in good working condition and fit for use of its intended purpose; and (3) all work shall meet all of the requirements of this Agreement. Such warranty shall continue for a period of one (1) year from AUTHORITY's acceptance as shown in Article 42 hereunder. Under this warranty, CONTRACTOR shall remedy at its own expense any such failure to conform or correct any such defect. In addition, CONTRACTOR shall remedy at its own expense any damage to AUTHORITY owned or controlled real or personal property, when that damage is the result of CONTRACTOR's failure to conform to Agreement requirements or any such defect of equipment, material, workmanship or design. CONTRACTOR shall also restore any work damaged in fulfilling the terms of this clause. CONTRACTOR's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.

B. AUTHORITY shall notify CONTRACTOR in writing within a reasonable time after the discovery of any failure, defect or damage. CONTRACTOR has seven (7) days from receipt of notice from AUTHORITY to respond to AUTHORITY's notification and indicate how CONTRACTOR will remedy the failure, defect, or damage. If AUTHORITY is not satisfied with the remedy proposed by CONTRACTOR, CONTRACTOR and AUTHORITY shall meet and mutually agree when and how CONTRACTOR shall remedy such violation. In the case of an emergency requiring immediate corrective action, CONTRACTOR shall implement such action, as it deems necessary and shall notify AUTHORITY

1 in writing of the urgency of a decision and action taken. CONTRACTOR and AUTHORITY shall, then
2 promptly meet in order to agree on a remedy. If CONTRACTOR and AUTHORITY fail to agree on the
3 remedy within a five (5)-day period, AUTHORITY, after notice to CONTRACTOR, shall have the right to
4 perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne
5 by CONTRACTOR.

6 C. Should CONTRACTOR fail to remedy any failure, defect or damage described in paragraph
7 A above within a reasonable time after receipt of notice thereof, AUTHORITY shall have the right to
8 replace, repair or otherwise remedy such failure, defect or damage at CONTRACTOR's expense and
9 CONTRACTOR shall be liable for all damages, including, but not limited to, actual or consequential
10 damages and cost of any suit to enforce AUTHORITY's rights hereunder, including reasonable attorney's
11 fees.

12 D. In addition to the other rights and remedies provided by this clause, all subcontractors,
13 manufacturers, and suppliers' warranties, expressed or implied, respecting any work and materials
14 furnished hereunder, shall, at the direction of AUTHORITY, be enforced by CONTRACTOR for the benefit
15 of AUTHORITY. In such case if CONTRACTOR's warranty under paragraph A above has expired, any
16 suit directed by AUTHORITY shall be at the expense of AUTHORITY. CONTRACTOR shall obtain any
17 warranties, which the subcontractors, manufacturers or suppliers would give in normal commercial
18 practice and shall cause all subcontractor or supplier warranties to be extend to AUTHORITY.

19 E. If directed by AUTHORITY, CONTRACTOR shall require any such warranties to be executed
20 in writing to AUTHORITY.

21 F. Notwithstanding any other provision of this clause, unless such a defect is caused by the
22 negligence of CONTRACTOR or its subcontractors or suppliers at any tier, CONTRACTOR shall not be
23 liable for the repair of any defects of material or design furnished by AUTHORITY nor for the repair of any
24 damage which results from any such defect in AUTHORITY furnished material or design.

25 G. The warranty specified herein shall not limit AUTHORITY's rights under the Inspection and
26 Acceptance clause of this Agreement with respect to latent defects, gross mistakes or fraud.

H. Defects in design or manufacture of equipment specified by AUTHORITY on a "brand name and model" basis shall not be included in this warranty. CONTRACTOR shall require any subcontractors, manufacturers or suppliers thereof to execute their warranties in writing directly to AUTHORITY.

I. Any disagreement between AUTHORITY and CONTRACTOR relating to this Article shall be subject to dispute resolution in accordance with Article 16.

ARTICLE 40. GENERAL WAGE RATES AND DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

A. State Prevailing Wage and Labor Code Requirements. Notice is hereby given that, in accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, CONTRACTOR is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public works is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the Department of Industrial Relations of the State of California (DIR) is required to and has determined such general prevailing rates of per diem wages. CONTRACTOR agrees to comply with the provisions of California Labor Code Sections 1771, 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Copies of such prevailing rates of per diem wages may be obtained online at (<http://www.dir.ca.gov/>), are on file at the Authority's office, and will be available to any interested party upon request. In accordance with the Labor Code, no workman employed upon work under this Agreement shall be paid less than the above referenced prevailing wage rate. A copy of said rates shall be posted at each job site during the course of construction.

1. This Agreement is subject to compliance monitoring and enforcement by the DIR. The DIR shall monitor and enforce compliance with applicable prevailing wage requirements for this Agreement. The reporting requirements may be found at <https://www.dir.ca.gov/Public-Works/Contractors.html>. CONTRACTOR is responsible for complying with all requirements of the DIR, including filing electronic payroll reports.

2. Pursuant to Labor Code Section 1771.1, CONTRACTOR and any subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work on a public works project unless registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Business and Professions Code Section 7029.1 or by Public Contract Code Section 10164 or 20103.5, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. CONTRACTOR shall not perform any work under this Agreement with any subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

3. Pursuant to Labor Code Section 1771.4, CONTRACTOR will post all job site notices, as prescribed by regulation.

4. CONTRACTOR, and all subcontractors, shall comply with the provisions of Labor Code Sections 1777.5 and 1777.6 concerning the employment of apprentices. CONTRACTOR shall have full responsibility for compliance with such Labor Code sections for all apprenticeable occupations, regardless of any other contractual or employment relationships alleged to exist.

5. CONTRACTOR agrees to comply with the provisions of Labor Code Section 1776, including the keeping of payroll records and furnishing certified copies thereof in accordance with said Section and with the terms as set forth in Exhibit A, "General Provisions." CONTRACTOR is responsible for compliance with Section 1776 by all subcontractors.

6. CONTRACTOR agrees to comply with all applicable Labor Code provisions governing legal working hours and shall forfeit, as a penalty to AUTHORITY, twenty-five dollars (\$25.00) for each laborer, workman or mechanic employed in the execution of the contract, by him or any sub-contractor under him, upon any of the work hereinbefore mentioned, for each calendar day during which the laborer, workman or mechanic is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the Labor Code.

7. In accordance with the provisions of Labor Code Section 3700, CONTRACTOR will be required to secure the payment of compensation to his or her employees.

B. Federal Prevailing Wage Rates and Anti-Kickback.

1. CONTRACTOR shall comply with the Davis-Bacon Act, 40 U.S.C. Sections 3141-3144 and Sections 3146-3148, as supplemented by U.S. DOL regulations at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." Under 49 U.S.C. Section 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA-assisted construction, alteration, or repair projects. In accordance with the statute, CONTRACTOR shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. CONTRACTOR agrees to pay wages not less than once per week. CONTRACTOR shall comply with the Davis-Bacon Labor Provisions of 29 CFR Section 5.5, as set forth in Exhibit A, "General Provisions."

2. CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. Section 3145), as supplemented by U.S. DOL regulations at 29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." CONTRACTOR is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

ARTICLE 41. CONTRACT WORK HOURS AND SAFETY STANDARDS

A. If the maximum cumulative payment obligation of this Agreement exceeds \$100,000, CONTRACTOR agrees to comply with the Federal Contract Work Hours and Safety Standards (40 U.S.C. Section 3701 et seq. as supplemented by 29 CFR part 5). Under 40 U.S.C. Section 3702, CONTRACTOR shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of forty (40) hours.

1. Overtime requirements: CONTRACTOR, and any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, shall

not require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of paragraph (A) of this Article, CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, CONTRACTOR and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this Article, 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 (40) hours without payment of the overtime wages required by paragraph (A) of this Article.

3. Withholding for unpaid wages and liquidated damages: FTA 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 CONTRACTOR or subcontractor under any such contract or any other Federal contract with CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in this Article.

4. Subcontracts: CONTRACTOR shall insert in any subcontracts the clauses set forth in paragraphs (A) of this Article and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraph A of this Article.

B. CONTRACTOR agrees to comply with U.S. DOL Regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 CFR part 1904; "Occupational Safety and Health Standards," 29 CFR part 1910; and "Safety and Health Regulations for Construction," 29 CFR part 1926.

ARTICLE 42. INSPECTION AND ACCEPTANCE

A. All work (which term includes but is not restricted to materials, equipment, workmanship, and manufacture and fabrication of components) shall be subject to inspection and test by AUTHORITY at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of AUTHORITY and shall not relieve CONTRACTOR of the responsibility of providing quality control measures to assure that the work strictly complies with requirements of this Agreement. No inspection or test by AUTHORITY or its representative shall be construed as constituting or implying acceptance. Any inspection or test shall not relieve CONTRACTOR of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of AUTHORITY after acceptance of the completed work under the terms of paragraph F of this Article, except as herein above provided.

B. CONTRACTOR shall, without charge, replace any material or correct any workmanship found by AUTHORITY not to conform to the requirements of this Agreement, unless in the public interest AUTHORITY consents to accept such material or workmanship with an appropriate adjustment in the price of this Agreement. CONTRACTOR shall promptly segregate and remove rejected material from the premises.

C. CONTRACTOR shall furnish promptly, without additional charge, all facilities, labor, equipment and material reasonably needed for performing such safe and convenient inspection and test as may be required by AUTHORITY. All inspections and tests by AUTHORITY shall be performed in such manner as to not unnecessarily delay the work. AUTHORITY reserves the right to charge to CONTRACTOR any additional cost of inspection or test when material or workmanship is not ready at the time specified by CONTRACTOR for inspection or test or when reinspection or retest is necessitated by prior rejection.

D. If CONTRACTOR does not promptly replace rejected material or correct rejected workmanship, AUTHORITY (1) may, by Agreement or otherwise, replace such material or correct such workmanship and charge the cost thereof to CONTRACTOR, or (2) may terminate CONTRACTOR's right to proceed in accordance with the clause of this Agreement entitled "Termination for Default."

E. Should it be considered necessary or advisable by AUTHORITY at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, CONTRACTOR shall, on request, promptly furnish all necessary facilities, labor and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of CONTRACTOR or its subcontractors, CONTRACTOR shall pay all costs of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of this Agreement, an equitable adjustment shall be made in the Agreement price to compensate CONTRACTOR for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, it shall in addition, be granted a suitable extension of time.

F. Unless otherwise provided in this Agreement, acceptance by AUTHORITY shall be made as promptly as practicable after completion and inspection of all work required by this Agreement, or that portion of the work that AUTHORITY determines can be accepted separately. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud or as regards AUTHORITY's rights under the warranty provisions set forth herein.

ARTICLE 43. MATERIAL AND WORKMANSHIP

A. Unless otherwise specifically provided in this Agreement, all equipment, material, and articles incorporated in the work covered by this Agreement are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Agreement, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and CONTRACTOR may, at its option, use any equipment, material, article or process which, in the judgment of AUTHORITY, is equal to that named. CONTRACTOR shall furnish to AUTHORITY for its approval the name of the manufacturer, the model number and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment, which CONTRACTOR contemplates incorporating in the work. When required by this Agreement or when called for by AUTHORITY, CONTRACTOR shall furnish AUTHORITY, for approval, full information concerning the

material or articles, which it contemplates incorporating in the work. When so directed, samples shall be submitted for approval at CONTRACTOR's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without required approval shall be at the risk of subsequent rejection.

B. All work under this Agreement shall be performed in a skillful and workmanlike manner. Notwithstanding the provisions of Article 3 hereof, AUTHORITY may, in writing, require CONTRACTOR to remove from the work any employee AUTHORITY deems incompetent, careless or otherwise objectionable.

ARTICLE 44. NON-CONFORMING WORK

A. Nonconforming work rejected by AUTHORITY shall be removed and replaced so as to conform to the requirements of this Agreement, at CONTRACTOR's cost and without a time extension; and CONTRACTOR shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that AUTHORITY may not have discovered the nonconforming work shall not constitute an acceptance of such nonconforming work. If CONTRACTOR fails to correct any nonconforming work within ten (10) days of receipt of notice from AUTHORITY requesting correction, or if such nonconforming work cannot be corrected within ten (10) days, and CONTRACTOR fails to; (1) provide to AUTHORITY a schedule for correcting any such nonconforming work acceptable to AUTHORITY within such ten (10)-day period, (2) commence such corrective work within such ten (10)-day period and (3) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then AUTHORITY may cause the nonconforming work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due to CONTRACTOR and/or obtain reimbursement from CONTRACTOR for such cost.

B. If AUTHORITY agrees to accept any nonconforming work without requiring it to be fully corrected, AUTHORITY shall be entitled to reimbursement of a portion of the contract price in an amount equal to the greater of the amount deemed appropriate by AUTHORITY to provide compensation for future maintenance and/or other costs relating to the nonconforming work, or 100% of CONTRACTOR's

cost savings associated with its failure to perform the work in accordance with Contract requirements. Such reimbursement shall be payable to AUTHORITY within ten (10) days after CONTRACTOR's receipt of an invoice thereof. CONTRACTOR acknowledges and agrees that AUTHORITY shall have sole discretion regarding acceptance or rejection of nonconforming work and that AUTHORITY shall have sole discretion with regard to the amount payable in connection therewith.

ARTICLE 45. CONTRACTOR INSPECTION SYSTEM

CONTRACTOR shall maintain an adequate inspection system and perform such inspections as will assure that the work performed under this Agreement conforms to the specified requirements, and shall maintain and make available to AUTHORITY adequate records of such inspections.

ARTICLE 46. SUPERINTENDENCE BY CONTRACTOR

CONTRACTOR, at all times during performance and until the work is completed and accepted, shall give its personal superintendence to the work or have on the work a competent superintendent, satisfactory to AUTHORITY and with authority to act for and on behalf of CONTRACTOR.

ARTICLE 47. OTHER CONTRACTS

AUTHORITY may undertake or award other agreements for additional work, and CONTRACTOR shall fully cooperate with such other CONTRACTOR's and AUTHORITY's employees and carefully fit its own work to such additional work as may be directed by AUTHORITY. CONTRACTOR shall not commit or permit any act, which will interfere with the performance of work by any other CONTRACTOR or by AUTHORITY.

ARTICLE 48. INSPECTION OF SITE

CONTRACTOR acknowledges that it has investigated and satisfied itself as to the conditions affecting the work including, but not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power and roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. CONTRACTOR further acknowledges that it has satisfied itself as to the character, quality and

1 quantity of surface and subsurface materials or obstacles to be encountered insofar as this information
2 is reasonably ascertainable from an inspection of the site, including all exploratory work done by
3 AUTHORITY, as well as from information presented by the drawings and specifications made a part of
4 this Agreement. Any failure by CONTRACTOR to acquaint itself with the available information will not
5 relieve it from responsibility for the difficulty or cost of successfully performing the work. AUTHORITY
6 assumes no responsibility for any conclusions or interpretations made by CONTRACTOR on the basis
7 of the information made available by AUTHORITY.

8 **ARTICLE 49. DIFFERING SITE CONDITIONS**

9 A. CONTRACTOR shall immediately, and before such conditions are disturbed, notify
10 AUTHORITY in writing of: (1) subsurface or latent physical conditions at the site which differ materially
11 from those indicated in this Agreement, or (2) unknown physical conditions at the site, of an unusual
12 nature, which differ materially from those ordinarily encountered and generally recognized as inherent in
13 work of the character provided for in this Agreement. AUTHORITY will investigate the conditions within
14 three (3) business days of receipt of notification, and if it finds that such conditions do materially so differ
15 and cause an increase or decrease in CONTRACTOR's cost of, or the time required for, performance of
16 any part of the work under this Agreement, whether or not changed as a result of such conditions, an
17 equitable adjustment shall be made and the Agreement modified in writing accordingly.

18 B. No claim of CONTRACTOR under this Article shall be allowed unless CONTRACTOR has
19 given the written notice required above; no claim by CONTRACTOR for an equitable adjustment
20 hereunder shall be allowed if asserted after final payment under this Agreement.

21 **ARTICLE 50. SEISMIC SAFETY REQUIREMENTS**

22 CONTRACTOR agrees that the work performed under this Agreement will be accomplished in
23 accordance with the standards for Seismic Safety required in DOT's Seismic Safety Regulations 49 CFR
24 part 41 and will certify compliance to the extent required by the regulation for such work. CONTRACTOR
25 shall ensure that all work performed under this Agreement including work performed by a subcontractor
26 . /

is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

ARTICLE 51. RECYCLED PRODUCTS

CONTRACTOR shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Section 6962), including but not limited to the regulatory provisions of 40 CFR part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR part 247. CONTRACTOR agrees to include this requirement in all of its subcontracts.

ARTICLE 52. ENERGY CONSERVATION REQUIREMENTS

If the maximum cumulative payment obligation of this Agreement exceeds the Simplified Acquisition Threshold, as defined in 48 CFR Subpart 2.1, CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy Conservation Act.

ARTICLE 53. CLEAN AIR

CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. CONTRACTOR shall report any violations of use of prohibited facilities to the FTA and the United States Environmental Protection Agency (US EPA). CONTRACTOR agrees to include this requirement in each subcontractor exceeding Simplified Acquisition Threshold.

ARTICLE 54. CLEAN WATER REQUIREMENTS

If the maximum cumulative payment obligation of this Agreement exceeds Simplified Acquisition Threshold, as defined in 48 CFR Subpart 2.1, CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. CONTRACTOR shall report any violations of use of prohibited facilities to the FTA and US EPA. CONTRACTOR agrees to include this requirement in each subcontract exceeding Simplified Acquisition Threshold.

ARTICLE 55. OPERATIONS AND STORAGE AREAS

A. All operations of CONTRACTOR (including storage of materials and equipment) on AUTHORITY-owned premises shall be confined to areas authorized or approved by AUTHORITY. CONTRACTOR shall hold AUTHORITY and its officers and agents free and harmless from liability of any nature occasioned by CONTRACTOR's operations.

B. Temporary building (storage sheds, shops, offices, etc.) may be erected by CONTRACTOR with the written consent of AUTHORITY, and shall be built with labor and materials furnished by CONTRACTOR without expense to AUTHORITY. Such temporary buildings and utilities shall remain the property of CONTRACTOR and shall be removed by CONTRACTOR at its expense upon the completion of the work. With the written consent of AUTHORITY, such buildings and utilities may be abandoned and need not be removed.

C. CONTRACTOR shall, under regulations prescribed by AUTHORITY, use only established roadways or construct and use such temporary roadways as may be authorized by AUTHORITY. Where materials are transported in the prosecution of work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state or local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by CONTRACTOR and any damaged roads, curbing or sidewalks shall be repaired by, or at the expense of, CONTRACTOR.

ARTICLE 56. BUY AMERICA

A. If the maximum cumulative payment obligation of this Agreement exceeds \$150,000, CONTRACTOR shall comply with the "Buy America" requirements of 49 U.S.C. Section 5323(j) and 49 CFR part 661, as amended, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

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B. CONTRACTOR shall furnish a Certificate of Compliance, conforming to the provisions of this Article, for all steel and iron materials.

C. CONTRACTOR shall ensure all subcontractors at every tier comply with these requirements.

ARTICLE 57. PROTECTION OF VEGETATION, UTILITIES, IMPROVEMENTS

A. CONTRACTOR shall preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by AUTHORITY.

B. CONTRACTOR shall protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to it, and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this Agreement or the failure to exercise reasonable care in the performance of the work. If CONTRACTOR fails or refuses to repair any such damage promptly, AUTHORITY may have the necessary work performed and charge the cost to CONTRACTOR.

ARTICLE 58. CLEANING UP

A. CONTRACTOR shall at all times keep the construction area, including storage areas used by it, free from accumulations of waste material or rubbish, and prior to completion of the work remove any rubbish from AUTHORITY owned premises and all tools, scaffolding, equipment and materials not the property of AUTHORITY. Upon completion of the construction, CONTRACTOR shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to AUTHORITY.

B. After completion of all work on the project, and before making application for acceptance of the work, CONTRACTOR shall clean the construction site, including all areas under the control of AUTHORITY, that have been used by CONTRACTOR in connection with the work on the project and remove all debris, surplus material and equipment, and all temporary construction or facilities of whatever

1 nature, unless otherwise approved by AUTHORITY. Final acceptance of the work by AUTHORITY will
2 be withheld until CONTRACTOR has satisfactorily complied with the foregoing requirements for final
3 cleanup of the project site.

4 C. Full compensation for conforming to the provisions in this Article, not otherwise provided for,
5 shall be considered as included in price of this Agreement and no additional compensation will be allowed
6 therefore.

7 **ARTICLE 59. USE AND POSSESSION TO COMPLETION**

8 AUTHORITY shall have the right to take possession of or use any completed or partially
9 completed part of the work. Prior to such possession or use, AUTHORITY shall furnish CONTRACTOR
10 an itemized list of work remaining to be performed or corrected on such portions of the project as are to
11 be possessed or used by AUTHORITY, provided that failure to list any item of work shall not relieve
12 CONTRACTOR of responsibility for compliance with the terms of this Agreement. Such possession or
13 use shall not be deemed an acceptance of any work under this Agreement. While AUTHORITY has such
14 possession or use, CONTRACTOR shall be relieved of the responsibility for the loss or damage to the
15 work resulting from AUTHORITY's possession or use. If such prior possession or use by AUTHORITY
16 delays the progress of the work or causes additional expense to CONTRACTOR, an equitable adjustment
17 in the Agreement price or the time of completion will be made and the Agreement shall be modified in
18 writing accordingly.

19 **ARTICLE 60. PROHIBITED INTERESTS**

20 A. CONTRACTOR covenants that, for the term of this Agreement, no director, officer or
21 employee of AUTHORITY, during his/her tenure in office or for one (1) year thereafter, shall have any
22 interest, direct or indirect, in this Agreement or the proceeds thereof.

23 B. No member of or delegates to the Congress of the United States shall have any interest, direct
24 or indirect, in this Agreement or the benefits thereof.

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ARTICLE 61. CONTRACTOR PURCHASED EQUIPMENT

A. If during the course of this Agreement, additional equipment is required, which will be paid for by AUTHORITY, CONTRACTOR must request prior written authorization from AUTHORITY's project manager before making any purchase. As part of this purchase request, CONTRACTOR shall provide a justification for the necessity of the equipment or supply and submit copies of three (3) competitive quotations. If competitive quotations are not obtained, CONTRACTOR must provide the justification for the sole source.

B. CONTRACTOR shall maintain an inventory record for each piece of equipment purchased that will be paid for by AUTHORITY. The inventory record shall include the date acquired, total cost, serial number, model identification, and any other information or description necessary to identify said equipment or supply. A copy of the inventory record shall be submitted to AUTHORITY upon request.

C. At the expiration or termination of this Agreement, CONTRACTOR may keep the equipment and credit AUTHORITY in an amount equal to its fair market value. Fair market value shall be determined, at CONTRACTOR's expense, on the basis of an independent appraisal. CONTRACTOR may sell the equipment at the best price obtainable and credit AUTHORITY in an amount equal to the sales price. If the equipment is to be sold, then the terms and conditions of the sale must be approved in advance by AUTHORITY's project manager.

D. Any subcontractor agreement entered into as a result of this Agreement shall contain all provisions of this clause.

ARTICLE 62. DEBARMENT AND SUSPENSION GUIDELINES

CONTRACTOR shall not do business with a subcontractor or other participant who is debarred, suspended or otherwise disqualified. CONTRACTOR shall comply with 2 CFR part 180, as adopted and supplemented by 2 CFR part 1200. CONTRACTOR shall include the requirements in any lower tier covered transaction it enters into.

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ARTICLE 63. HEALTH AND SAFETY SPECIFICATIONS

CONTRACTOR shall comply with all requirements set forth in Exhibit H, Level 3 Safety Specifications.

ARTICLE 64. LOBBYING

CONTRACTOR shall comply with the lobbying requirements of 31 U.S.C. Section 1352 and the applicable regulations under 49 CFR part 20. If the maximum cumulative payment obligation of this Agreement exceeds \$100,000, CONTRACTOR shall file both the "Certification of Restrictions on Lobbying" and the "Disclosure of Lobbying Activities." CONTRACTOR shall also require each subcontractor to certify to CONTRACTOR that subcontractor will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. Section 1352. CONTRACTOR shall also require any subcontractor to disclose to CONTRACTOR 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. Section 1352.

ARTICLE 65. TRANSPORTATION OF EQUIPMENT, MATERIALS OR COMMODITIES BY OCEAN VESSEL

A. CONTRACTOR shall utilize privately owned United States-flag commercial vessels to ship at least 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 section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. CONTRACTOR shall furnish within twenty (20) working 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 shipping originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of lading in English for each shipment of cargo described in paragraph A of this Article to

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, Washington, DC 20590, marked with appropriate identification of the project.

ARTICLE 66. FLY AMERICA REQUIREMENTS

A. CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipient of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

ARTICLE 67. CLAYTON AND CARTWRIGHT ACT

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to this Agreement, CONTRACTOR and any subcontractor offers and agrees to assign to AUTHORITY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract entered into for purposes of this Agreement. This assignment shall be made and become effective at the time the AUTHORITY tenders final payment to the CONTRACTOR, without further acknowledgment by the parties.

ARTICLE 68. FORCE MAJEURE

Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control,

including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-7-2018 to be executed on the date first above written.

ORANGE COUNTY TRANSPORTATION AUTHORITY

By _____ By _____
Darrell E. Johnson
Chief Executive Officer

License No:

APPROVED AS TO FORM:

By _____
James M. Donich
General Counsel

APPROVED:

By _____
James G. Beil
Executive Director Capital Programs

Date _____

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS
FEDERALLY FUNDED CONTRACTS WITH DBE GOALS**

I. DBE Participation

It is the Consultant's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26 and the Orange County Transportation Authority's (Authority's) DBE program developed pursuant to these regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55 that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- D. Consultant must not claim DBE participation as attained until the amount to be claimed is paid and fully adheres to DBE crediting provisions.

If the Consultant has committed to utilize DBE(s) in the performance of this DOT-assisted contract, the Consultant's submitted "DBE Participation Commitment Form" will be utilized to monitor Consultant's DBE commitments, unless otherwise directed and/or approved by the Authority prior to the Consultant effectuating any changes to its DBE participation commitment(s) (*Refer to Subsection H: "Performance of DBE Subconsultants"*).

Consultant must complete and submit all required DBE documentation to effectively capture all DBE utilization on the Authority's DOT-assisted contracts whether achieved race neutrally or race consciously. Even if a Consultant has not committed to utilize DBE(s) in the performance of this contract, the Consultant must execute and submit all required DBE forms and other related documentation as specified under this contract or as otherwise requested by the Authority. No changes to the Consultant's DBE Commitment must be made until proper protocols for review and approval of the Authority are rendered in writing.

To ensure full compliance with the requirements of 49 CFR, Part 26 and the Authority's DBE Program, the Consultant must:

- A. Take appropriate actions to ensure that it will continue to meet the DBE Commitment at the minimal level committed to at award or will satisfy the good faith efforts to meet the DBE Commitment, when change orders or other contract modifications alter the

dollar amount of the contract or the distribution of work. The Consultant must apply and report its DBE goal commitments against the total Contract Value, including any contract change orders and/or amendments.

II. DBE Policy and Applicability

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

The project is subject to these stipulated regulations and the Authority's DBE program. 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, Part 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of the Authority to:

Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of Authority's DOT-assisted contracting opportunities.

- A. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
- B. Ensure non-discrimination in the award and administration of Authority's DOT-assisted contracts.
- C. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- D. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- E. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- F. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.
- G. Consultant must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultant.

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.

III. Authority's DBE Policy Implementation Directives

Pursuant to the provisions associated with federal regulation 49 CFR, Part 26, the Disadvantaged Business Enterprise (DBE) program exists to ensure participation, equitable competition, and assistance to participants in the USDOT DBE program. Accordingly, based on the Authority's analysis of its past utilization data, coupled with its examination of similar Agencies' Disparity Study and recent Goal Methodology findings the Authority has implemented the reinstatement of the DBE program utilizing both race-conscious and race-neutral means across the board as all protected groups participation have been affected using strictly race neutral means on its FTA-assisted contracts.

The Authority reinstates the use of contract goals and good faith efforts. Meeting the contract-specific goal by committing to utilize DBEs or documenting a bona fide good faith effort to do so, is a condition of award. Additionally, contract-specific goals are now specifically targeted at DBEs (*DBEs owned and controlled by Black Americans, Hispanic Americans, Asian-Pacific Americans, Native Americans, Asian-Pacific Americans, Sub-Continent Asian Americans, and Women*). In the event of a substitution, a DBE must be substituted with another DBE or documented adequate good faith efforts to do so must be made, in order to meet the contract goal and DBE contract requirements.

A. Definitions

The following definitions apply to the terms used in these provisions:

1. **"Disadvantaged Business Enterprise (DBE)"** means a small business concern:
(a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern must not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.
3. **"Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and

who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:

- a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
 - e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and
 - f) Women, regardless of ethnicity or race.
4. **"Owned and Controlled"** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.
5. **"Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Consultant.
6. **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
7. **"Fraud"** includes a firm that does not meet the eligibility criteria of being a certified DBE and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under

circumstances indicating a serious lack of business integrity or honesty. The Authority may take enforcement action under 49 CFR, Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR, Part 31. The Authority may refer the case to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

8. ***"Other Socially and Economically Disadvantaged Individuals"*** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or a recognized California Unified Certification Program Certifying Agency to meet the social and economic disadvantage criteria described below.

B. "Social Disadvantage"

1. The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
2. The individual must demonstrate that he/she has personally suffered social disadvantage.
3. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
4. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
5. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
6. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

C. "Economic Disadvantage"

1. The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.
2. The following criteria will be considered when determining the degree of diminished

credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth
- personal and business income and profits

IV. Submission of DBE Information and Ongoing Reporting Requirements (Post-Award)

If there is a DBE goal on the contract, Consultant must complete and submit the following DBE exhibits (forms) consistent with Consultant DBE Goal Commitment within the specified timelines. Even if no DBE participation will be reported, the Consultant must execute and return the form:

- A. "Monthly DBE Subconsultant Commitment and Attainment Report Summary and Payment Verification" (Form 103)

The purpose of this form is to ensure Consultant 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/service. This form further serves to collect DBE utilization data required under 49 CFR, Part 26.

The Consultant is required to complete and submit a Form 103 to the Authority by the 10th of each month until completion of the contract. The Consultant must submit its first Form 103 following the first month of contract activity. Upon completion of the contract, the Consultant must complete and submit a "Final: Monthly DBE Subconsultant Commitment and Attainment Report Summary and Payment Verification" (Form 103) to facilitate reporting and capturing actual DBE attainments at conclusion of the contract.

The Form 103 must include the following information:

1. General Contract Information – Including Contract Number and Name, Prime Consultant and the following:
 - a) Original Contract Amount
 - b) Running Total of Change Order Amount
 - c) Current Contract Amount
 - a) Amount Paid to Consultant during Month
 - b) Amount Paid to Consultant from Inception to Date

- c) DBE Contract Goal
- d) Total Dollar Amount of DBE Commitment
- e) DBE Commitment as Percentage of Current Contract Amount

2. Listed and/Proposed Consultant/Subconsultant Information – For All DBE participation being claimed either Race Neutrally or Race Consciously, regardless of tier:

- a) DBE Firm Name, Address, Phone Number, DBE Type of Operation, Certification Type and Certification Number.
- b) DBE Firm Contract Value Information:
 - A. Original contract amount, running total of change order amount, Current contract amount, Amount paid to Consultant during month and Amount paid to Consultant to date.

3. Consultant Assurance of Full Compliance with Prompt Payment Provisions

Consultant to sign the prompt payment assurance statement of compliance contained within the Form 103. Consultant is to further maintain and submit at the request of Authority 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. The Payment and Retention Reporting tally must also include:

DBE(s) and Non DBE(s) Invoice Number, Invoice Amount, Invoice Date, Prime Consultant'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 Consultant'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.

Consultant is advised not to report the participation of DBE(s) toward the Consultant'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.

4. DBE Subcontract Agreements

The Consultant 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 Consultant 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.

5. "Monthly DBE Trucking Verification" Form

Prior to the 10th of each month, the Consultant must submit documentation on the "Monthly DBE Trucking Verification" Form to the Authority showing the amount paid to DBE trucking companies. The Consultant 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 Contactor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Consultant 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.

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

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 Subconsultants" and certified correct by the Consultant or the Consultant'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.

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

If a DBE Sub is decertified during the life of the project, the decertified Subconsultant must notify the Consultant in writing with the date of decertification. If a Subconsultant becomes a certified DBE during the life of the project, the Subconsultant must notify the Consultant in writing with the date of certification (Attach DBE certification/Decertification letter). The Consultant 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 Consultant 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.

V. DBE Eligibility and Commercially Useful Function Standards

A DBE must be certified at the time of Proposal submission:

1. A certified DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
2. A DBE may participate as a Prime Consultant, Subconsultant, joint venture partner with a Prime or Subconsultant, vendor of material or supplies, or as a trucking company.
3. 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.
4. At time of proposal submission, DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - A. The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>.
1. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

VI. DBE Crediting Provisions

- A. When a DBE is proposed to participate in the contract, either as a Prime Consultant or Subconsultant, at any tier, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards DBE participation. If the Consultant is a DBE joint venture participant, only the DBE proportionate interest in the joint venture must be counted.
 1. If a DBE intends to subcontract part of the work of its subcontract to a lower-tier Subconsultant, the value of the subcontracted work may be counted toward DBE participation only if the Subconsultant is a certified DBE and actually performs the work with their own forces. Services subcontracted to a Non-DBE firm may not be

credited toward the Prime Consultant's DBE attainment.

2. Consultant is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward DBE attainment, as follows:
 - a) Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
 - b) One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
3. The following types of fees or commissions paid to DBE Subconsultants, Brokers, and Packagers may be credited toward the prime Consultant's 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:
 - a) 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;
 - b) 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;
 - c) Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
4. Consultant may count the participation of DBE trucking companies toward DBE attainment, as follows:
 - a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 - b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e) The DBE may also lease trucks from a non-DBE 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.

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.

5. If the Consultant listed a non-certified 1st tier Subconsultant to perform work on this contract, and the non-certified Subconsultant subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subconsultant 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. If a DBE Consultant performs the installation of purchased materials and supplies they are eligible for full credit of the cost of the materials.

VII. Performance of DBE Subconsultants

DBEs must perform work or supply materials as listed in the "DBE Participation Commitment Form" specified under "*DBE Proposal Submission Requirements*" of these special provisions. Do not terminate a DBE listed Subconsultant for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the AUTHORITY.

The AUTHORITY grants authorization to use other forces or sources of materials for requests that show any of the following justifications (written approval from the AUTHORITY must be obtained prior to effectuating a substitution):

- A. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
- B. You stipulate a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
- C. Work requires a Consultants' license and listed DBE does not have a valid license under Consultants License Law.
- D. Listed DBE fails or refuses to perform the work or furnish the listed materials.
- E. Listed DBE's work is unsatisfactory and not in compliance with the contract.
- F. Listed DBE delays or disrupts the progress of the work.

G. Listed DBE becomes bankrupt or insolvent.

If a listed DBE Subconsultant is terminated, you must make good faith efforts to find another DBE Subconsultant to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution. The AUTHORITY does not pay for work or material unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section.

VIII. Additional DBE Subconsultants

In the event Consultant identifies additional DBE Subconsultants or suppliers not previously identified by Consultant for DBE participation under the contract, Consultant must notify the Authority by submitting "Request for Additional DBE Firm" to enable Consultant to capture all DBE participation. Consultant must 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).

IX. DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate as DBEs in the Authority's federally -assisted contracts. Proposers are cautioned against knowingly and willfully using "fronts." The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse or mismanagement of Federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline: (800) 424-9071; or to the following: 245 Murray Drive, Building 410, Washington, DC 20223; Telephone: (202) 406-570.

X. Consultant's Assurance Clause Regarding Non-Discrimination

In compliance with State and Federal anti-discrimination laws, the Consultant must affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, the Consultant must affirm that they will consider, and utilize Subconsultants and vendors, in a manner consistent with non-discrimination objectives.

XI. Prompt Payment Clause

Upon receipt of payment by Authority, Consultant agrees to promptly pay each Subconsultant for the satisfactory work performed under this Agreement, no later than seven

(7) calendar days. Consultant agrees further to return retainage payments to each Subconsultant within thirty (30) calendar days after the Subconsultant's work is satisfactorily completed. Authority reserves the right to request the appropriate documentation from Consultant showing payment has been made to the Subconsultants. Any delay or postponement of payment from the above referenced time frames may occur only for good cause following written approval by Authority.

In accordance with 49 CFR part 26.29 "Prompt Payment Provisions" (DBE Final Rule) the Authority will elect to utilize the following method to comply with the prompt payment of retainage requirement:

Hold retainage from the Consultant and provide for prompt and regular incremental acceptances of portions of the Consultant, pay retainage to prime Consultants based on these acceptances, and require a contract clause obligating the Consultant to pay all retainage owed to the Subconsultants for satisfactory completion of the accepted work within thirty (30) days after payment to the Consultant.

Failure to comply with this provision or delay in payment without prior written approval from Authority will constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to a withhold of two percent (2%) of the invoice amount due per month for every month that payment is not made.

These prompt payment provisions must be incorporated in all subcontract agreements issued by Consultant under this Agreement. Each subcontract must require the Subconsultant to make payments to sub-Subconsultants and suppliers in a similar manner.

XII. Administrative Remedies and Enforcement

Consultant must fully comply with the DBE contract requirements, including the Authority's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs" and ensure that all Subconsultants regardless of tier are also fully compliant. Consultant's failure to comply constitutes a material breach of contract, wherein the Authority will impose all available administrative sanctions including payment withholdings, necessary to effectuate full compliance. In instances of identified non-compliance, a Cure Notice will be issued to the Consultant identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

The Consultant must be given ten (10) working days from the date of the Cure Notice to remedy or to (1) File a written appeal accompanied with supporting documentation and/or (2) Request a hearing with the Authority to reconsider the Authority's DBE determination. Failure to respond within the ten (10) working day period must constitute a waiver of the Consultant's right to appeal. If the Consultant files an appeal, the Authority, must issue a written determination and/or set a hearing date within ten (10) working days of receipt of the

written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

If, after review of the Consultant's appeal, the Authority decides to uphold the decision to impose DBE administrative remedies on the Consultant, the written determination must state the specific remedy(s) to be imposed.

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of contract and is subject to administrative remedies, including, withholding at minimum of two percent (2%) of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance the Authority will release all withholdings.

In addition to administrative remedies defined in this section, the Authority is not precluded from invoking other contractual and/or legal remedies available under federal, state or local laws.

LEVEL 3 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

REQUIRED HSE SUBMITTAL SUMMARY

The Contractor shall submit copies of the items listed below for contract scope work on Orange County Transportation Authority (OCTA or Authority) projects and property. Copies shall be provided prior to contractor's mobilization onto OCTA projects and property. Contractor shall provide compliant written Health, Safety & Environmental (HSE) submittals within 30 days of the contract notice to proceed.

HSE submittals shall comply with the 1988 Drug Free Workplace Act and California Code of Regulations (CCR) Title 8 regulatory standards for review by OCTA.

Contractor's established written programs/plans shall comply with CCR Title 8 regulatory standards, and/or new developed written programs/plans shall be prepared by a qualified HSE professional who is recognized by an organization of industry standard (i.e., CSP, CIH, CHST, STS, CHMM, etc.) and is experienced in developing compliant written HSE programs.

1. Contractor shall provide a copy of Company's Injury Illness Prevention Program in accordance with CCR Title 8, Section 3203.
2. Contractor shall provide a copy of their Company HSE Policy/Procedure Manual, in compliance with CCR Title 8 Standards for awarded scope.
3. Contractor shall provide a copy of their Policy or Substance Abuse Prevention Program that complies with the 1988 Drug Free Workplace Act.
4. Contractor shall provide a copy of their Hazard Communication Program and SDS Management Program in compliance with CCR Title 8, Section 5194, Hazard Communication Standard.
5. On-Site HSE Representative:
On Facility Modification Projects, The Contractor's On-Site HSE Representative shall preferably have a certification from the Board of Certified Safety Professionals (BCSP) and as a minimum, a 30 hour OSHA training certificate, plus five (5) years construction or scope agreement HSE experience enforcing HSE compliance on heavy or industrial construction project sites, the last two years of which have been administering HSE in the construction or scope discipline for which Contractor is contracting with the Authority.
On Capital Programs, The Contractor's On-site HSE Representative shall be a Certified Safety Professional (CSP) with current standing from the Board of Certified Safety Professionals (BCSP) or a Construction Health and Safety Technician (CHST) with current standing from the (BCSP) or a Certified Industrial Hygienist (CIH) with current standing from the American Board of Industrial Hygiene (ABIH), or similar professional HSE Certificate of standing acceptable to the Authority and have a minimum of five (5) years heavy construction experience in administering HSE programs on heavy construction project sites, the last two years of which have been administering HSE in the construction discipline for which Contractor is contracting with the Authority.

6. Site Specific HSE Work Plan:

Indicate methods, procedures, equipment, and sequence of tasks as listed on the project schedule. Specify safety measures in accordance with applicable Cal/OSHA standards, South Coast Air Quality Management District (SCAQMD) rules, National Fire Protection Association (NFPA), National Electric Code (NEC), American National Standards Institute (ANSI) codes and regulations, job hazard analysis, policies, procedures, HSE training requirements and known and potential hazards of Contractor's scope. Plans shall be prepared as specified above, and may require if necessary a professional engineer licensed to practice in the state of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.

PART I – GENERAL

1.0 GENERAL HEALTH, SAFETY AND ENVIRONMENTAL REQUIREMENTS

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) requirements of this safety specification, project site requirements, and bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work or agreements with the Authority including California Department of Transportation safety requirements and special provisions. Additionally, manufacturer requirements are considered incorporated by reference, as applicable, to this scope of work.
- B. Observance of repeated unsafe acts or conditions, serious violation of health and safety standards, non-conformance of Authority HSEC requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor may be reason for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. The Authority HSEC requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be pre-planned and performed, and safe conditions shall be maintained during the course of this work scope.
- D. The Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety and environmental hazards for which it and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that the Authority may not have such expertise, and is relying upon the Contractor for such expertise. The Authority retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.
- E. The Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with the

Authority's HSEC requirements, CCR Title 8 Standards, and recognized safe work practices.

- F. The Contractor shall instruct all its employees, and all associated sub-contractors under contract with the Contractor who works on Authority projects in the following; recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.

PART II – SPECIFIC REQUIREMENTS

- 2.0 While these safety specifications are intended to promote safe work practices, Contractors are reminded of their obligation to comply with all federal (Code of Federal Regulations (CFR) Sections 1926 & 1910 Standards), state (CCR Title 8 Standards), local and municipal safety regulations, and Authority health, safety and environmental requirements applicable to their project scope. Failure to comply with these standards may be cause for termination of scope or agreements with the Authority, at the sole discretion of the Authority.

2.1 REQUIRED DOCUMENTATION / REPORTING REQUIREMENTS

The Contractor at a minimum shall provide the following documents to the Authority's Project Manager. Items A through E below shall be submitted and accepted by the Authority's Project Manager prior to Contractor mobilization. Item F upon each occurrence, and for items G through K, contractor shall verify the following documentation is in place, prior to and during contract scope and make the same available to the Authority upon request within 72 hours.

Contractor's established written programs/plans shall comply with CCR Title 8 Standards, and/or new developed written programs/plans shall be prepared by a qualified HSE professional who is recognized by an organization of industry standard (i.e., CSP, CIH, CHST, STS, CHMM, etc.) and is experienced in developing compliant written HSE programs.

- A. A Comprehensive Project Specific Health, Safety, and Environmental (HSE) Work Plan.
 - a. The Contractor shall develop a site project plan that may include, but is not limited to: Permits, Evacuation, Emergency Plan, Roles and Responsibilities, Scope and Construction Activity Details, Constructability Review, Contractor Coordination Process, Safe Work Methods, Hazard Identification & Risk Control, First Aid and Injury Management, Emergency Procedures, Public Protection, Authority and Contractor Site Rules, Incident Reporting and Investigation, Specialized Work or Licensing, Training and Orientation Requirements, Chemical Management, and Subcontractor Management.
 - b. Site Specific HSE Plan: Indicate methods, procedures, equipment, and sequence of tasks as listed on the project schedule. Specify safety measures in accordance with applicable Cal/OSHA standards, SCAQMD rules, NFPA, NEC, ANSI codes and regulations, job hazard analysis,

policies, procedures, HSE training requirements and known and potential hazards of Contractor's scope. Plans shall be prepared as specified above, and may require if necessary a professional engineer licensed to practice in the state of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.

- B. Contractor shall provide a copy of their Company HSE Policy/Procedure Manual, in compliance with CCR Title 8 Standards for awarded scope.
- C. Contractor shall provide a copy of Company's Injury Illness Prevention Program in accordance with CCR Title 8, Section 3203.
- D. Contractor shall provide a copy of their Policy or Substance Abuse Prevention Program that complies with the 1988 Drug Free Workplace Act.
- E. Contractor shall provide the resume and qualifications/certifications of assigned project designated Onsite HSE Representative for this scope as identified in section 2.3 of this specification.
- F. Accident/Incident investigation report within 24 hours of event (immediate verbal notification to Authority Project Manager, followed by Written Report).

The following required documentation shall be provided to the Authority's Project Manager, upon Authority request, within 72 hours.

- G. A copy of Contractor weekly site safety inspection report with status of corrections, upon request, within 72 hours.
- H. Contractor shall provide a copy of the Contractors and subcontractors competent person list (submit to Authority Project Manager, upon Authority request, within 72 hours).
- I. Contractors and subcontractors training records for qualified equipment operators, electrical worker certification (NFPA 70E), confined space training, HAZWOPER training, and similar personnel safety training certificates as applicable to the agreement scope and as requested by the OCTA Project Manager and/or HSEC department, upon Authority request, within 72 hours and prior to starting or during the scope activity (submit to Project Manager).
- J. A monthly report that includes number of workers on project, a list of subcontractors, work hours (month, year to date, & project cumulative) of each contractor, labor designation, OSHA Recordable injuries and illnesses segregated by medical treatment cases, restricted workday cases, number of restricted days, lost workday cases, and number of lost work days, and recordable incident rate. Contractor shall provide to the Authority, upon request, within 72 hours.

K. TRAINING DOCUMENTATION

To ensure that each employee is qualified to perform their assigned work, when applicable to scope work, Contractor shall verify training documentation

is in place, prior to and during contract scope, and make available to the Authority, upon request, within 72 hours. Training may be required by the Authority or CCR Title 8 Standards and required for activity on Authority's property and/or Authority projects. Contractor shall provide to Authority, upon request, within 72 hours.

2.2 HAZARD COMMUNICATION (CCR Title 8, Section 5194)

- A. Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to chemical use on Authority property and/or project work areas the Contractor shall provide to the Authority Project Manager copies of Safety Data Sheet (SDS) for all applicable products used, if any.
- B. All chemicals including paint, solvents, detergents and similar substances shall comply with SCAQMD Rules 103, 1113, and 1171.

2.3 DESIGNATED HEALTH, SAFETY, ENVIRONMENTAL (HSE) REPRESENTATIVE

- A. Before beginning on-site activities, the Contractor shall designate an On-site HSE Representative. This person shall be a Competent or Qualified Individual as defined by the Occupational, Safety, and Health Administration (OSHA), familiar with applicable CCR Title 8 Standards, and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.
- B. The Contractor's On-site HSE Representative for all Authority projects is subject to acceptance by the Authority Project Manager and the HSEC Department Manager. All contact information of the On-site HSE Representative (name, phone, and fax and pager/cell phone number) shall be provided to the Authority Project Manager.
- C. QUALIFICATIONS – On Capital Programs, the Contractor shall submit the resume of the full time, of the On-site HSE Representative(s) who reports directly to the Contractor's Project Manager or Superintendent, and who is responsible for HSE oversight for field operations on the project no later than ten (10) days after receipt of Notice to Proceed, and prior to mobilization. The Contractor's On-site HSE Representative(s) shall have a minimum of five (5) years heavy construction experience in administering HSE programs on heavy construction project sites, the last two years of which have been administering HSE in the construction discipline for which Contractor is contracting with the Authority. The Contractor's On-site HSE Representative shall be a Certified Safety Professional (CSP) with current standing from the Board of Certified Safety Professionals (BCSP) or a CHST with current standing from the BCSP or a CIH with current standing from the ABIH, or similar professional HSE Certificate of standing acceptable to the Authority. The Contractor's On-site HSE Representative(s) shall be on site during all operational hours. The On-site HSE Representative(s) shall set up, carry forward and aggressively and effectively maintain the project specific safety program and IIPP covering all phases of the work. If at any time the Contractor wishes to replace their On-site HSE Representative(s), the Contractor must provide written notice thirty (30)

days prior to change of personnel to the Authority. The Contractor shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the scope work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Authority who may be involved. This requirement applies continuously and is not limited to normal working hours.

On Facility Modification Projects, the Contractor shall submit the resume of the qualified On-site HSE Representative who reports directly to the Contractor's Project Manager or Superintendent, and who is responsible for safety oversight for field operations on the project no later than ten (10) days after receipt of Notice to Proceed, and prior to mobilization. The Contractor's On-Site HSE Representative shall preferably have a certification from the BCSP and as a minimum, a 30 hour OSHA training certificate, plus five (5) years construction or scope agreement HSE experience enforcing HSE compliance on heavy or industrial construction project sites, the last two years of which have been administering HSE in the construction or scope discipline for which Contractor is contracting with the Authority. The Contractor's On-site HSE Representative(s) shall be on site during all operational hours. The Authority reserves the right to allow for an exception of these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and HSEC Department Manager.

1. Capital Programs may include, but are not limited to, projects involving demolition and construction of; heavy construction, rail projects, highway projects, parking lots and structures, fuel stations, building construction, facility modifications, bus base construction, EPA/DTSC remediation, AQMD air or soil monitoring, fuel tank removal or modification, major bus base modifications, handling potential hazardous waste projects, and similar projects as deemed a Capital Program at the sole discretion by the Authority.
2. Facility Modification Projects may include, but are not limited to, projects involving minor demolition and construction or improvement projects for transportation centers, bus base sites and/or building modifications, equipment and/or building upgrades, and similar projects as deemed a Facility Modification Project at the sole discretion by the Authority.
3. Competent Individual means an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees and/or property, and who has authorization to take prompt corrective measures to eliminate them.
4. Qualified Individual means an individual who by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

- D. The Contractor shall designate a Competent Individual for each task, as required by Cal-OSHA standards or laws. The task Competent Individual shall be responsible for the prevention of accidents. If the Authority or any public agency with jurisdiction notifies the Contractor of any claimed dangerous condition at the site that is within the Contractor's care, custody or control, the Contractor shall take immediate action to rectify the condition at no additional cost to the Authority. The Contractor shall be responsible for the payment of all fines levied against the Authority for deficiencies relating to the Contractor's supervision or conduct and/or control of the scope agreement.
- E. On Facility Modification Projects, the Authority Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in section 2.3 (C), above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 15 workers, there are multiple scope work sites, or as warranted by the scope of work at the sole discretion by the Authority.
- F. On Capital Programs, the Authority's Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in item 2.3 (C) above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 50 workers, or is warranted by the scope of work.

2.4 SITE HSE ORIENTATION

The Contractor shall conduct and document a project site safety orientation for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects. The safety orientation, at a minimum, shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 reflective vests, designated smoking, eating, and parking areas, traffic speed limit and routing, cell phone policy, and barricade requirements. When required by scope, additional orientation shall include fall protection, energy isolation/lock-out/tag-out (LOTO), confined space, hot work permit, security requirements, and similar project safety requirements.

2.5 INCIDENT NOTIFICATION AND INVESTIGATION

- A. The Authority shall be promptly notified of any of the following types of incidents:
 - 1. Damage to Authority property (or incidents involving third party property damage);
 - 2. Reportable and/or recordable injuries (as defined by the U. S. Occupational Safety and Health Administration);
 - 3. Incidents impacting the environment, i.e. spills or releases on Authority property.

- B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the general public that arise from the performance of Authority contract work. An initial immediate verbal notification, followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.

A final written incident investigative report shall be submitted within seven (7) calendar days, and include the following information. The current status of anyone injured, photos of the incident area, detailed description of what happened, the contributing factors that led to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of the task planning documentation, and the corrective action initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report acceptable to OCTA.

- C. A Serious Injury, Serious Incident, OSHA Recordable Injury / Illness, or Significant Near Miss may require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within seven (7) calendar days of the incident. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors leading to the incident, a root cause analysis, and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.

1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement.
2. Serious Incident: includes property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, EPA, AQMD, DTSC, etc.) notification or representation.
3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.
4. Significant Near Miss Incident: includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.

2.6 REGULAR INSPECTIONS & THIRD PARTY INSPECTIONS

- A. Frequent and regular inspections of the project jobsite shall be made by the Contractor's On-site HSE Representative, or another Competent Individual

designated by the Contractor. Unsafe acts and/or conditions noted during inspections shall be corrected immediately.

- B. The Contractor is advised that representatives of regulatory agencies (i.e., CAL-OSHA, EPA, SCAQMD, etc.), upon proper identification, are entitled to access onto Authority property and projects. The Authority Project Manager shall be notified of their arrival as soon as possible.

2.7 ENVIRONMENTAL REQUIREMENTS

- A. The Contractor shall comply with Federal, State, county, municipal, and other local laws and regulations pertaining to the environment, including noise, aesthetics, air quality, water quality, contaminated soils, hazardous waste, storm water, and resources of archaeological significance. Expense of compliance with these laws and regulations is considered included in the agreement. Contractor shall provide water used for dust control, or for pre-wetting areas to be paved, as required; no payment will be made by OCTA for this water.
- B. The Contractor shall prevent pollution of storm drains, rivers, streams, irrigation ditches, and reservoirs with sediment or other harmful materials. Fuels, oils, bitumen, calcium chloride, cement, or other contaminants that would contribute to water pollution shall not be dumped into or placed where they will leach into storm drains, rivers, streams, irrigation ditches, or reservoirs. If operating equipment in streambeds or in and around open waters, protect the quality of ground water, wetlands, and surface waters.
- C. The Contractor shall protect adjacent properties and water resources from erosion and sediment damage throughout the duration of the contract. Contractor shall comply with applicable NPDES permits and Storm Water Pollution Prevention Plan (SWPPP) requirements.
- D. Contractor shall comply with all applicable EPA, Cal EPA, Cal Recycle, DTSC, SCAQMD, local, state, county and city standards, rules and regulations for hazardous and special waste handling, recycling and/ disposal. At a minimum, Contractor shall ensure compliance where applicable with SCAQMD Rule 1166, CCR Title 8, Section 5192, 29 CFR Subpart 1910.120, 49 CFR Part 172, Subpart H, 40 CFR Subpart 265.16 and CCR Title 22 Section 6625.16. Contractor shall provide OCTA a schedule of all hazardous waste and special or industrial waste disposal dates in advance of transport date. Only authorized OCTA personnel shall sign manifests for OCTA generated wastes. Contractor shall ensure that only current registered transporters are used for disposal of hazardous waste and industrial wastes. The Contractor shall obtain approval from OCTA for the disposal site locations in advance of scheduled transport date.
- E. If the Contractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or other Hazardous Substance (as defined in California Health and Safety Code, and all regulations pursuant thereto) which has not been rendered harmless, the Contractor shall immediately stop work in that area affected and report the condition to the Authority in writing. The work in the affected area shall not thereafter be

resumed except by written agreement of the Authority and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) or other hazardous substance and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or other hazardous substance, or when it has been rendered harmless, by written agreement of the Authority and the Contractor, or in accordance with a final determination by an Environmental Consultant employed by the Authority.

- F. The Contractor shall not permit any hazardous substances to be brought onto or stored at the Project Site or used in the construction of the work, except for specified materials and commonly used construction materials for which there are no reasonable substitutes. All such materials shall be handled in accordance with all manufacturers' guidelines, warnings and recommendations and in full compliance with all applicable laws. All notices required to be given with respect to such materials shall be given by the Contractor. The Contractor shall not intentionally release or dispose of hazardous substances at the Project Site or into the soil, drains, surface or ground water, or air, nor shall the Contractor allow any Sub-Contractor, subcontractor or supplier or any other person for whose acts the Contractor or any subcontractor, vendor or supplier may be liable, to do so. For purposes of Contract Documents, "hazardous substance" means any substance or material which has been determined or during the time of performance of the work is determined to be capable of posing a risk of injury to health, safety, property or the environment by any federal, state or local governmental authority.

2.8 VEHICLE AND ROADWAY SAFETY REQUIREMENTS

- A. The Contractor shall ensure that all Contractor vehicles, including those of its subcontractors, suppliers, vendors and employees are parked in designated parking areas, are identified by company name and/or logo, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.
- B. Personal vehicles belonging to Contractor employees shall not be parked on the traveled way or shoulders including any section closed to public traffic, or areas of the community that may cause interference or complaints
- C. The Contractor shall comply with California Department of Transportation safety requirements and special provisions when working on highway projects.
- D. The Contractor shall conform to American Traffic Safety Services Association (Quality Standard for Work Zone Control Devices 1992).

2.9 LANGUAGE REQUIREMENTS

For safety reasons, the Contractor shall ensure employees that do not read, or understand English, shall be within visual and hearing range of a bilingual supervisor or responsible designee at all times when on the Authority property or projects.

2.10 PERSONAL PROTECTIVE EQUIPMENT AND CLOTHING

Contractors, and all associated subcontractors, vendors and suppliers are required to provide their own personal protective equipment (PPE), including eye, head, foot, and hand protection, respirators, reflective safety vests, and all other PPE required to perform their work safely on Authority projects.

- A. RESPIRATORS (CCR Title 8, Section 5144) - The required documentation for training and respirator use shall be provided to the Authority's Project Manager upon request within 72 hours. All compliance documentation as required by CCR Title 8, Section 5144, Respiratory Protective Equipment.
- B. EYE PROTECTION – The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.
- C. BUS BASE – Minimum PPE required includes but is not limited to; Eye protection, class 2 reflective vest, steel toe or construction type footwear that meets ANSI Z41 1991 are recommended.
- D. CONSTRUCTION PROJECTS - Minimum PPE required includes but is not limited to; hard hat, eye protection, hand protection, class 2 reflective vest, safety toe footwear that meets ANSI Z41 1991 are recommended.
- E. HARD HATS: Approved hard hat that meet ANSI Z89. 1 (latest revision). Hard hats should be affixed with the company/agency logo and/or name. The bill shall be worn forward. Metal hard hats and cowboy style are forbidden on Authority projects.
- F. FOOTWEAR: Enclosed leather that covers the ankles, such as a construction type boot. Employees shall not wear casual dress shoes, open toe, sneakers, sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal in construction work areas. Safety toe footwear that meets ANSI Z41 1991 are recommended on construction sites and in operating facilities.
- G. CLOTHING/SHIRTS: minimum or waist length shirts with sleeves (4" minimum).
- H. CLOTHING/TROUSERS: Cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. No sweat pants, or trousers with holes.

2.11 AERIAL DEVICES (CCR Title 8, Section 3648)

Aerial devices are defined in CCR Title 8 as any vehicle-mounted or self-propelled device, telescoping extensible or articulating, or both, which is primarily designed to position personnel. If aerial devices are to be used, the required documentation in CCR Title 8, Section 3648 shall be provided to the Authority's Project Manager, upon request, within 72 hours.

2.12 CONFINED SPACE ENTRY (CCR Title 8, Section 5157)

Before any employee will be allowed to enter a confined space, the required documentation as required by CCR Title 8, Section 5157 shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- A. RECOMMENDED: a copy of the most recent calibration record for each air monitoring unit, 3-gas monitor or "sniffer" to be used by the Entry Supervisor prior to entering permit-required confined spaces.

2.13 CRANES

- A. Crane activity shall comply with 29 CFR 1926.550, CCR Title 8 Standards, manufacture's recommendations and requirements, applicable American Society of Mechanical Engineers (ASME), and ANSI Standards. In addition, Contractor shall comply with the following requirements: Prior to using mobile cranes, the Contractor shall provide to the Authority Project Manager, items 1, 2 & 3 of the following documentation a minimum of seven (7) days prior to activity, and item 4 on each day of crane activity.
 1. Cranes require a submittal of the annual certification, and copy of the cranes most recent quarterly inspection.
 2. A copy of each crane operator's qualification (NCCCO or equivalent) of company-authorized crane operators that have been properly trained in the equipment's use and limitations. Operator certification as required by CCR Title 8, Section 5006.1.
 3. A rigging plan is required for all lifts. Critical lifts require an engineered plan designed by a registered professional engineer licensed in the State of California.
 4. Contractor shall provide the name and qualifications of each "Qualified Rigger" as defined by OSHA.
 5. Rigging scope activity shall comply with 29 CFR Subparts 1926.250, 1929.753 and CCR Title 8 Standards.
 6. All rigging equipment shall be free from defects, in good operating condition and maintained in a safe condition.
 7. Rigging equipment shall be inspected by a designated, competent employee prior to initial use on the project, prior to each use, and documented inspections performed regularly. Records shall be kept on jobsite of each of these inspections by contractor and be made available to the Authority upon request within 72 hours.

8. Only one (1) sling eye should be in a hook, for multiple slings a shackle shall be used to prevent separation of slings, and prevent stress on weak points of the hook.
 9. Contractor shall prepare a documented daily crane inspection report.
- B. Pick and carry with rubber tired cranes is forbidden on Authority projects.
- C. Engineered Critical Lifts

A critical lifts is established where any one of the following conditions are created:

1. Where in the crane's current configuration at any point during the lift, a gross load weight exceeds 75% of the capacity of the crane.
2. A gross weight equal to, or greater than 10 tons.
3. Lifts over buildings, equipment, public roadways, structures, or power lines.
4. A single lift where two or more cranes are used, including tandem lifts and tailing cranes.
5. Lifts made in close proximity of power lines, as defined by CCR Title 8 voltage clearance specifications.
6. Lifts involving helicopters, and specialized or unique and complex rigging equipment.
7. Hoisting of suspended work platforms.
8. Static tower crane erection and dismantlement.
9. Making lifts below the ground level where the crane is positioned.

Note: Where the below the ground lift is minimal (evaluated by California registered professional engineer), a critical lift plan may not be required.

D. Critical Lift Plan

Where a critical lift will be performed, a written critical lift plan shall be submitted to the Authority Project Manager prior to commencing with the lift. The written plan shall include the following:

1. Crane manufacturer, capacity, and all specifications for the configuration to be used for the lift.

2. Load chart data for the crane to be used to make the lift. Total calculated weight of the load to be lifted including all rigging and other deductions consistent with the manufacturer's load chart.
3. Engineering data shall be provided on the hook assembly (manufacturer's certification or independent laboratory testing and load testing within the past 60 days), below-the hook rigging, and all specialized below-the-hook lifting devices.
4. Diagrams of the lift that provides geometrical conditions of the load, rigging, and all crane positions during the lift. The drawing shall provide the following:
 - A. Locations of all components to be lifted prior, during and after the lift is completed.
 - B. Radius points.
 - C. Swing patterns.
 - D. In the event that the lift must be aborted, positions where the load may be safely landed.
 - E. Areas where any personnel, public, and vehicles must be evacuated during the lift.
5. Potential ground loading for each point of contact by the crane in selected locations in which the crane will perform the critical lift.
6. Soil and subsurface data and information pertaining to the location on which the crane used for the critical lift will be positioned. This information shall be procured from an authoritative source such as a geotechnical engineer or a professional civil engineer registered in the state of California.

Note: *This information may be available from the Authority for selected locations on some projects.*

7. An engineer shall use the data provided in #5 and #6 above to verify and confirm the following:
 - A. That the soil and subsurface conditions are capable of supporting all loads imposed during the critical lift.
 - B. That the designs of cribbing and other supports used under the crane load points are appropriate to safely transfer such loads.

8. Signature and stamp on the plan by a California registered professional engineer, evidencing review of the plan as meeting the requirements that all loads and load information and calculations contained in the plan are approved, acceptable and safe to perform.
9. Operator qualifications.
10. Method by which communication will be provided to the crane operator. (Designated signal person, two-way radio, hard wire phone system, etc.).
11. A critical lift hazard analysis which identifies the particular hazards (including weather, wind, obstructions, etc.) associated with the lift and the means and methods to reduce, mitigate, or eliminate the hazards.
12. Emergency action plan.
13. Documentation of lift and pre-job meeting shall be conducted by Contractor's Project Manager.

The written plan shall be submitted 7 days prior to any critical lift for review by the Authority Project Manager and the Authority HSEC department. No critical lifts shall be conducted prior to such review.

E. OVERHEAD CRANES

Before using the Authority overhead cranes, each Contractor shall designate a limited number of employees to attend a training session on the use and limitations of overhead cranes with designated Authority personnel.

2.14 DEMOLITION OPERATIONS (CCR Title 8, Section 1734)

Before starting demolition activities the required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours. Contractor shall provide all compliance documentation as required by CCR Title 8 Article 31.

- A. The Contractor shall be responsible for visiting and examining the project site to assess and personally determine the extent of demolition, associated work, debris removal, disposal and general work to be done under this section.
- B. The Contractor shall take possession of all demolished materials, except as noted otherwise in the Contract Documents, and be responsible for disposing of them in accordance with applicable laws and regulations. On-site burning or burial of demolition materials will not be permitted.
- C. Provide continuous noise and dust abatement as required, preventing disturbances and nuisances to the public, workers, and the occupants of adjacent premises and the surrounding areas. Dampen areas affected by demolition operation as necessary to prevent dust nuisance.

- D. Site demolition plan: Indicate methods, procedures, equipment, and structures to be employed. Specify safety measures in accordance with applicable codes including signs, barriers, and temporary walkways. Plans shall be prepared by a qualified person (CSP, CIH, CHST, CHMM, etc.), or as necessary by a professional engineer licensed to practice in the State of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.
- E. Equipment, haul routes, and disposal sites to be used in the demolition and disposal work. Copy of manifests showing delivery of disposed materials in accordance with the plan and permit conditions. Certification that all demolished materials removed from the site have been disposed of in accordance with applicable laws and regulations.

2.15 EXCAVATION OPERATIONS (CCR Title 8, Section 1541)

Before starting excavation activities more than 5 feet deep into which people shall enter, the required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours. All compliance documentation shall comply with the following CCR Title 8, Section 1541 requirements:

- A. A copy of the Contractor's Excavation Permit.
- B. Attention is directed to the applicable sections of the Labor Code concerning trench excavation safety plans, "Trench Safety." Excavation for any trench 5 feet or more in depth shall not begin until the Contractor has received approval from the Engineer of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of that trench and any design calculations used in the preparation of the detailed plan. Excavations 20 feet or greater shall be engineered and plan stamped by a California registered professional engineer.
- C. The detailed plan shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during the excavation. No plan shall allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health. If the plan complies with the shoring system standards established by the Construction Safety Orders, the plan shall be submitted at least five (5) days before the Contractor intends to begin excavation for the trench.
- D. Excavations and trenches shall be inspected by a "Competent Person" daily and after every rainfall to determine if they are safe. Daily inspections shall be recorded. Documentation is to be kept on site and available for review upon request.
- E. Excavations are considered class 'C' soil unless documented testing in accordance with 29 CFR Subpart P, Section 1926.650 and CCR Title 8 Standards supports a class 'B' soil classification and is confirmed and stamped by a California registered professional engineer. In no case will excavations be classified as class 'A' soil.

2.16 FALL PROTECTION (CCR Title 8, Sections 1669-1671)

The following standards are required when performing work on Authority property. The required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- A. Fall protection is required for workers exposed to falls in excess of six (6) feet.
- B. When conventional fall protections methods are impractical or create a greater hazard, a written plan in conformance with CCR Title 8, Article 24, shall be submitted to the Authority a minimum of seven (7) days in advance of the scheduled activity.

2.17 FORKLIFTS, BACKHOES AND OTHER INDUSTRIAL TRACTORS (CCR Title 8, Section 3664)

CCR Title 8 defines backhoes as "industrial tractors". All compliance documentation shall be provided as required by CCR Title 8, Section 3664. The following required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours:

- A. A copy of each operator's certificate or a list of company-authorized industrial tractor operators that have been properly trained in the equipment's use and limitations. Please state which equipment, and model each operator has been authorized to operate (i.e. forklifts, backhoe, bulldozer, front-end loader, etc.).

2.18 ELECTRICAL OPERATIONS

HIGH VOLTAGE (CCR Title 8, Sections 2700-2974)

Any work on electrical equipment defined by OSHA as high-voltage, at or above 600 volts, requires specialized training certifications and personal protective equipment. Before any high-voltage work commences, the Authority Project Manager must be notified and must provide approval. The following required NFPA 70E certification and a certificate of training from a recognized organization of a two day high voltage safety training course shall be provided to the Authority's Project Manager, upon request, within 72 hours:

- A. A list of the name(s) of the company-designated high voltage Qualified Electrical Worker(s)

LOW VOLTAGE (CCR Title 8, Sections 2299-2599)

Only qualified persons shall work on electrical equipment or systems.

- A. Electrical Certification of Training: Contractor employees working on or around electrical panels, wiring, motors, electrical energy sources or similar electrical devices shall have attended a NFPA 70E, Electrical Safety Course and provide to the OCTA Project Manager a copy of employees' NFPA 70E qualification certificate of training for each employee assigned to electrical tasks on OCTA property or projects.

2.19 POWDER-ACTUATED TOOLS (CCR Title 8, Section 1685)

Before using tools such as “Hilti guns” or other powder-actuated tools, the following required documentation shall be provided to the Authority’s Project Manager, upon request, within 72 hours.

- A. A copy of each qualified person’s valid operator card.

2.20 SCAFFOLDS (CCR Title 8, Sections 1635.1-1677)

Scaffold erection shall be in compliance with CCR Title 8 Standards. All compliance documentation shall be provided as required by CCR Title 8, Sections 1635.1-1677. In addition, the Contractor shall comply with the following additional requirements.

- A. All scaffolds on Authority project shall be inspected by a competent person qualified for scaffolds in accordance with CCR Title 8 Standards.
- B. Contractor shall arrange for a third party inspection, at least quarterly, by a credentialed professional (insurance carrier, scaffold manufacturer representative, or similar) in addition to the contractors daily self inspections.
- C. A proper scaffold inspection and tagging system shall be maintained identifying compliance status (Example: Green/safe, Yellow/modified-fall protection required, Red/unsafe-do not use).
- D. Contractor shall have a fall protection plan that meets CCR Title 8 Standards for scaffold erectors, an erection/dismantling plan shall be submitted to Authority Project Manager for review prior to start of activity.
- E. Scaffold erection/dismantling shall install handrails beginning on the first level above ground erected, and erectors shall plan erection and dismantling in a manner to maximize handrail protection and minimize employees at unprotected areas.

2.21 WARNING SIGNS AND DEVICES

Signs, signals, and/or barricades shall be visible at all times when and where a hazard exists. Overhead tasks, roofing tasks, excavations, roadwork activity, demolition work, and other recognized hazards shall have guardrail protection, warning barricades, or similar protective measures acceptable to the Authority’s Project Manager. Signs, signals, and/or barricades shall be removed when the hazard no longer exists.

2.22 STEEL ERECTION

Steel Erection scope activity shall comply with 29 CFR Subpart R, Section 1926.750, and CCR Title 8 Standards. In addition to OSHA Standards, Contractor shall comply with the following requirements.

- A. Erection planning should incorporate installation methods using aerial devices (man-lifts) and elevated work platforms (scissor lift) to minimize fall hazards of climbing steel where possible. A detailed written job safety analysis (JSA) shall identify installation methods, equipment, and control methods to minimize potential fall hazards.
- B. The Contractor shall not allow any employee to walk the steel unprotected from falls. Contractor employees must be tied-off and "coon" the beam until safety cables are provided to which employees shall use 100% tie-off protection. Two lanyards are required to ensure 100% tie-off protection.
- C. A safe means of access to the level being worked shall be planned. Climbing and sliding down columns are not considered safe access and are forbidden on Authority projects.
- D. A qualified rigger shall inspect the rigging prior to each shift and each lift.
- E. Multiple lift rigging (Christmas Treeing) lifts are forbidden on Authority property and controlled projects.

2.23 AUDITS

- A. The Authority may make periodic patrols of the project site as a part of its normal security and safety program. The Contractor shall not be relieved of its aforesaid responsibilities and the Authority shall not assume same, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Contractor, as a result of safety patrols by the Authority.
- B. The Authority may audit the Contractor's safety program for HSE compliance at various intervals of the project, at the sole discretion of the Authority. Elements may include, but are not limited to: OSHA injury & illness records and logs, Job Safety Analysis and safety plans, equipment operator licenses and training records, incident reports, meeting minutes, engineered plans, safety meeting records, crane and rigging plans, equipment inspection records, qualifications of and interviews with key Contractor management personnel, and other similar information. The Contractor shall support and cooperate with these audits at no additional compensation or schedule impacts with this contract.

2.24 RAILWAY SAFETY PRECAUTIONS

- A. Work on operating railways shall be in compliance with 49 CFR, Part 214, CCR Title 8 Standards, and the Southern California Regional Rail Authority (SCRRA).
- B. New construction rail projects require that all employers and contractors are responsible to assure employees are trained and understand on-track safety procedures, and follow roadway worker rules identified in 49 CFR, Part 214, CCR

Title 8, SCRRA, the California Department of Transportation (CalTrans), and OCTA HSE Construction Management Requirements (i.e., item E references).

- C. Minimum PPE for workers include hard hat, safety glasses, orange (i.e., rail company approved color) class 2 reflective vest, safety toe footwear that meets ANSI Z41 1991 (lace-up type over the ankle) and hearing protection (on person and worn as necessary).

2.25 FINES

The Contractor shall be responsible for the payment of all fines levied against the Authority for HSE violations arising from or related to activities over which Contractor has responsibility per the contract.

2.26 COMPLIANCE COSTS

Compliance with Health, Safety and Environmental Compliance identified in these aforementioned Authority Safety Specifications shall be at the expense of the Contractor, and included in Bid Documents to the Authority for the Contractor's scope. The Authority shall incur no additional cost or schedule impacts by Contractor, for compliance with California Construction Safety Orders, CCR Title 8 Standards, Federal OSHA Standards, and the Authority Safety Specifications for the protection of persons and property.

2.27 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. CFR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. Construction Industry Institute (CII)
- E. OCTA Construction Management Procedures Manual
- F. OCTA Yard Safety Rules

END OF DOCUMENT

SECTION VII: GENERAL PROVISIONS - EXHIBIT A

SECTION VII: GENERAL PROVISIONS

A. COST BREAKDOWN

Within fifteen (15) calendar days after "Notice to Proceed," the Contractor shall, upon request by the Authority, submit a cost breakdown of the lump sum Bid entered on the Bid Form for all construction work. This cost breakdown will form the basis for progress payments in accordance with these Specifications and shall show all of the major categories and subcategories of work and equipment requested by the Authority. Additionally, all costs shall be segregated between off-site and on-site costs. Mobilization costs shall not exceed ten percent (10%) of total construction costs. Bonds and insurance costs will be identified as a separate line item. Such cost breakdown shall not be required if the Authority, at its sole discretion, elects to pay the Contractor in lump sum within thirty (30) calendar days of receipt of proper invoice following the Contractor's satisfactory completion and the Authority's acceptance of all work.

B. PROGRESS PAYMENTS

1. The Authority, no later than the twenty-fifth (25th) day of each month, shall prepare a progress payment estimate based on the estimated percentage of completion of each Bid Item and on the Contractor's actually incurred allowable expenses on such Bid Items. The Authority will issue the progress payment, in the amount it deems appropriate, by approximately the fifteenth (15th) day of the following month.
2. For purposes of calculating the progress payments, Authority will use the cost breakdown submitted by the Contractor for each Bid Item at the start of this Agreement. In no event will the Authority make a progress payment that, when added to the prior progress payments, amounts to a sum more than the Contractor's actual aggregate incurred expenses, adjusted to include Contractor's overhead and profit as allocated to such incurred expenses.
3. The Authority will pay only ninety-five percent (95%) of each progress payment amount as determined above, retaining five percent (5%) as part security for the fulfillment of this Agreement by the Contractor, subject to Public Contract Code 22300.
4. The amount retained in accordance with paragraph B.3., hereinabove from the progress payments will be paid in full to the Contractor as part of the final payment upon Contractor's full completion of this Agreement, except that one half of one percent ($\frac{1}{2}$ of 1%) of this Agreement's total price shall be retained for one (1) year beyond the date of the Notice of Completion filed for this Agreement as partial security for fulfillment of the warranty obligations by the Contractor under this Agreement.
5. No progress payments will be made for materials not installed.

6. Progress payments made by Authority in no way shall be deemed or construed as acceptance by the Authority of work or waiver by the Authority of any rights hereunder.
7. The Contractor shall pay subcontractors, promptly upon receipt of each Authority progress payment; the respective amounts allowed the Contractor on account of the work performed by subcontractors, to the extent of each such subcontractor's interest therein. Such payments to subcontractors shall be based on estimates made pursuant to this Agreement. Any diversion by the Contractor of payments received for prosecution of a contract, or failure to reasonably account for the application or use of such payments, constitutes ground for termination of the Contractor's control over the work and for taking over the work, in addition to disciplinary action by the Contractor's State License Board. The subcontractor shall notify, in writing, the Contractor's State License Board and the Authority of any payment less than the amount or percentage approved for the class or item of work as set forth in this Agreement.
8. In addition to other amounts properly withheld under this Agreement, the Authority shall withhold all legally required sums for, but not necessarily limited to, stop notices, labor and tax liens, etc.

C. FINAL INSPECTION AND ACCEPTANCE

Promptly after Substantial Completion has occurred, Contractor shall perform all Punch List Work, if any, which was deferred for purposes of Project Completion, and shall satisfy all of its other contractual obligations under the contract documents.

When the Contractor determines that the work is fully completed, including satisfactory completion of all inspections, tests, and required documentation, Punch List and clean-up items, Contractor shall give the Authority a written request for Final Acceptance within ten (10) days thereafter, specifying that the work is completed and the date on which it was completed.

Within thirty (30) days after receipt of the request for Final Acceptance from Contractor, Authority will make a final inspection of the work and will either:

1. Reject the request for Final Acceptance, specifying the defective or uncompleted work; or
2. Issue a written Final Acceptance and record Notice of Completion with County Recorder.

Substantial Completion is defined herein as; In the opinion of the Authority, that work or portion thereof that is sufficiently complete and in accordance with the Contract, that it can be utilized by the Authority for the purpose for which it was intended. A determination of Substantial Completion does not waive, but may not

require the prior completion of minor items, which do not impair the Authority's ability to safely occupy and utilize the Work for its intended purpose.

D. CLAIMS

A "Claim" that falls within the definition of Public Contract Code Section 9204 (hereafter, "Section 9204"), as may be amended, means a separate demand by Contractor, sent by registered mail or certified mail with return receipt requested, for one or more of the following: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by Authority; (b) payment by Authority of money or damages arising from work done by, or on behalf of, the Contractor and payment for which is not otherwise expressly provided or to which Contractor is not otherwise entitled; and/or (c) payment of an amount that is disputed by the Authority.

It is important that the Authority be promptly notified of any potential claims so that it can timely and reasonably investigate the merits of the Claim when the events giving rise to the Claim are current and, when appropriate, make timely adjustments in the work in response thereto. Contractor shall submit to Authority a Notice of Claim within fifteen (15) calendar days after receipt of or the discovery of information, or the occurrence of an event, or any actions of Authority or its agents, that Contractor believes may result in a Claim. The Notice of Claim shall state the reason(s) for the Claim and the nature of the additional costs or delay that Contractor believes it will incur. Such Notice shall be submitted prior to the submission of the Claim documentation described below. If a Notice of Claim is not submitted within the fifteen (15) day period, it shall be deemed waived.

The Authority and Contractor agree to attempt to informally resolve any disputes which may give rise to a Claim. The Authority and Contractor shall meet within twenty (20) calendar days, or any mutually agreeable extension thereof, from the date the Notice of Claim is received by Authority in a good faith effort to resolve the dispute. Contractor shall provide a representative at the meeting who has authority to resolve the claim on the Contractor's behalf. If a resolution is not reached and the Authority and Contractor have not, in writing, mutually agreed to continue with informal efforts at resolution, Contractor shall file a Claim within thirty (30) calendar days after the informal resolution process has concluded, or such Claim shall be deemed waived.

The Authority and the Contractor shall process the Claim in accordance with Section 9204 and the requirements set forth herein.

1. Claim Requirements.

- a. Any submittal intended by the Contractor to be evaluated by Authority as a Claim shall be entitled "Claim" and sent to Authority by registered mail or certified mail with return receipt requested. The Contractor may present a Claim on behalf of a subcontractor or a lower tier subcontractor meeting the requirements of Section 9204(d)(5).

- b. All Claims shall be submitted by the Contractor within thirty (30) calendar days after the conclusion of the informal resolution process discussed above; however, this timeframe may be extended unilaterally by Authority in writing. Any Claim not submitted within the specified thirty (30) calendar days, or as otherwise authorized by Authority, shall be deemed untimely and waived.
- c. All Claims shall include reasonable documentation in support, including a detailed factual statement that sets forth names, dates, and specific events that took place. In addition, supporting documents shall include a detailed analysis of a request for a time extension, if applicable, and a detailed breakdown of a request for additional compensation. A revised construction schedule shall also be included identifying the impact of the delays, including proposals to minimize any of the impacts.
- d. Claims filed by the Contractor shall be in sufficient detail to enable the Authority to ascertain the basis and amount of said Claims. The Authority will consider and determine the Contractor's Claims, and it will be the responsibility of the Contractor to furnish within a reasonable time such further information and details as may be required by the Authority to determine the facts or contentions involved in its Claims. Failure to submit sufficient information and details will be cause for Authority to deny the Claim and/or find the Claim untimely and, therefore, waived. If the Claim is silent regarding entitlement to extra time, the Contractor shall be entitled to no extra time in connection with the Claim. If the Claim is silent regarding additional compensation, the Contractor shall be entitled to no additional compensation in connection with the Claim.
- e. No Claims shall be filed later than the date of final payment.
- f. All Claims and any amendments thereto shall include the fully executed certification set forth below. Any Claim submitted without a fully executed certification shall be rejected by Authority and returned to the Contractor.

Certificate

Under the penalty of law for perjury or falsification with specific reference to the California False Claims Act, Government Code Section 12650 et. Seq., the undersigned,

(Name)

(Title)

(Company)

herby certifies that the claim for the additional compensation and time, if any, made herein for the work on this Contract is a true statement of the actual cost incurred and time sough, and is fully documented and supported under the Contract between the parties

Dated: _____

Signature: _____

Subscribed and sworn before this _____ day of _____, 20
_____.

Notary Public

My Commission Expires: _____

2. Claim Review

Within forty-five (45) calendar days of receipt of the Claim, or any extension thereof agreed upon by the Authority and the Contractor, the Authority will conduct a reasonable review of the Claim and provide the Contractor with a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Payment of any undisputed portion of the Claim shall be made within sixty (60) calendar days after the Authority issues its written statement. If the Authority does not provide a written statement within the time specified, the Claim shall be deemed rejected.

3. Claim Settlement Conference

If the Contractor disputes the Authority's written statement or if the Claim is deemed rejected, the Contractor may demand in writing, by registered or certified

mail to the Authority, return receipt requested, an informal conference to meet and confer in an effort to settle the disputed portion of any Claim. Within thirty (30) calendar days of receipt of such written demand, the Authority shall schedule a meet and confer conference. Such conference shall be attended by an officer or principle of the Contractor who has the authority to resolve the Claim on the Contractors' behalf.

If any portion of the Claim remains in dispute after the conference, the Authority shall, within ten (10) business days of the conclusion of the conference, provide the Contractor with a written statement identifying any portion that remains in dispute and any portion that is undisputed. Payment of any undisputed portion shall be made within sixty (60) calendar days after the Authority issues its written statement.

Any remaining disputed portion shall be submitted to nonbinding mediation, unless the Contractor and Authority waive the mediation upon mutual written agreement. Mediation includes any nonbinding process, including, but not limited to, a neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. The Authority and the Contractor will share in the costs of mediation equally in accordance with Section 9204.

Within ten (10) business days after issuance of the Authority's written statement, the Authority and Contractor shall select a mutually-agreeable mediator. If the parties cannot agree to a mediator, the Authority and Contractor will each select a mediator who will then select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Authority and Contractor will each bear its own fees and costs for its respective mediator in connection with the selection of the neutral mediator.

Claims which are not resolved through this Claims settlement process shall be resolved in accordance with the laws of the State of California.

E. FINAL PAYMENT

1. After the filing of the Notice of Completion, (or acceptance of the Project), the Authority will make a proposed final estimate, in writing, of the total amount payable to the Contractor, including therein an itemization of said amount, segregated as to Contract item quantities, extra work and any other basis for payment, and shall also show therein all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the contract. All prior estimates and payments shall be subject to correction in the proposed final estimate. Within fifteen (15) days after proposed final estimate has been submitted, Contractor shall submit to the Authority written approval of proposed final estimate and/or a written statement of all claims of the Contract. No claim will be considered that was not included in written statement of claims, nor will any claim be allowed unless the Contractor has previously complied with the notice and protest requirements.

2. On the Contractor's approval, or if he files no claim within stated period, Authority will issue a final written estimate, in accordance with the proposed final estimate submitted to the Contractor; and thirty-five (35) days after the date of filing the Notice of Completion (or acceptance) Authority will pay the entire sum found to be due. Such final estimate and payment thereon shall be conclusive and binding against the Contractor on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided.
3. If the Contractor within said period of fifteen (15) days files claims, Authority will issue a semi-final estimate in lieu of the final estimate submitted to the Contractor; and thirty-five (35) days after the date of filing of the Notice of Completion, the Authority will pay the sum found to be due. Such semi-final estimate and payment thereon shall be conclusive and binding against the Contractor on all questions relating to the amount of work done and the compensation payable therefore, except insofar as affected by the claims filed within the time and in the manner required hereunder and except as otherwise provided.
4. Upon final determination of any outstanding claims, the Authority shall then make and issue a final estimate in writing and within thirty (30) days thereafter, the Authority will pay the entire sum, if any, found due. Such final estimate shall be conclusive and binding against the Contractor on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided.

F. EXTRA WORK AND CHANGES

1. New and unforeseen work, which in the judgment of the Authority is found necessary or desirable for the satisfactory completion of the work, will be classified as extra work, as well as work specifically designated as such in the plans or specifications. The Contractor shall do such extra work and furnish material and equipment therefore as directed by the Engineer in writing by a Contract Change Order. No extra work will be paid for or allowed unless the same was done upon written Contract Change Order of the Engineer and after all legal requirements have been complied with. The Contractor agrees that he will accept as full compensation for extra work, so ordered, an amount to be determined by one of the following methods:
 - a. A price mutually agreed upon in writing by the Engineer and Contractor (hereafter Agreed Price).
 - b. Force Account as hereafter provided.
2. It is mutually agreed that on the agreed price, the Contractor and subcontractor(s) shall add not more than a total markup of twenty percent (20%) to be divided between the Contractor and subcontractor(s) as full

compensation for all other expenses including overhead, profit, bond, superintendence, insurance and small tools.

3. When extra work is to be paid for on a force account basis, compensation will be determined as follows:

a. Materials

A sum equal to the actual cost to the Contractor of the materials furnished by him, as shown by paid receipts, plus not more than fifteen percent (15%). Only installed materials shall be paid for.

b. Labor

1. The actual wages paid as shown on the certified copies of Contractor's payroll, for all labor directly engaged in the work and including the cost of any compensation insurance paid for by the Contractor, subsistence and travel allowance aid to such workmen as required by collective bargaining agreements plus not more than twenty percent (20%).
2. To the actual wages as described in Subsection 1 above will be added a labor surcharge of not more than seventeen percent (17%), and shall constitute full compensation for all other payments, including payments imposed by State and Federal laws.

c. Equipment

1. Equipment will be paid for as a rental charge whether owned by the Contractor or not, and said rental rates prevailing in the area for comparable equipment will be paid. To the direct costs of "Equipment Rental" will be added a not more than fifteen percent (15%) markup.
2. All extra work at Force Account shall be adjusted daily upon report sheets prepared by the Engineer, furnished to the Contractor and signed by both parties. Said daily reports shall thereafter be considered the true record of all extra work done. The decision of the Engineer as to whether extra work has in fact been performed shall be conclusive and binding upon both parties to the contract.

4. A Contract Change Order approved by Authority may be issued to the Contractor at any time. Any such changes will be made using the Authority's Contract Change Order form, set forth in Exhibit I to the Contract. Should the Contractor disagree with any terms or conditions set forth in the Contract Change Order, the Contractor shall submit a written protest to the Authority within fifteen (15) days after the receipt of the Contract Change Order. The

protest shall state the points of disagreement and, if possible, the contract specification references, quantities and costs involved. If a written protest is not submitted within the above period, payment will be made as set forth in the approved Contract Change Order and such payment shall constitute full compensation for all work included therein or required thereby. Such unprotested approved Contract Change Orders will be considered as executed Contract Change Orders.

5. Contractor shall promptly notify the Authority in writing when it receives direction, instruction, interpretation or determination from any source other than the Authority or its designated representatives that may lead to or cause change in the work. Such written notification shall be given to the Authority before the Contractor acts on said direction, instruction, interpretation or determination.

G. EXTENDED FIELD OFFICE OVERHEAD COSTS

1. Within thirty (30) days after receipt of the Notice to Proceed, the Contractor shall submit a written statement to the Authority detailing its field office overhead costs which are time related. The Authority will review this cost submittal and reach a written agreement with the Contractor on a daily field office overhead cost rate which shall be issued as an agreed upon Change Order. The daily rate agreed to in this Change Order will be applicable throughout the duration of the Contract. No field office costs will be paid until such agreement is reached between the Authority and the Contractor and the Change Order concerning this daily rate is executed by both parties.
2. The individual cost components of the daily field office overhead rate shall represent costs which increase as a direct result of any time extension caused solely and exclusively by an act of the Authority. This listing may include such cost items as on-site project management, supervision, engineering and clerical salaries; on-site office utilities and rent; on-site company vehicles and their operating expenses; and site maintenance and security expenses. Field office overhead costs which are unaffected by increased time shall not be allowable costs in calculating the daily field office overhead rate. These non-time related costs include, but are not limited to, acquisition and installation of stationary equipment; temporary construction facilities; utilities and office furnishings (unless such items are rented or leased); the preparation of the site including clearing, grubbing, grading and fencing; mobilization and demobilization costs; and the costs of permits, bonds and insurance coverage for the project.
3. The individual wage cost components used to calculate the daily field office overhead rate shall be supported by actual employee payroll

records, not salary ranges or estimates. Hourly rates for management, supervisory, engineering and clerical employees shall be based upon 2,080 works hours per year and shall not include allowances for holidays, vacation or sick time.

4. The daily field office overhead rate shall be multiplied by the number of days the Contract is delayed or extended by Change Order and shall be added to the agreed upon Change Order cost. The days of delay shall be those caused solely by action of the Authority and documented by a time impact analysis prepared and submitted by the Contractor. In the event of a deductive Change Order is issued which reduces time under the Contract, the daily field office overhead rate shall be added to the deductive amount. No allowance for overhead costs and no profit allowance shall be added to the extended field office overhead cost.

H. ACCELERATION

1. Authority reserves the right to accelerate the work of the Contract at any time during its performance. In the event that the Authority directs acceleration, such directive will be given to the Contractor in writing. The Contractor shall keep cost and other Project records related to the acceleration directive separately from normal Project cost records and shall provide a written record of acceleration costs to the Authority on a daily basis.
2. In the event that the Contractor believes that some action or inaction on the part of the Authority constitutes an acceleration directive, the Contractor shall immediately notify the Authority in writing that the Contractor considers the actions or inactions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. The Contractor shall not accelerate their work efforts until the Authority responds to the written notification. If acceleration is then directed or required by the Authority, all cost records referred to in Subsection H.1 shall be maintained by the Contractor and provided to the Authority on a daily basis.
3. In order to recover additional costs due to acceleration, the Contractor must document that additional expenses were incurred and paid by the Contractor. Labor costs recoverable will only be overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will only be the cost of added equipment mobilized to the site to accomplish the accelerated work effort.

I. VALUE ENGINEERING

Authority encourages the Contractor to submit Value Engineering Proposals (VEP's) whenever it identifies areas and/or instances in which improvements can be made, in order to avail the Authority of potential cost savings. Contractor and the Authority will share any savings in the manner described below.

A VEP applies to a Contractor developed and documented VEP that:

1. Requires a change to the contract.
2. Reduces the total contract price without impairing essential functions or characteristics of the work.
3. Results in an estimated total net savings to the Authority equal to or greater than \$1,000.

At a minimum, a VEP should include the following information:

1. A description of the existing contract requirements that are involved in the proposed change.
2. A description of the proposed change, and all specifications and/or plans necessary for the complete evaluation of the proposed change. Include a discussion of the differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item. All relevant back up documentation needs to be included to support proposed changes.
3. Cost estimate for existing contract requirements correlated to the Contractors lump sum breakdown and the proposed changes in those requirements, including costs of development and implementation by the Contractor.

Contractor shall submit the VEP to the Authority. At its sole discretion, Authority may accept, in whole or in part and by Change Order, any VEP submitted pursuant to this section. Until a Change Order is issued on a VEP, Contractor shall remain obligated to perform in accordance with the Contract. The decision of the Authority as to the rejection or acceptance of a VEP shall be at the sole discretion of the Authority.

If a VEP, submitted by the Contractor pursuant to this section is accepted by the Authority, the total Contract price shall be adjusted based upon a sharing of the net savings by the Contractor and the Authority (50% Authority, 50% Contractor). Contractor's profit shall not be reduced by application of the VEP.

Net savings are defined as gross savings less the Contractor's costs and less the Authority's costs.

1. Contractor's cost means reasonable costs incurred by the Contractor in preparing the VEP and making the change.
2. Authority's costs means reasonable costs incurred by the Authority for evaluating and implementing the VEP.
3. Contractor is not entitled to share in either concurrent, collateral or future

Contract savings. Collateral savings are those measurable net reductions in the Authority's costs of operation that result from the VEP. Concurrent savings cover the reductions in the cost of performance of other contracts.

Contractor shall include appropriate VEP provisions in all subcontracts greater than \$25,000.

J. STOP NOTICES

The Authority, at its sole discretion, may, at any time, retain out of any amounts due the Contractor, sums sufficient to cover claims filed pursuant to Section 9358 et seq. of the California Civil Code.

K. ORDER OF WORK

Contractor shall perform work hereunder at such places, and in such order or precedence, as may be determined necessary by the Engineer to expedite completion of the required work.

L. DAVIS-BACON LABOR PROVISIONS (2 CFR SECTION 5.5)

1. Prevailing Wages

Contractor shall comply with all applicable requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. If this Agreement is funded, in whole or in part, by federal funds, Contractor shall comply with these Davis-Bacon Labor Provisions ("Labor Provisions") and all applicable federal requirements respecting prevailing wages, including, but not limited to, the Davis-Bacon Act, 40 U.S.C. Sections 3141-3144, and Sections 3146-3148, as supplemented by U.S. DOL regulations at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction."

If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the wage rates determined by the Director of the Department of Industrial Relations (DIR) for similar classifications of labor, the Contractor and subcontractors shall not pay less than the higher wage rate. The DIR will not accept lower state wage rates not specifically included in the Federal minimum wage determination.

2. Minimum Wages

- a. All mechanics and laborers 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, the full amount of wages and bona fide fringe benefits (Or cash equivalents thereof) due at time of payment computed at wage rates not less than those specified in the General Wage Determinations referenced in this section regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics; and the wage determination

decision shall be posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or cost reasonably anticipated under the Labor Code of the State of California on behalf of laborers or mechanics are considered wages paid by such Laborers or mechanics. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

- b. Authority shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the General Wage Determinations and which is to be employed under this Contract, shall be classified conformably to such wage determinations. The Authority will approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (1) the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) the classification is utilized in the area by the construction industry; and (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Authority 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 Authority to the Administrator of the Wage and Hour Division, U.S. Department of Labor. The Administrator will approve, modify, or disapprove every additional classification action within thirty (30) days from receipt and so advise the Authority or will notify the Authority within the thirty (30)-day period that additional time is necessary.
- c. In the event the Authority does not concur in the Contractor's proposed classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question, accompanied by the recommendation of the Authority, shall be referred to the State Director of Industrial Relations for determination. The wage rate (including fringe benefits where appropriate) determined pursuant to this subsection 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.
- d. Authority shall require, 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 wage and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon cash equivalent of the fringe benefit, the questions, accompanied by the

recommendation of the Authority, shall be referred to the State Director of Industrial Relations for determination.

- e. 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 costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon written request of 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 this plan or program.
- f. All disputes concerning the payment of wages or the classification of workers under this Agreement shall be promptly reported to the Authority.

3. Deductions

Authority may deduct from each progress payment and the Final Payment the following:

- a. Any Authority or third-party claims or losses for which Contractor is responsible hereunder or any Liquidated Damages which have accrued as of the date of the application for payment;
- b. If a notice to stop payment is filed with Authority, due to the Contractor's failure to pay for labor or materials used in the work, money due for such labor or materials, plus the 25% prescribed by law, will be withheld from payment to the Contractor. In accordance with Section 9358 of the Civil Code, Authority may accept a bond by a corporate surety in lieu of withholding payment;
- c. Any sums expended by or owing to Authority as a result of Contractor's failure to maintain the as-built drawings;
- d. Any sums expended by Authority in performing any of the Contractor's obligations under the Contract which Contractor has failed to perform; and
- e. Any other sums which Authority is entitled to recover from Contractor under the terms of the Contract.

- f. The amount of the accrued payments or advances as many 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.

The failure by Authority to deduct any of these sums from a progress payment shall not constitute a waiver of Authority's right to such sums.

All amounts owing by Contractor to Authority under the Contract shall earn interest from the date on which such amount is owing at the lesser of (i) ten percent (10%) per annum or (ii) the maximum rate allowable under applicable Governmental Rules.

4. Payrolls and Basic Records

- a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name, address and social security number of each such worker, the 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.
- b. Contractor will submit weekly a copy of all payrolls to the Authority as required in these "Labor Provisions." The copy shall be accompanied by a statement signed by the employer or its agent indicating that the payrolls

are correct and complete; that each laborer or mechanic (including helpers, apprentices, and trainees) have 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 29 CFR part 3; that the wage rates contained therein are not less than those determined by the State Director of Industrial Relations and that the classifications as set forth for each laborer or mechanic conform to the work performed. A submission of the "Weekly Statement of Compliance," which is required under this Contract, shall satisfy this requirement. The prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The Contractor will make the records required under the labor standard clauses of the Contract available for the inspection by authorized representatives of the Authority, and will permit such representatives to interview employees during working hours on the job.

5. Apprentices and Trainees

- a. Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program as defined in Section 1777.5 of the Labor Code of the State of California. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the State Director of Industrial Relations for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish to the Authority or the State Director of Industrial Relations written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman's rate contained in the applicable wage determination).
- b. Trainees: Except as provided in 29 CFR Section 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 or 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, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his 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-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 wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. 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.

- c. 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, 29 CFR part 30, and 41 CFR part 60.

6. Compliance with Copeland Regulations (29 CFR part 3)

The Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c). The Contractor shall also comply with the Copeland Regulations (29 CFR part 3), which are herein incorporated by reference.

7. Contract Termination; Debarment

A breach of Subsections 1 through 6 above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor provided in 29 CFR Section 5.12.

8. 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 laborer or mechanic in any work week in which he is employed on such work to work in excess of eight (8) hours a day or forty

(40) hours in such work week 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 eight (8) hours a day or forty (40) hours in such work week.

9. Violation; Liability for Unpaid Wages

Pursuant to Section 1775 of the Labor Code of the State of California, in the event that any workman employed on this public works project is paid less than the amount specified in the General Prevailing Wage Determinations or less than is required, relative to overtime, the Contractor and any subcontractor responsible therefore shall be liable to the affected workman for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the State of California or the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual workman found to be underpaid and shall be in the amount of \$50 per calendar day that a workman was underpaid.

10. Withholding for Liquidated Damages

The Authority may withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in this section.

11. Final Labor Summary

The Contractor and each subcontractor shall furnish to the Authority, upon the completion of the Contract, a summary of all employment, indicating for the completed project, the total hours worked and the total amount earned.

12. Final Certificate

Upon completion of the Contract, the Contractor shall submit to the Authority, with the voucher for a final payment for any work performed under the Contract, a certification concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the project, in the following form:

The undersigned, Contractor on

(Contract No.)

hereby certifies that all laborers, mechanics, apprentices and trainees employed by the Contractor or by a subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and Title

13. Notice to the Authority of Labor Dispute

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Authority.

14. Disputes Clause

- a. Disputes arising out of these Labor Provisions will be resolved in accordance with the procedures set forth in 29 CFR parts 5, 6, and 7, including disputes between the Authority, the Contractor (or any of its subcontractors), the U.S. Department of Labor, or the employees or their representatives. All disputes concerning the payment of prevailing wage rates or classifications shall be promptly reported to the Authority for its referral to DOT for decision or, at the option of the Authority, DOT referral to the Secretary of Labor. The decision of DOT or the Secretary of Labor, as the case may be, shall be final.
- b. All questions relating to the application or interpretation of the Copeland Act, the Contract Work Hours Standards Act, the Davis-Bacon Act, or Section 13 of the Act shall be sent to the Federal

Transit Administration (FTA) for referral to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final.

15. 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.

16. Certification of Eligibility

By entering into this Agreement, 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). 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). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

17. Insertion in Subcontracts

The Contractor shall set forth in all subcontracts Subsections 1 through 16 above so that all of the provisions of this section will be inserted in all construction subcontracts of any tier, and such other clauses as the Government may by appropriate instructions require.

18. Certified Payroll Records

- a. The Authority shall obtain from the Contractor and each subcontractor a certified copy of each weekly payroll within seven (7) days after the regular payroll date. Following a review by the Authority for compliance with State and Federal labor laws, the payroll copy shall be retained at the project site for later review by FTA.
- b. Contractor may use the Department of Labor Form WH-347, "Optional Payroll Form," which provides for all the necessary payroll information and certifications.
- c. If, on or before the twentieth (20th) of the month, the Contractor has not submitted satisfactory payrolls covering its work and the work of all subcontractors for all payroll periods ending on or before the sixty (6th) of that month, such payrolls will be considered to be delinquent. Regardless of the number of delinquent payrolls, an amount equal to ten percent (10%) (but not less than \$1,000 or more than \$10,000) shall be deducted from the estimate. Deductions will be made separately for each estimate period in

which a new delinquency appears and will be continued until payrolls have been submitted.

- d. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the Authority that their employment is pursuant to an approved program and shall identify the program.

M. TIME EXTENSION/DELAYS

- a. Contractor may be granted an extension of time for any portion of a delay in completion of the work due to acts of God, the public enemy, wars, civil unrest, fires, quarantine restrictions, or weather more severe than normal, providing that (1) the aforesaid causes were not foreseeable and did not result from an act or omission by the Contractor, (2) Contractor has taken reasonable precautions to prevent further delays owing to such causes, and (3) Contractor notifies Authority in writing of the cause(s) for the delay within ten (10) days from the beginning of any such delay. No claims for additional compensation or damages for the foregoing delays shall be allowed to the Contractor, and the extension of time provided for herein shall be the sole remedy of the Contractor on account of any such delays.
- b. An extension of time will not be granted for a delay described in the above paragraph(s) caused by a shortage of materials, except if materials are furnished by Authority, unless the Contractor supplies the Authority with documented proof that every effort to obtain the materials from all known sources that (a) such materials could have been obtained only at exorbitant prices or (b) the prices were entirely inconsistent with current rates, taking into account the quantities; and (c) such facts could not have been known or anticipated at the time the Notice To Proceed was issued. Contractor shall also submit proof, that the inability to obtain such materials when originally planned, did in fact, cause a delay in completion of the work that could not be compensated for by revising the sequence of its operations. Only the physical shortage of material will be considered as a basis for an extension of time.
- c. An extension of time for weather more severe than normal shall be granted only to the extent the work is actually delayed as determined by the Authority. Normal is defined as the monthly average of the temperature and rainfall wherein the work was performed for the prior twenty (20) years before the execution of the contract.
- d. In the event Contractor is actually and necessarily delayed by an act or omission on the part of the Authority, as determined by the Authority, the Contractor shall notify the Authority in writing within five (5) days from the beginning of any such delay. The time for completion of the work may be extended at the sole discretion of the Authority.

- e. Within thirty (30) days after the last day of delay, Contractor shall provide Authority with detailed information concerning the circumstances of the delay, the number of days actually delayed, and the measures taken to minimize or prevent the delay. Failure to submit information shall be sufficient reason to deny the claim. Authority shall ascertain the facts and the extent of the delay; and provide the Contractor its written findings, which will be final and conclusive. Except for the additional compensation for herein and except as provided in Public Contract Code Section 7102, Contractor shall have no claim for damages or compensation for any delay or hindrance.
- f. No extension of time will be granted for any Authority caused delay or delay as defined in which (a) the performance of work would have been concurrently delayed by Contractor induced causes, including but not limited to an act or omission of the Contractor, or (b) remedies are included or excluded by any other Contract provision. Only the actual delay necessarily resulting from the causes specified in this Article shall be grounds for extension of time. Should the Contractor be delayed at any time for any period by two or more of the causes specified in this article, Contractor shall only be entitled to one time extension for the entire delay.
- g. Any time extension granted to Contractor shall not release the Contractor or surety from its obligations. Work shall continue and be carried on in accordance with the Contract provisions, unless formally suspended or terminated by the Authority.

N. AFFIRMATIVE ACTION

If this Agreement is funded in whole, or in part, by federal funds, Contractor and subcontractors holding a value of work of \$10,000 or more must submit a Monthly Employment Utilization Report (Form 257) to the Authority Engineer by the fifth (5th) of each month or sanctions shall be applied for late submittal, non-submittal and incomplete forms returned to the Contractor and resubmitted after the due date.

The reporting period shall be for each calendar month.

The report shall include the information requested for each Contractor's aggregate work force (for all workers on all projects within Orange County) and not just for workers on this project.

If the form is not received by the fifth (5th) of the month, a deduction of ten (10%) (with a minimum of \$1,000 and a maximum of \$10,000) will be withheld from the monthly estimate at the option of the Authority.

The Contractor shall designate an Equal Employment Officer for the project and notify the Authority in writing whom that person is prior to beginning of work. All workers shall also be informed who the EEO Officer is.

**O. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

If this Agreement is funded in whole, or in part, by federal funds, Contractor and subcontractors holding a value of work of \$10,000 or more shall comply with the Standard Federal Equal Employment Opportunity Construction Contract Specifications, set forth in 41 CFR Section 60-4.3, which are incorporated herein by this reference.

P. CONFLICT OF INTEREST

All Contractors responding to this Invitation For Bids must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, a Contractor is unable, or potentially unable to render impartial assistance or advice to the Authority; a Contractor's objectivity in performing the work identified in the specifications is or might be otherwise impaired; or a Contractor has an unfair competitive advantage. Contractor is obligated to fully disclose to the Authority in writing any conflict of interest issues as soon as they are known. All disclosures must be disclosed at the time of bid submittal.

Q. CODE OF CONDUCT

Contractor agrees to comply with the Authority's Code of Conduct as it related to Third-Party contracts, which is hereby referenced and by this reference is incorporated herein. Contractor agrees to include these requirements in all of it's subcontracts.

R. GOVERNMENT INSPECTIONS

The Authority and Federal Government representatives shall have access to the construction site and shall have the right to inspect all project works.

S. LICENSING, PERMITS AND INSPECTION COSTS

1. The Contractor warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, the County of Orange, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintains these licenses and permits in effect for the duration of the Agreement. Further, Contractor warrants that its employees, agents, and Contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. Contractor further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. Contractor shall notify the Authority immediately and in writing of its employees', agents', Contractors' or subcontractors'

inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, and exemptions. Such inability shall be cause for termination of this Agreement.

2. Contractor shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

T. HAZARDOUS SUBSTANCES

1. CAL-OSHA Requirements

All flammable, corrosive, toxic, or reactive materials being bid must have a complete CAL-OSHA Safety Data Sheet (SDS) accompanying the submitted bid.

2. South Coast Air Quality Management District (SCAQMD)

All materials (paints, coatings, inks, solvents, and adhesives) shall comply with the volatile organic compounds (VOC) content requirements of the applicable SCAQMD rules.

3. Notice of Hazardous Substances

Title 8, California Code of Regulations, Section 5194 (e) (c), states that the employer must inform any Contractor employers with employees working in the employer's workplace of the hazardous substances to which their employees may be exposed while performing their work. In compliance with this requirement, the Authority hereby gives notice to all bidders that the following general categories of hazardous substances are present on the Authority's premises:

- Adhesives, sealant, patching, and coating products
- Antifreezes, coolants
- Cleaners, detergents
- Paints, thinners, solvents
- Pesticides, Petroleum products (diesel and unleaded fuel, oil products)
- Printing, photocopying materials
- Propane Welding materials/compressed gases (e.g., acetylene, oxygen, nitrogen)

More specific information may be obtained from the Authority's Safety and Benefits office at (714) 560-5854, and from Safety Data Sheets (SDS) for individual products.

4. Hazardous Waste Labels

Containers containing hazardous substances must be labeled with the following information:

- Identity of hazardous substance-chemical name, not manufacturer or trade name;
- Appropriate health warning relative to health and physical hazard; and
- Name and address of manufacturer or other responsible party.

All containers containing hazardous substances may be rejected unless containers are properly labeled. Containers of 55 gallons or larger must have either weather resistant labels or the information should be painted directly on the containers.

U. CHANGES IN LAWS AND REGULATIONS

CONTRACTOR shall at all times comply with all applicable state and local regulations, policies, procedures and directives, including without limitation those listed directly or by reference in this Agreement. CONTRACTOR's failure to so comply shall constitute a material breach of Contract.

V. MEDIA AND THE PUBLIC

Contractor shall immediately refer all inquiries from the news media or other public sources to the Authority's Project Manager, or designated representative, relating to this project.

W. COORDINATION AND ACCESS

Authority may undertake or award other contracts for additional work at the project site. Contractor is responsible for coordinating its work with the work of other Contractors as appropriate. The Contractor acknowledges that they do not have any exclusive access to the site or other work areas Authority may require that certain facilities and areas be used concurrently by the Contractors and others. Contractor shall cooperate fully with Authority Contractors/consultants that may be performing work in the construction area.

X. UTILITIES RELATED DELAYS

If, due to interruptions caused by the undocumented utilities, Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to the Contractor that amount that the Authority may find to be a fair and reasonable compensation for the part of the Contractor's actual loss, that, in the opinion of Authority was unavoidable, determined as follow: Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis, as provided in Section F. Extra Work and Changes, Item 3,c. Equipment with the following exceptions:

1. The utility related delay factor for each classification of equipment shown in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates will be applied to that equipment rental rate.
2. The time for which the compensation will be paid will be the actual normal working time during which the delay condition exists, but in no case will exceed eight (8) hours in any one day.
3. The days for which compensation will be paid will be the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of the delay, except that when the rented equipment can be returned or used elsewhere on the project, then no payment will be made for utilities related delays.

Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of workers, and cost of extra moving of equipment. Compensation for idle time of equipment will be determined as provided in this section and compensation for idle time of workers will be determined as provided in Section F. Extra Work and Changes, Item 3, b. "Labor," and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment will be paid for as extra work and changes as provided in Section F of General Provisions.

If performance of the Contractor's work is delayed as the result of the Utilities Related Delays, an extension of time determined pursuant to the provisions in Article 18. Termination for Default – Damages for Delay – Time Extensions will be granted.

Y. UTILITIES AND SUBSURFACE STRUCTURES

Contractor shall protect from damage utility and other subsurface structures that are to remain in place, be installed, relocated or otherwise rearranged (as used herein, rearranged includes installation, relocation, alteration or removal).

The right is reserved to the Authority, or their authorized agents, to enter upon the site for the purpose of making those changes that are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. Contractor shall cooperate with forces engaged in this work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by the other forces. Wherever necessary, the work of Contractor shall be coordinated with the rearrangement of utility or other non-highway facilities, and Contractor shall make arrangements with the owner of those facilities for the coordination of the work.

Attention is directed to the possible existence of underground main or trunk line facilities not indicated on the plans or in the special provisions and to the possibility that underground main or trunk lines may be in a location different from that which is indicated on the plans or in the special provisions. Contractor shall ascertain

the exact location of underground main or trunk lines whose presence is indicated on the plans or in the special provisions, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters and junction boxes prior to doing work that may damage any of the facilities or interfere with their service.

If Contractor cannot locate an underground facility whose presence is indicated on the plans or in the special provisions, the Contractor shall so notify the Authority in writing. If the facility for which the notice is given is in a substantially different location from that indicated on the plans or in the special provisions, the additional cost of locating the facility will be paid for as extra work as provided in Section F.

If Contractor discovers underground main, trunk lines or other structures and utilities not indicated on the plans or in the special provisions, Contractor shall immediately give the Authority and the Utility Company written notification of the existence of those facilities. Such facilities shall be located and protected from damage as directed by the Authority, and the cost of that work will be paid for as extra work as provided in Section F. Contractor shall, if directed by the Authority repair any damage which may occur to the main or trunk lines. The cost of that repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as extra work as provided in Section F. Damage due to Contractor's failure to exercise reasonable care shall be repaired at the Contractor's cost and expense.

Where it is determined by the Authority that the rearrangement of an underground facility is essential in order to accommodate the project work and the plans and specifications do not provide that the facility is to be rearranged, Authority will provide for the rearrangement of the facility by other forces or the rearrangement shall be performed by Contractor and will be paid for as extra work as provided in Section F.

When ordered by the Authority in writing, Contractor shall rearrange any utility or other subsurface structures necessary to be rearranged as a part of the project work and that work will be paid for as extra work as provided in Section F.

Should Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate the Contractor's construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the plans or in the special provisions, the Contractor shall make whatever arrangements are necessary with the owners of the utility or other subsurface structure for the rearrangement and bear all expenses in connection therewith.

Contractor shall immediately notify the Authority of any delays to the Contractor's operations as a direct result of underground utilities or other structures which were not indicated on the plans or in the special provisions or were located in a position substantially different from that indicated on the plans or in the special provisions,

(other than delays in connection with rearrangements made to facilitate the Contractor's construction operations or delays due to a strike or labor dispute). These delays will be considered utilities related delays within the meaning of Section X. Utilities Related Delays and compensation for the delay will be determined in conformance with the provisions in Section M. Contractor shall be entitled to no other compensation for that delay.

Z. LOCATION OF UNDERGROUND FACILITIES (OFFSITE WORK ONLY)

Contractor is required to obtain digging permits prior to start of excavation by contacting the appropriate permitting agencies 15 calendar days in advance. For the Offsite work scan the construction site with electromagnetic or sonic equipment, and mark the surface of the ground where existing underground utilities are discovered. Verify the elevations of existing piping, utilities, and any type of underground obstruction not indicated or specified to be removed but indicated or discovered during scanning in locations to be traversed by piping, ducts, and other work to be installed. Verify elevations before installing new work closer than nearest manhole or other structure at which an adjustment in grade can be made. Perform potholing to confirm location of all the utilities along the construction alignment prior to start of the construction. The Contractor is responsible for all costs associated with these investigations including the cost of equipment, labor and materials required for any confined space entry.

AA. UNFORESEEN HAZARDOUS OR REGULATED MATERIALS

All known hazardous or regulated materials are indicated in the Contract documents. If material that is not indicated in the Contract documents is encountered that may be dangerous to human health upon disturbance during construction operations, stop that portion of work and notify Authority immediately. Intent is to identify materials such as PCB, lead paint, mercury, petroleum products, and friable and non-friable asbestos. Within 14 calendar days, the Authority will determine if the material is hazardous. If the material is not hazardous or poses no danger, the Authority will direct Contractor to proceed without change. If the material is hazardous and handling of the material is necessary to accomplish the work, Authority will contract with a qualified environmental remediation/hazardous materials removal Contractor for such remediation or removal as may be necessary. The remediation or removal will be performed in compliance with applicable State, Federal, and local environmental laws and regulations.

Contractor shall immediately notify the Authority of any delays to the Contractor's operations as a direct result of Unforeseen Hazardous and Regulated Materials. These delays will be considered utilities related delays within the meaning of Section Z. Utilities Related Delays and compensation for the delay will be determined in conformance with the provisions in Section M. Contractor shall be entitled to no other compensation for that delay.

BB. TRENCHING AND EXCAVATIONS

In the event the Contractor is required to dig any trench or excavation that extends deeper than four (4) feet below the surface in order to perform the work authorized under the Agreement, Contractor agrees to promptly notify the Authority in writing and before further disturbing the site, if any, of the conditions set forth below are discovered:

1. Materials that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.
2. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

The Authority will promptly investigate the conditions, and if it determines that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a Change Order under the procedures described in the Agreement.

In the event that a dispute arises between the Authority and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

SECTION VIII: PROJECT SPECIFICATIONS - EXHIBIT B

