

provided at one-hundred (100%) percent of Years 1 to 3 of O&M (not including pass-through costs) as shown on CONTRACTOR Price Proposal Sheet 4, Projected Bond Amounts Table (cell C25).

D. The O&M Bond (not including pass-through costs) shall be renewed each year at the anniversary date of Go-Live through the end of the Term. For subsequent years after the first year of O&M, the renewed O&M Bond shall be submitted to AUTHORITY at least fifteen (15) Business Days prior to the anniversary date of Go-Live. Upon Approval thereof, AUTHORITY will release the prior year's Bonds.

E. The value of the O&M Bond for years 2 through 6 and shall be determined as follows:

1. Year 2 O&M Bond = Estimated total combined cost of O&M for years 2 and 3 (not including pass-through costs) as shown on Sheet 4, Projected Bond Amounts table (cell C26).

2. Each of Years 3 through 6 O&M Bond = Estimated cost of total combined cost of O&M for upcoming year only as provided on Sheet 4, Project Bond Amounts Table for the respective upcoming year (cells C27, C28, C29, C30, as applicable).

F. The estimated value of the O&M costs for any given year with regard to bonded amount shall be based on the value presented in the CONTRACTOR Price Proposal for total O&M costs for the referenced year(s) as provided in paragraph E of this article, as adjusted for any Approved change orders that have affected these Price Proposal cells and any updates in the estimated O&M volumes for the year(s) provided by AUTHORITY at its sole determination.

G. If any Bond previously provided becomes ineffective, or if the Eligible Surety that provided the Bond no longer meets the AGREEMENT requirements, CONTRACTOR shall provide a replacement Bond in the same form issued by an Eligible Surety within five (5) Business Days of CONTRACTOR's knowledge of same. CONTRACTOR shall provide Notice to AUTHORITY promptly following such Bond being rendered ineffective or when such Bond's surety is no longer an Eligible Surety, in no case later than three (3) Business Days thereafter.

H. Additionally, the Performance Bond shall meet the following requirements:

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1. Identify AUTHORITY and AGREEMENT No. C--0-2690 for which the Performance Bond is provided; and

2. Upon Notice by AUTHORITY that CONTRACTOR has defaulted under this AGREEMENT, the Eligible Surety will have ten (10) Business Days to make a determination on the claim and to notify AUTHORITY accordingly.

ARTICLE 14. INDEMNIFICATION

A. CONTRACTOR shall indemnify, defend and hold harmless AUTHORITY, Caltrans, FHWA, and their officers, directors, employees and agents, (hereafter, the "Indemnitees") from and against any and all claims (including attorneys' 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 by CONTRACTOR, its officers, directors, employees, agents, Subcontractors or Suppliers in connection with or arising out of the performance of this AGREEMENT. In addition to any other defense and indemnity obligations that CONTRACTOR has assumed under this AGREEMENT, CONTRACTOR shall defend, indemnify and hold harmless the Indemnitees from and against any and all liabilities, actions, suits, claims, and legal expenses, including attorneys' fees, which arise out of any claim asserting a cause of action for trespass, inverse condemnation or any other unlawful entry onto property by CONTRACTOR, its Subcontractors, agents or employees. Any monies owed may be deducted from any monies due or to become due to CONTRACTOR hereunder or under any other agreement between CONTRACTOR and AUTHORITY.

B. Intellectual Property:

1. CONTRACTOR shall be liable and responsible without limitation for any and all claims made against AUTHORITY for infringement of Intellectual Property rights, by the use or supplying of any Equipment or Software in the course of performance or completion of, or in any way connected with, the Work, or AUTHORITY's continued use of such Equipment or Software. The CONTRACTOR shall indemnify AUTHORITY against and save it harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of Intellectual Property infringement arising

1 out of or in connection with AUTHORITY's use, pursuant to this AGREEMENT, of the Equipment and
2 Software.

3 2. Without limiting any other rights or remedies available to AUTHORITY under the
4 AGREEMENT, in law and/or equity, in the event that any Intellectual Property, Equipment or Software
5 employed to provide Work pursuant to this AGREEMENT, or portion thereof, is held to constitute an
6 infringement and its use is or may be enjoined, the CONTRACTOR shall have the obligation at
7 AUTHORITY's option to do one or more of the following:

8 a. Require CONTRACTOR to, at its own expense, supply, temporarily or
9 permanently, replace the Intellectual Property, Equipment or Software of similar quality and function
10 which is not subject to such an infringement or injunction;

11 b. Require CONTRACTOR to, at its own expense, remove all such
12 Intellectual Property, Equipment and Software and refund to AUTHORITY the cost thereof or equitably
13 adjust compensation;

14 c. Take such steps as is necessary to ensure compliance by AUTHORITY
15 with such injunction;

16 d. Modify, or require that the applicable Subcontractor or Supplier modify, the
17 alleged infringing Intellectual Property at its own expense, without impairing in any respect the
18 functionality or performance thereof that is non-infringing; and/or

19 e. Procure for AUTHORITY, at CONTRACTOR's expense, the rights
20 provided under this AGREEMENT to use the infringing Intellectual Property, Equipment or Software.

21 3. CONTRACTOR shall be solely responsible for determining and informing
22 AUTHORITY whether a prospective Supplier or Subcontractor is a party to any litigation involving
23 Intellectual Property infringement or misappropriation or any injunction related thereto, or arising out of
24 any Intellectual Property, Equipment and/or Software provided hereunder. The CONTRACTOR shall
25 enter into agreements with all Suppliers and Subcontractors at its own risk. AUTHORITY may reject any
26 Intellectual Property, Equipment or Software, which it believes to be the subject of any such litigation or

injunction, or if, in AUTHORITY's judgment, use thereof does not meet the objectives of Work, restricts or impairs AUTHORITY's rights in any Intellectual Property, or is unlawful.

ARTICLE 15. INSURANCE

A. CONTRACTOR shall procure at its own expense and maintain during the Term of this AGREEMENT or longer as provided herein, insurance coverage as specified in this Article 15 or as otherwise agreed to by AUTHORITY. CONTRACTOR shall provide the following insurance coverage:

1. Commercial General Liability at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001 or equivalent) with a minimum limit of \$5,000,000.00 per occurrence and \$10,000,000.00 general aggregate. and is acceptable to AUTHORITY;

2. Automobile Liability at least as broad as Insurance Services Office Business Auto Coverage (form CA 0001, code 1, any auto, or equivalent), with a minimum combined single limit of \$5,000,000.00 per occurrence and is acceptable to AUTHORITY;

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Employer's liability limits shall be no less than \$1,000,000 each accident, each employee for bodily injury, and policy limit for bodily injury. The policy shall be endorsed to waive the insurer's right of subrogation against the AUTHORITY and its respective officers, directors, employees and agents;

4. Commercial Crime with limits no less than \$5,000,000 per claim and in the aggregate to include: Employee dishonesty, Forgery & Alteration, Monies & Securities, Computer Crime; and

5. Technology Errors & Omissions Including Privacy and Network Security- covering liability for errors or omissions in rendering computer or information technology services including 1) systems analysis 2) systems programming 3) data processing 4) systems integration 5) outsourcing development and design 6) systems design, consulting, development and modification 7) training services relating to computer Software or Hardware 8) management, repair and maintenance of computer

products, networks and systems 9) marketing, selling, servicing, distributing, installing and maintaining computer Hardware or Software 10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and 11) Privacy and Network Security (Cyber Liability) insurance covering liability arising from a) hostile action, or a threat of hostile action ("ransomware"), b) "malware" including computer viruses, Trojan horses, worms and any other type of malicious or damaging code c) dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons, d) denial of service for which the insured is responsible that results in the degradation of or loss of access to internet or network activities or normal use of a computer system e) loss of service that results in the inability of a third-party, who is authorized to do so, to access a computer system and conduct normal activities. The policy limit shall be not less than fifteen million dollars (\$15,000,000) per claim and annual aggregate.

B. Proof of such coverage, in the form of a certificate of insurance, a copy of the insurance policy and/or an insurance company issued policy endorsement shall be provided to AUTHORITY. Proof of insurance coverage and endorsements evidencing the requirements for additional insureds must be received by AUTHORITY within ten (10) Calendar Days from notification of award of this AGREEMENT. Such insurance shall be primary and non-contributory to any insurance or self-insurance maintained by AUTHORITY. AUTHORITY reserves the right to request certified copies of all related insurance policies.

C. CONTRACTOR shall include on the face of the Certificate of Insurance the AGREEMENT Number and AUTHORITY'S Contract Administrator's Name, Robert Webb, Principal Contracts Administrator.

D. AUTHORITY and the California Department of Transportation, their officers, directors, employees and agents (the "Indemnitees") must be named as additional insured on Commercial General Liability and Automobile Liability Certificates and on the insurance policy endorsement with respect to performance hereunder.

E. CONTRACTOR shall also include in each subcontract the requirement that Subcontractors shall maintain appropriate insurance coverage in the amounts as required by

CONTRACTOR and include the Indemnitees as additional insureds on general and automobile liability policies. Such coverage shall be in effect at all times that a Subcontractor is performing Work under the AGREEMENT. CONTRACTOR shall have responsibility to enforce Subcontractor compliance with these or similar insurance requirements provided that CONTRACTOR shall upon AUTHORITY'S request provide acceptable evidence of insurance for any Subcontractor. The CONTRACTOR shall assume all responsibility for risks or casualties of every description, for any and all damage, loss or injury, to persons or property arising out of the nature of the Work, including but not limited to the negligence or failure of its Subcontractors (as well as CONTRACTOR's employees) to comply with this AGREEMENT.

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

G. CONTRACTOR shall at all times during the Term of this AGREEMENT maintain insurance in such form as is satisfactory to AUTHORITY, and will furnish AUTHORITY with continuing evidence of insurance as provided below. All insurance policies shall be issued by companies licensed to do business in the State of California, with an A.M. Best Rating of A-, Class VII, or better, or as otherwise approved by AUTHORITY. CONTRACTOR shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing California laws or this AGREEMENT.

H. CONTRACTOR shall provide AUTHORITY with certificates showing the required coverage to be in effect and a copy of the insurance policy or endorsements evidencing the requirements for the additional insureds. Such policies shall provide that the insurance shall not be materially modified or cancelled except upon thirty (30) Calendar Days prior written Notice to AUTHORITY. Copies of all insurance policies and endorsements shall be provided to AUTHORITY upon request.

I. AUTHORITY reserves the right to review all insurance coverage and amounts of insurance coverage on an annual basis and to require the CONTRACTOR to adjust the insurance coverage and amounts of insurance coverage based on industry standards for contracts of this size and type. CONTRACTOR shall timely pay all premiums and deductibles when due for all insurance coverage

required herein. The above insurance shall not contain a self-insurance retention (SIRs) unless Approved by AUTHORITY.

J. Pertaining to the above paragraphs regarding professional liability, technology errors and omissions, and cyber liability insurance, if coverage is written on a claims made basis, such insurance shall be maintained in force at all times during the Term and for a period of three (3) years thereafter for Work completed during the Term. Additionally, if a sub-limit applies to any elements of coverage, the policy endorsement evidencing the coverage above must specify the coverage section and the amount of the sub-limit.

K. Providing and maintaining adequate insurance coverage described herein is a material obligation of the CONTRACTOR and is of the essence for this AGREEMENT. The limits of coverage under each insurance policy maintained by CONTRACTOR shall not be interpreted as limiting the CONTRACTOR's liability and obligations under the AGREEMENT.

L. Subcontractors' Insurance: CONTRACTOR shall either require each Subcontractor to obtain and maintain Workers' Compensation Insurance, Commercial General Liability, Business Automobile Liability and Professional Liability coverage similar to those required above in this section for the CONTRACTOR, or any other coverage deemed necessary to the successful performance of the AGREEMENT, or cover Subcontractors under the CONTRACTOR's policies. Such coverage shall be in effect at all times that a Subcontractor is performing Work under the AGREEMENT. The CONTRACTOR shall have responsibility to enforce Subcontractor compliance with these or similar insurance requirements; provided the CONTRACTOR shall upon AUTHORITY's request provide acceptable evidence of insurance for any Subcontractor. The CONTRACTOR shall assume all reasonability for risks or casualties of every description, for any and all damage, loss or injury, to persons or property arising out of the nature of the Work, including but not limited to the negligence or failure of its Subcontractors (as well as CONTRACTOR's employees) to comply with this AGREEMENT.

M. Waivers: AUTHORITY and CONTRACTOR waive all rights against each other, against each of their agents and employees and their respective members, directors, officers, employees, agents

and consultants for any claims to the extent covered by insurance obtained pursuant to this Article 15, except such rights as they may have to the proceeds of such insurance. CONTRACTOR shall require all Subcontractors to provide similar waivers in writing in favor of AUTHORITY and its respective officers, officials, employees and volunteers except as otherwise agreed to by AUTHORITY.

ARTICLE 16. CHANGES

A. By written Notice or order, AUTHORITY may, from time to time, order Work suspension, add or deduct Work and/or make changes in the general Scope of Work and Requirements of this AGREEMENT hereinafter collectively referred to as "Changes". Changes include, but are not limited to, the Work furnished to AUTHORITY by CONTRACTOR as described in the Scope of Work and Requirements.

B. Any such Changes to Work that are considered by AUTHORITY to be a Change(s) to the current Scope of Work and Requirements shall result in the issuance of an Amendment signed by both AUTHORITY and the CONTRACTOR. No Change shall be compensated or time extensions therefore permitted, except pursuant to an Approval. A Work suspension issued by AUTHORITY, via a stop notice, which results in an increase or decrease to the maximum obligation due CONTRACTOR, will require an Amendment.

C. Any Change considered by AUTHORITY to be within the current Scope of Work but that has not been specifically tasked or separately identified in CONTRACTOR Price Proposal, will not require a Contract Amendment and will be identified as an Additional Work Order, subject to Approval by AUTHORITY.

D. If any such suspension of Work or Change causes an increase or decrease in the price of this AGREEMENT or in the time required for its 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 requested Change.

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E. In determining additional compensation to be paid for Change, the Parties shall use the labor, Equipment, unit and material costs and rates included in the CONTRACTOR Price Proposal for labor and material only where deemed appropriate and Approved by the AUTHORITY in preparing the Amendment. Labor rates shall be calculated in accordance with the Price Instructions, Section 2.6 Additional Service Rates and Section 2.9 CPI Actual Cost Adjustments. For Equipment, applications, tools and/or materials not covered in the Price Proposal or covered in the Price Proposal but not deemed appropriate or Approved by the AUTHORITY, a catalog or market price of a commercial product sold in substantial quantities shall be used as the basis for proposed costs.

F. If the cost of Change cannot be established on this basis or on the basis of prices set by the AGREEMENT, law or regulation, CONTRACTOR shall submit detailed cost breakdowns, including information on Equipment, Software, labor and materials costs and other direct costs.

G. CONTRACTOR agrees that it will accept as full compensation for the Change, in the case of paragraph B, a price mutually agreed upon in writing, via an Amendment by the AUTHORITY and CONTRACTOR or in the case of paragraph C, an Additional Work Order by the AUTHORITY and CONTRACTOR.

H. If the CONTRACTOR disagrees with the amount of compensation or time extension proposed by AUTHORITY in the Amendment, AUTHORITY may issue a Work Directive. CONTRACTOR shall submit a written dispute to AUTHORITY within fifteen (15) Calendar Days after the receipt of the Work Directive. Notwithstanding CONTRACTOR'S disagreement, CONTRACTOR shall proceed diligently with performance if directed by AUTHORITY. The dispute shall state the points of disagreement and, if possible, the AGREEMENT Scope of Work and Requirements references, quantities and costs involved. If a written dispute is not submitted within the above period, payment will be made as set forth in the Work Directive and such payment shall constitute full compensation for all Work included therein or required thereby. An undisputed Work Directive will be considered as executed Amendment.

I. CONTRACTOR shall promptly notify AUTHORITY in writing when it receives direction, instruction, interpretation or determination from any source other than AUTHORITY that may lead to or

cause change in the Work. AUTHORITY shall Approve before CONTRACTOR acts on said direction, instruction, interpretation or determination.

J. CONTRACTOR shall only commence Work covered by an Amendment after the Amendment is executed by AUTHORITY, or it is considered an executed Amendment under the terms of paragraph H, or if a Work Directive has been issued.

ARTICLE 17. 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 (CAMP), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of the Director, CAMP, 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 while awaiting the decision of AUTHORITY's Director, CAMP. 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, with venue in Orange County, CA. In lieu of litigation the Parties may upon terms agreed to by the Parties, elect mediation or arbitration, binding or otherwise.

ARTICLE 18. LIQUIDATED DAMAGES

A. If CONTRACTOR fails to: (1) complete the Work by the Guaranteed Completion Dates or any Approved extension thereof, or (2) provide Key Team Personnel in accordance with the AGREEMENT, or (3) meet the O&M Performance Measures of the AGREEMENT established in the Scope of Work and Requirements, the actual damage to AUTHORITY will be difficult or impossible to determine. Therefore, the Parties have agreed to stipulate to the amount payable to the AUTHORITY as liquidated damages in order to fix and limit CONTRACTOR's costs and to avoid later disputes over what amount of damages are proper. The Parties agree that the amount of liquidated damages are

reasonable in light of the anticipated or actual damage to the AUTHORITY and do not constitute a penalty.

Liquidated damages may be assessed at the AUTHORITY's sole discretion as follows:

B. Implementation Phase Delays:

1. In the event that CONTRACTOR has not completed the Work required for Ramp-up/Customer Services by the Guaranteed Completion Date, CONTRACTOR shall be assessed per Calendar Day on a cumulative basis, commencing the day following the Guaranteed Completion Date as follows:

- 1-30 Calendar Days following Guaranteed Completion Date: \$2,300 per Calendar Day
- 31-60 Calendar Days following Guaranteed Completion: \$5,700 per Calendar Day
- Greater than 60 days following the Guaranteed Completion Date: \$11,400 per Calendar Day

2. In the event that CONTRACTOR has not completed the Work required for Implementation of the 405 BOS and has not achieved Readiness for Go-Live by the Guaranteed Completion Dates, CONTRACTOR shall be assessed \$45,000 per Calendar Day, commencing the day following the Guaranteed Completion Date, but not to exceed sixty (60) Calendar Days or \$2,700,000. Upon commencement of assessment of the liquidated damages for not achieving Readiness for Go-Live under this paragraph B. 2, any liquidated damages provided for in B. 1 for not meeting the Guaranteed Completion Date for Ramp-up/Customer Services shall cease to continue to accrue; however, any cumulative Ramp-up/Customer Services' liquidated damages incurred prior to that date in accordance with the above sub-paragraph B-1 shall still be in effect.

C. Key Team Personnel:

1. CONTRACTOR acknowledges that the award of this AGREEMENT by AUTHORITY was based in significant part on the qualifications and experience of the Key Team Personnel listed in CONTRACTOR's Proposal and representation that they would be available to perform the Work.

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2. In the event that CONTRACTOR Project Manager and/or other Personnel identified in Table below become Unavailable to perform the Work, subject to the conditions set forth in Article 4, CONTRACTOR's Personnel, AUTHORITY may assess CONTRACTOR liquidated damages for each occasion of such Unavailability as follows:

Key Team Personnel Liquidated Damages

POSITION	LIQUIDATED AMOUNT
Project Manager – Implementation Phase	\$ 150,000
Project Manager - O&M Phase	\$150,000
Operations Manager	\$ 50,000
Installation Manager	\$ 25,000

3. In addition to the amounts payable for positions identified in the above table, CONTRACTOR shall pay AUTHORITY a further liquidated amount of \$20,000, if any other Key Team Personnel is Unavailable.

4. The amounts payable under this Article 18 for Unavailability apply for each occasion of Unavailability for each of the Key Team Personnel.

D. Failure to Meet Performance Measures:

1. Performance Measures establish a minimum level of service for O&M Phase Work. These Performance Measures include compliance with Security Standards identified in the Scope of Work and Requirements, including but not limited to data security, payment card industry (PCI), and Personally Identifiable Information (PII) standards.

2. Failure to meet such Performance Measures shall result in the assessment of liquidated damages in the form of Adjustments as set forth in the Scope of Work and Requirements. These Adjustments shall result in a reduction of the amount of the monthly fee AUTHORITY would otherwise pay to CONTRACTOR for the Work. Standard reports shall be developed by CONTRACTOR to measure whether the Performance Measures have been met. The format and

content of such reports shall be Approved during the design period, shall be generated by the BOS, and shall be run on a scheduled basis by CONTRACTOR and provided to AUTHORITY on a monthly basis, unless another frequency is otherwise specified in the Scope of Work and Requirements or as otherwise directed by AUTHORITY.

E. AUTHORITY may deduct liquidated damages from any monies due or that may become due to CONTRACTOR under the AGREEMENT. AUTHORITY is not obligated, however, to make such a deduction or to provide notice thereof. If such deducted monies are insufficient to recover the liquidated damages owing, CONTRACTOR or CONTRACTOR's Surety shall pay to AUTHORITY any deficiency prior to Final Acceptance of Implementation Phase or closeout of O&M Phase, as applicable, or upon termination of this AGREEMENT.

F. The failure of AUTHORITY to assess any liquidated damages authorized under this Article 18 shall not constitute a waiver of AUTHORITY's right to assess such Adjustments or liquidated damages at a future date. Further, failure to impose liquidated damages does not constitute a waiver of CONTRACTOR's obligations to perform in accordance with the AGREEMENT and Scope of Work and Requirements.

G. Liquidated damages are separate and cumulative and are not in lieu of Actual Damages covered under Article 19, Actual Damages.

ARTICLE 19. ACTUAL DAMAGES

A. During the O&M Phase, CONTRACTOR shall reimburse AUTHORITY for lost revenue which AUTHORITY or CONTRACTOR identifies as having been lost due to the fault of the CONTRACTOR. Lost revenue includes, but is not limited to, such events as processing errors, lost transactions, lost images, unprocessed transactions, lost data, revenue lost due to data security breach, and transactions that are not able to be collected due to failures or delays in transaction processing. If actual data is available for the affected time period, such data will be considered in the calculation of actual damages as applicable. If AUTHORITY does not have actual transactional, financial, or other relevant operational data from the affected period, such actual damages shall be calculated based on a

determination of a comparable period made by AUTHORITY, and shall consider the day, month, time of day, location, season, whether the day is a weekday, weekend or Holiday, and such other factors as are reasonable. AUTHORITY may choose, in its sole discretion, to recover such lost revenue from the CONTRACTOR by deducting such amounts from payments otherwise due and owing from AUTHORITY to the CONTRACTOR.

B. In addition to other actual damages, CONTRACTOR shall be responsible for all additional costs associated with any PII, PCI, data or security breach associated with CONTRACTOR's provision of Work, including but not limited to, special mailings notifying customers of a mistake in their monthly statements due to inaccurate reporting of information by CONTRACTOR and providing credit monitoring services to customers.

ARTICLE 20. RISK OF LOSS

A. CONTRACTOR shall bear all risk of damage or loss to the BOS except to the extent the damage and loss is caused by the sole negligence or willful misconduct of AUTHORITY or Force Majeure.

B. In the case of damage or loss that AUTHORITY agrees was caused by the sole negligence or willful misconduct of AUTHORITY or Force Majeure, CONTRACTOR shall promptly replace the damaged or lost portions of the System at CONTRACTOR's cost after such cost is pre-Approved by AUTHORITY, and submit the amount(s) thus expended to AUTHORITY for reimbursement as a clearly identified, separate item on its next invoice to AUTHORITY.

ARTICLE 21. DEFAULT

A. Event of Default:

1. An "Event of Default" shall mean a material breach of this AGREEMENT by the CONTRACTOR. Without limiting the generality of the foregoing and in addition to those instances referred to elsewhere in this AGREEMENT as a breach, an Event of Default shall include the following:

a. CONTRACTOR fails to timely remit or credit revenues due AUTHORITY pursuant to this AGREEMENT;

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b. CONTRACTOR fails to timely deliver and/or maintain Deliverables to AUTHORITY, which Deliverables include, but are not limited to, all insurance, bonds or other performance security required by this AGREEMENT or to maintain in force and effect any such insurance, bonds or performance security;

c. CONTRACTOR fails to promptly perform the Work following Effective Date of AGREEMENT; to diligently perform the Work in accordance with the Approved Baseline Implementation Schedule; suspends or otherwise ceases to perform the Work (excepting therefrom excused suspensions directed by AUTHORITY or due to Force Majeure); or promptly resume performance of the Work which have been suspended as directed by AUTHORITY;

d. CONTRACTOR fails to perform the Work in accordance with this AGREEMENT, including, but not limited to, the Scope of Work and Requirements;

e. CONTRACTOR fails to supply enough properly skilled workers or proper materials to perform the Work required under this AGREEMENT;

f. CONTRACTOR fails to make prompt payment to Subcontractors or Suppliers in accordance with this AGREEMENT absent a valid dispute as between the CONTRACTOR and its Subcontractors or Suppliers;

g. CONTRACTOR fails to make any payment due AUTHORITY under this AGREEMENT, including but not limited to, liquidated damages;

h. CONTRACTOR commences any suit or any suit is commenced against CONTRACTOR, under any bankruptcy, insolvency or similar law to liquidate, reorganize or dissolve CONTRACTOR, or which seeks the appointment of a receiver, trustee, custodian or other similar official to attach, execute or such similar process for any substantial part of CONTRACTOR's assets; or CONTRACTOR assigns the proceeds received from this AGREEMENT for the benefit of its creditors, or it has taken advantage of any insolvency statute or debtor/creditor law or if the CONTRACTOR's property or affairs have been put in the hands of a receiver; or any of the foregoing events occur with respect to any Surety, which Surety is not promptly replaced by CONTRACTOR;

i. CONTRACTOR fails to obtain the Approval of AUTHORITY where required by this AGREEMENT;

j. CONTRACTOR fails to provide adequate assurances as required under paragraph 2. below;

k. CONTRACTOR has failed in the representation of any warranties stated herein;

l. Any person authorized to act on CONTRACTOR's behalf makes a statement to any person authorized to act on AUTHORITY's behalf, indicating that CONTRACTOR cannot or will not perform any one or more of its obligations under this AGREEMENT;

m. CONTRACTOR has a pattern of repeated failures to provide the Work and meet the Scope of Work and Requirements of this AGREEMENT;

n. CONTRACTOR fails to remedy Pervasive Defects; or

o. The suspension or revocation of any license, permit, or registration necessary for the performance of the CONTRACTOR's obligations under this AGREEMENT.

2. When, in the opinion of AUTHORITY, reasonable grounds for uncertainty exist with respect to the CONTRACTOR's ability to perform the Work or any portion thereof, AUTHORITY may request that the CONTRACTOR, within the time frame set forth in AUTHORITY's request, provide adequate assurances to AUTHORITY, in writing, of CONTRACTOR's ability to perform in accordance with the terms of this AGREEMENT. Until AUTHORITY receives such assurances, AUTHORITY may suspend all payments or portions thereof to CONTRACTOR. In the event that CONTRACTOR fails to provide to AUTHORITY the requested assurances within the prescribed time frame, AUTHORITY may:

a. Treat such failure as an Event of Default;

b. Resort to any remedy for breach provided herein or at law or equity, including, but not limited to, taking over the performance of the Work or any part thereof either by itself or through others;

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c. Remove all technical documentation deposited with the Escrow Agent pursuant to the Escrow Agreement executed in accordance with Article 25, Intellectual Property, and Article 26, Intellectual Property Escrow, with the purpose of competitively procuring any Equipment or Software or providing any Work based on such documentation; and

d. Terminate CONTRACTOR's performance hereunder.

3. The enumeration in this Article or elsewhere in this AGREEMENT of specific rights or remedies of AUTHORITY shall not be deemed to limit any rights or remedies which AUTHORITY would have in the absence of such enumeration and no exercise by AUTHORITY of any right or remedy shall operate as a waiver of any other of AUTHORITY's rights or remedies not inconsistent therewith or to stop AUTHORITY from exercising such other rights or remedies.

B. Notice of Default - Chance to Cure:

If, in the determination of AUTHORITY, an Event of Default has occurred, AUTHORITY will notify CONTRACTOR by delivery of a Notice hereinafter referred to as "Default Notice" specifying the default claimed, and advising the CONTRACTOR that such default must be cured as set forth therein or this AGREEMENT may be terminated. Prior to declaring an Event of Default AUTHORITY shall allow the CONTRACTOR to cure the default to AUTHORITY's reasonable satisfaction within fifteen (15) Calendar Days, or such shorter time if the default requires it; provided that AUTHORITY is not required to issue a Default Notice if there is an Event of Default which by nature cannot be cured. Failure to provide a Default Notice shall not preclude AUTHORITY from exercising other available remedies short of termination. AUTHORITY may extend the opportunity to cure beyond the fifteen (15) Calendar Day period if the default is one AUTHORITY agrees requires additional time to cure, so long as the CONTRACTOR has commenced curing such default and is effectuating a cure with diligence and continuity during such fifteen (15) Calendar Day period extension thereof which AUTHORITY prescribes.

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C. Remedies in the Event of Default:

1. If CONTRACTOR does not cure the Event of Default within the time prescribed or the default is not subject to cure, AUTHORITY may declare an Event of Default, which shall be in writing and provided to CONTRACTOR, and, as appropriate the Surety. In addition to all other rights and remedies under this AGREEMENT and/or the bonds, AUTHORITY shall, upon declaration of an Event of Default, have the right to terminate this AGREEMENT, in whole or in part, pursuant to issuance of a Notice of Termination for Cause, specifying the effective date thereof and/or perform or cause to be performed the Work or any portion thereof, which are required of CONTRACTOR. In exercising such rights, AUTHORITY may immediately take possession of, and CONTRACTOR shall deliver, all applicable Equipment, Software and data, and facilities that house such items as AUTHORITY may direct. AUTHORITY shall also have the right to complete the Work with CONTRACTOR's Subcontractors as AUTHORITY directs and CONTRACTOR shall assign such subcontracts as AUTHORITY directs. AUTHORITY, as part of its right to complete the Work, may take possession of and use, and CONTRACTOR shall be required to deliver to AUTHORITY, any or all of the materials, plants, tools, Equipment, Hardware, supplies, and property of every kind, provided, purchased, maintained, leased, owned, or rented by CONTRACTOR, including but not limited to all technical specifications, drawings, source code, and object code placed into Escrow. AUTHORITY may make available such escrowed materials to third parties; third party licenses and Software, and/or procure other materials, plant, tools, Equipment, Hardware, and supplies. AUTHORITY may charge CONTRACTOR and the CONTRACTOR shall be liable to AUTHORITY for the expense of said labor, materials, plant, tools, Equipment, Hardware, supplies and property reasonably necessary in performing or completing the Work.

2. If AUTHORITY declares an Event of Default, CONTRACTOR shall be liable for those damages provided herein resulting from the default, including but not limited to:

a. Losses as defined in Article 20, Risk of Loss;

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b. The difference between the actual costs incurred by AUTHORITY in completing the Work and the compensation AUTHORITY would otherwise have paid CONTRACTOR under this AGREEMENT for completing such Work;

c. Liquidated damages; and

d. Actual damages.

The CONTRACTOR shall remain liable for any other liabilities and claims related to CONTRACTOR's default. All damages and costs may be deducted and paid out of any monies due from AUTHORITY to CONTRACTOR.

D. If an Event of Default occurs, CONTRACTOR and any Surety shall be jointly and severally liable to AUTHORITY for all losses and damages incurred by AUTHORITY. Upon the occurrence of an Event of Default and for so long as it occurs, AUTHORITY may withhold all of any portion of further payments to CONTRACTOR until the date that AUTHORITY accepts the Project as complete at which time AUTHORITY will determine if CONTRACTOR is entitled to any further payments. AUTHORITY will deduct, from any moneys due or which become due to CONTRACTOR or its Surety, all costs and charges incurred by AUTHORITY, including attorneys, accountants and expert witness fees and costs. If AUTHORITY's losses or damages exceed payments owing CONTRACTOR, then the CONTRACTOR and its Surety shall be liable and pay such amount to AUTHORITY within ten (10) Calendar Days of AUTHORITY's written demand. If CONTRACTOR or its Surety fail to pay such demand within such timeframe, AUTHORITY may collect interest thereon at the lesser of 10% per annum or the maximum rate allowed under State law from the date of the written demand.

E. In the event that it is later determined that the AGREEMENT was terminated upon grounds which did not justify a termination for Event of Default, such termination shall be deemed a termination for convenience pursuant to Article 22, Termination for Convenience.

F. Performance by Surety: Upon receipt of a demand from AUTHORITY requiring Surety to complete the Work, Surety shall diligently and promptly take charge of the Work and complete this

AGREEMENT pursuant to its terms at its own expense, receiving the balance of the funds due CONTRACTOR, minus any permissible deductions under this AGREEMENT. In the event AUTHORITY undertakes to complete the Work with its own forces or by way of contract, all costs incurred by AUTHORITY shall be deducted from the amounts due or may become due to CONTRACTOR. If such expense exceeds the sum payable under this AGREEMENT, then CONTRACTOR and Surety shall be jointly and severally liable for the amount of the excess expense up to the amount of the Performance Bond in existence at the time this AGREEMENT is terminated.

ARTICLE 22. 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, CONTRACTOR shall discontinue performance of all or that portion of Work, as set forth in such Notice and 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 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 11, Notices, 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. Thereafter, CONTRACTOR shall have no further claims against AUTHORITY under this AGREEMENT.

B. Upon termination, AUTHORITY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

C. AUTHORITY may temporarily suspend this Agreement, at no additional cost to AUTHORITY, provided that CONTRACTOR is given written notice of temporary suspension. If AUTHORITY gives such notice of temporary suspension, CONTRACTOR shall immediately suspend its activities under this Agreement. A temporary suspension may be issued concurrent with the notice of termination.

ARTICLE 23. ACCEPTANCE

A. BOS Acceptance of Implementation Phase:

1. The phases of the Project are set forth in Article 7, Start and Phases of Work.

2. AUTHORITY, in its sole discretion, may grant BOS Acceptance of the Implementation Phase if it deems that the Work on the Implementation Phase is substantially complete, and the following conditions have been met:

a. CONTRACTOR has passed the On-Site Installation and Commissioning Test, and Go-Live has been Approved in accordance with the Scope of Work and Requirements;

b. CONTRACTOR has substantially passed and has been given conditional Approval of the BOS Acceptance test; and

c. CONTRACTOR has committed to completing remaining punch list items and provided proof to AUTHORITY's satisfaction thereof.

3. AUTHORITY shall issue a written Notice of BOS Acceptance for the Implementation Phase upon satisfaction of the conditions listed above in items 2a through 2c. The occurrence of BOS Acceptance shall not relieve CONTRACTOR of any of its continuing obligations hereunder.

B. Final Acceptance of Implementation Phase:

Final Acceptance of an Implementation Phase shall be deemed to have occurred when all of the following conditions have been met:

1. CONTRACTOR has provided a Final Acceptance letter certification to close out the Implementation Phase. The certification shall include but not be limited to: total costs associated with

the Implementation Phase, date of Work completion for that phase and any additional required information contained in items 2 through 8 below:

2. Any and all punch list items have been satisfactorily completed and Approved by AUTHORITY and final Approval of the Acceptance Test, has been granted by AUTHORITY;

3. Escrowed Software has been delivered to AUTHORITY in accordance with the Escrow Agreement;

4. CONTRACTOR has delivered and AUTHORITY has Approved all Deliverables, including As-Built Documentation/Drawings, as defined in the Scope of Work and Requirements;

5. An affidavit has been delivered to AUTHORITY signed by the CONTRACTOR, stating all debts and claims of Suppliers and Subcontractors have been paid and/or settled;

6. All CONTRACTOR claims for the Implementation Phase are deemed to be resolved by AUTHORITY, and the CONTRACTOR has submitted a statement that no such requests or disputes will be applied for; any and all claims under this AGREEMENT are resolved, and that no such claims will be made;

7. All of CONTRACTOR's other obligations, including payment of liquidated damages under the Implementation Phase, shall have been satisfied in full or waived in writing by AUTHORITY; and

8. AUTHORITY shall have delivered to the CONTRACTOR a Notice of Final Acceptance for the phase.

C. Closeout of O&M Phase:

Closeout of the O&M Phase shall be deemed to have occurred when all of the following conditions have been met:

1. The CONTRACTOR shall have provided a letter certification to close out the O&M Phase. The certification shall include but not be limited to: total costs associated with the phase, date of phase completion and any additional required information contained in items 2 through 10 below:

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2. Delivery by the CONTRACTOR and Approval by AUTHORITY of all Deliverables, including As-Built Documentation/Drawings, as required in the Scope of Work and Requirements;

3. The CONTRACTOR has met all transition and succession requirements pursuant to the Scope of Work and Requirements;

4. All licenses and leases subject to transfer or assignment to AUTHORITY have been transferred or assigned;

5. Any and all CONTRACTOR action items associated with the phase have been satisfactorily completed and Approved by AUTHORITY;

6. An affidavit has been delivered to AUTHORITY signed by CONTRACTOR, stating all debts and claims of Suppliers and Subcontractors have been paid and/or settled;

7. All CONTRACTOR claims for the phase are deemed to be resolved by AUTHORITY, and CONTRACTOR has submitted a statement that no such requests or disputes will be applied for; any and all claims under this AGREEMENT are resolved, and that no such claims will be made;

8. The CONTRACTOR shall provide AUTHORITY with all required materials, fixtures, furnishings, Equipment and Software; documentation and manuals, either owned by or licensed to AUTHORITY, pursuant to this AGREEMENT. All such materials have been verified by AUTHORITY to be in good working order;

9. All of CONTRACTOR's other obligations under the O&M Phase, including liquidated damages, shall have been satisfied in full or waived in writing by AUTHORITY; and

10. AUTHORITY shall have delivered to CONTRACTOR a Notice of Closeout for the phase.

D. AUTHORITY's beneficial use of the Deliverables during any phase prior to AGREEMENT closeout shall not constitute Acceptance of any Deliverable, nor shall such use give rise to a claim for equitable adjustment.

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ARTICLE 24. INSPECTION

A. All Work, Sites, and Facilities shall be subject to inspection and testing by AUTHORITY at all reasonable times. Any inspection, test or Approval 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 or Approval by AUTHORITY or its representative shall be construed as constituting or implying Acceptance unless all criteria for Acceptance have been met in accordance with Article 23, Acceptance. Inspection or test or Approval 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.

B. CONTRACTOR shall furnish promptly, without additional charge, all facilities, labor, Equipment and material reasonably needed for performing inspection and testing in a safe and convenient manner as may be required by AUTHORITY and as further set forth in the Scope of Work and Requirements. 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 re-inspection or retest is necessitated by prior rejection.

ARTICLE 25. INTELLECTUAL PROPERTY

A. Project Intellectual Property:

1. CONTRACTOR acknowledges and agrees that all Intellectual Property authored, created, and invented under this AGREEMENT and/or for the purposes of the Project, in any medium, is either owned by AUTHORITY or specially ordered or commissioned by AUTHORITY including works made for hire in accordance with Section 101 of the Copyright Act of the United States ("Project Intellectual Property"), CONTRACTOR hereby irrevocably and exclusively assigns to AUTHORITY, immediately upon creation, authorship, development or invention of the Project Intellectual Property and without any restriction or condition precedent, (i) all rights, title and interest

in and to such Intellectual Property and (ii) physical possession and all rights, title and interest in any executable code and all Source Code, programmer notes, and other documentation and other relevant Software (collectively, the "IP Materials"). To perfect or register AUTHORITY Intellectual Property rights under this Section, CONTRACTOR agrees to execute such further documents and to do such further acts as may be necessary to perfect, register, or enforce AUTHORITY ownership of such rights, in whole or in part. If CONTRACTOR fails or refuses to execute any such documents, CONTRACTOR hereby appoints AUTHORITY as CONTRACTOR's attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on CONTRACTOR's behalf and to execute such documents. AUTHORITY hereby grants to CONTRACTOR a limited, non-exclusive license to use, exploit, manufacture, distribute, reproduce, adapt and display AUTHORITY Intellectual Property developed and owned by AUTHORITY independently of this AGREEMENT ("AUTHORITY Intellectual Property") and Project Intellectual Property, solely in connection with and limited to: (a) incorporation of relevant Intellectual Property into the Project or Work; (b) performance, provision, furnishing and discharge of the Work; and (c) licensing to other entities (to the extent required for Interoperability). Except as provided in this Article 25, no Intellectual Property rights of AUTHORITY, including the AUTHORITY's name and other trademarks, are granted to CONTRACTOR and all other rights are reserved to AUTHORITY. All rights granted in this Article shall terminate at the expiration of the Term.

2. CONTRACTOR shall deliver to AUTHORITY all AUTHORITY Materials, documents, results and related materials created in the development of Project Intellectual Property as soon as (i) incorporated into Project, or any Deliverable, Work, service(s), and/or Software, including any Upgrades, Updates or Enhancements, (ii) required by the AGREEMENT or Scope of Work and Requirements, or (iii) reasonably practicable, provided that all such IP Materials, shall be delivered to AUTHORITY not later than the effective termination date of this AGREEMENT, including expiration date of the Term.

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B. CONTRACTOR Intellectual Property:

1. CONTRACTOR hereby grants to AUTHORITY an irrevocable, perpetual, non-exclusive, transferable (solely to an AUTHORITY assignee or successor in interest), fully paid-up right and license to use, distribute, reproduce, adapt and display, and prepare derivative works of the CONTRACTOR Intellectual Property solely for the Project or any Deliverable, Work, service(s), and/or Software, including any Upgrades, Updates or Enhancements. CONTRACTOR Intellectual Property shall mean Intellectual Property authored, created or invented by CONTRACTOR either (a) prior to the Effective Date or (b) independently of the AGREEMENT. The rights granted herein shall survive the termination, expiration or cancellation of this AGREEMENT or any rights related thereto.

2. CONTRACTOR shall identify and disclose all CONTRACTOR Intellectual Property required by, incorporated in or integrated into the Project, or any Deliverable, Work, service(s), and/or Software, including any Upgrades, Updates or Enhancements, including (when reasonably available): full and specific information detailing Intellectual Property claimed, date of authorship, creation and/or invention, date of application(s), application number(s) and registering entity(ies), date of registration(s), registration number(s) and registering entity(ies), if any, and owner including person or entity name and address. Subject to the Intellectual Property deposit requirements of Article 27, CONTRACTOR shall not be required to identify or disclose CONTRACTOR Intellectual Property only to the extent that doing so would eliminate or substantially limit the legal protections for such Intellectual Property.

C. Third-Party Intellectual Property:

1. CONTRACTOR shall secure license(s) in the name of AUTHORITY to use, execute, perform, sublicense, distribute, reproduce, adapt, display, and prepare derivative works of Third-Party Intellectual Property in connection with or any Deliverable, Work, Service(s), and/or Software, including any Upgrades, Updates or Enhancements, including a representation and warranty that the Third-Party Intellectual Property does not infringe the rights, including Intellectual Property rights, of any other person or entity. Third-Party Intellectual Property shall mean Intellectual

Property owned by any person or entity unrelated to CONTRACTOR which is incorporated into the Project, Work or services. AUTHORITY shall review and Approve, in its sole discretion, any license(s) pursuant to this Article and in no event shall CONTRACTOR incorporate Third-Party Intellectual Property into the Project, or any Deliverable, Work, service(s), and/or Software, including any Upgrades, Updates or Enhancements without first securing such licenses and subject to AUTHORITY's prior review and Approval.

2. CONTRACTOR shall Identify and disclose to AUTHORITY all Third-Party Intellectual Property contained, or included, i) in the Project Intellectual Property, including (when reasonably available): or (ii) in the Project, or any Deliverable, Work, service(s), and/or Software, including any Upgrades, Updates or Enhancements, including (when reasonably available): full and specific information detailing Intellectual Property claimed; date of authorship, creation and/or invention; date of application(s); application number(s) and entity(ies); date of registration(s), registration number(s) and registering entity(ies), if any, and owner, including person or entity name and address.

3. CONTRACTOR shall obtain from each owner of the Third-Party Intellectual Property prior consent to have the relevant Third-Party Intellectual Property deposited into an Escrow in accordance with Article 26, Intellectual Property Escrows, or, to the extent the owner of the relevant Third-Party Intellectual Property has not provided such consent, obtain AUTHORITY's prior written Approval for a waiver of this requirement.

4. CONTRACTOR shall not incorporate Third-Party Intellectual Property into the Project without first obtaining (a) the licenses described in Article 25.C.1 and (b) consent for the delivery or deposit of IP Materials from each owner of the Third-Party Intellectual Property, or unless such requirement is waived by AUTHORITY in accordance with Article 25.C.3. The rights granted in Article 25.C.1 shall survive the termination, expiration or cancellation of this AGREEMENT or any rights related thereto.

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D. Delivery of IP Materials: CONTRACTOR shall deliver CONTRACTOR and Third-Party IP Materials into Escrow in accordance with Article 26, Intellectual Property Escrow and Article 27, Escrow Agreement Dates.

E. Payments Inclusive: CONTRACTOR acknowledges and agrees that the payments provided for in Article 8 include all royalties, fees, costs and expenses arising from or related to the Project Intellectual Property, including without limitation any fees pursuant to Articles 25, 26, and 27. CONTRACTOR acknowledges that AUTHORITY is a public agency subject to state laws, including the California Public Records Act (California Government Code §6250, et seq.) (the "Public Records Act"). Notwithstanding any designation or communication by CONTRACTOR that any CONTRACTOR information or materials provided under this AGREEMENT may be confidential or proprietary, CONTRACTOR consents in advance to AUTHORITY's disclosure of the same if AUTHORITY determines that it is required by law to disclose. Such disclosure shall not constitute a breach of this AGREEMENT. AUTHORITY will provide reasonable notice to CONTRACTOR of any request for disclosure of information or materials identified by CONTRACTOR as "confidential", "trade secret" or "proprietary" or otherwise considered confidential under this AGREEMENT. If CONTRACTOR wishes to oppose any such disclosure, CONTRACTOR shall assume the opposition to such disclosure(s) or shall indemnify AUTHORITY for all costs incurred (including attorneys' fees and court costs) in connection with any opposition to such disclosure.

ARTICLE 26. INTELLECTUAL PROPERTY ESCROW

A. CONTRACTOR acknowledges that AUTHORITY must be ensured access to CONTRACTOR and Third-Party IP Materials at any time and must be assured that such IP Materials are delivered to Escrow pursuant to Article 26 and Articles 27.

B. CONTRACTOR or an owner of Third-Party Intellectual Property shall deposit the IP Materials with an Escrow Agent. AUTHORITY and CONTRACTOR shall: (a) mutually select an escrow company ("Escrow Agent") engaged in the business of receiving and maintaining escrows of software source code and/or other intellectual property; (b) establish an Escrow (with the Escrow Agent on terms

and conditions substantially similar to terms and conditions of the Form of Intellectual Property Escrow AGREEMENT, Form H), for the deposit, retention, upkeep, authentication, confirmation and release of IP Materials to AUTHORITY pursuant to this AGREEMENT; (c) adhere to the deposit dates set forth in Article 27 and (c) determine a process for releasing from Escrow the IP Materials to be delivered to AUTHORITY pursuant to this AGREEMENT. Intellectual Property Escrows also may include Affiliates as parties and may include deposit of their Intellectual Property.

C. CONTRACTOR shall be responsible for the fees and costs of establishing and maintaining the Escrow Agent for the Term. AUTHORITY shall be responsible for all costs arising in connection with the maintenance of the Escrow referred to in this Article beyond the Term.

D. The Escrow shall survive expiration or earlier termination of this AGREEMENT regardless of the reason.

E. The IP Materials shall be released and delivered to AUTHORITY in any of the following circumstances:

1. This AGREEMENT is terminated for any reason including expiration of the Term;
2. A voluntary or involuntary bankruptcy or insolvency of CONTRACTOR occurs;
3. CONTRACTOR is dissolved or liquidated; and
4. CONTRACTOR or any third party, pursuant to a license under Article 25.C.2, (a) fails or ceases to provide services as necessary to permit continued use of any such Intellectual Property or (b) otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing the IP Materials pursuant to a license or any sublicense thereof.

F. Any CONTRACTOR Intellectual Property released and delivered to AUTHORITY under the terms of this AGREEMENT shall be deemed confidential and not disclosed or distributed to any third party without a non-disclosure agreement to ensure such confidentiality. Without limiting the license grants provided in this Article and subject to the confidentiality obligations of this section, any and all rights to CONTRACTOR Intellectual Property granted to AUTHORITY pursuant to paragraph B of Article 25

shall include the right to sublicense and disclose such CONTRACTOR Intellectual Property to AUTHORITY employee, agent, representative, vendor, assignee or affiliate in its sole discretion.

ARTICLE 27. ESCROW AGREEMENT

A. Within forty-five (45) Calendar Days from the Effective Date, AUTHORITY, an Escrow Agent, and CONTRACTOR shall enter into an Escrow AGREEMENT substantially as set forth in Article 26.

B. AUTHORITY may at its sole discretion require an initial deposit of the complete CONTRACTOR IP Materials within sixty (60) Calendar Days of AGREEMENT Effective Date.

C. Additional deposits shall be made to the Escrow within ten (10) Calendar Days of Go-Live and within ten (10) Calendar Days of BOS Acceptance.

D. In the event CONTRACTOR updates, revises or supplements any of the IP Materials deposited or revises, supplements or creates additional information, CONTRACTOR shall deposit a complete set of such revised, supplemented, or additional information with the Escrow Agent as soon as reasonably practicable, but in no event more than thirty (30) Calendar Days after such revision, supplement or addition and shall indicate with each deposit what information and which documents and pages have been revised, supplemented or added since the last deposit.

E. CONTRACTOR shall make deposits of the complete set of IP Materials current at the time of deposit, at a minimum of semi-annually if no deposits provided for in paragraph D have occurred within the relevant preceding six-month period.

ARTICLE 28. WARRANTIES

A. CONTRACTOR warrants the following:

1. All guarantees and warranties made herein are fully enforceable by AUTHORITY acting in its own name.

2. The Equipment, Hardware, and Software CONTRACTOR installs and places into operation will not result in any damage to existing facilities, walls or other parts of adjacent, abutting or

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overhead buildings, railroads, bridges, roadway, structures, surfaces, or cause any physical or mental injury to any person.

3. All provided Hardware and Equipment is new unless otherwise specifically Approved by AUTHORITY.

B. BOS Warranty:

The CONTRACTOR shall provide a full BOS warranty on all System Equipment, Hardware, and Software beginning from the date of Readiness for Go-Live through the end of the O&M Phase hereinafter referred to as "BOS Warranty Period", warranting that the full System shall be as set forth in the Scope of Work and Requirements. During the BOS Warranty Period, AUTHORITY shall not be charged for any Maintenance or Software Support Services performed on the BOS, other than Maintenance payments identified in the CONTRACTOR Price Proposal. In the period after installation and prior to the commencement of the O&M Phase, all Maintenance and Software Support Services shall also be at CONTRACTOR's sole expense. Further, at all times during the Term, CONTRACTOR shall promptly repair or replace, at its own cost or expense, including, the cost of removal, installation and transportation, any unit of Equipment, Hardware, or Software, or part or component thereof, which proves defective or otherwise fails to comply with Exhibit B, Scope of Work and Requirements, such that it complies with the Scope of Work and Requirements. All fees associated with restocking cancelled or returned orders shall be the responsibility of CONTRACTOR.

C. Software Warranties:

CONTRACTOR warrants that the Software needed to operate the BOS shall be as set forth in the Scope of Work and Requirements, and that commencing upon Go-Live, and for the Term, the Software and each module or component and function thereof shall:

1. Be free from defects in materials and workmanship under normal use;
2. Remain in good working order, be free from viruses; trap doors; disabling devices; Trojan horses; disabling codes; back doors; time bombs; drop-dead devices; worms, and any other type of malicious or damaging code or other technology or means which has the ability to interfere with the

use of the BOS by AUTHORITY or its designees, or permit access to AUTHORITY's computing systems without its knowledge or contrary to its system connectivity policies or procedures;

3. Not interfere with toll collection;

4. Operate and function fully, properly and in conformity with the warranties in this AGREEMENT;

5. Operate fully and correctly in the operating environment identified in the Scope of Work and Requirements, including by means of the full and correct performance of the Software, and all Updates, Upgrades, Enhancements, or new releases of the Software, on or in connection with the Equipment, any Updates, Upgrades, Enhancements, or new releases to such Equipment, and any other Software used by or in connection with any such Equipment;

6. Be fully compatible and Interface completely and effectively with the Equipment, including other Software programs provided to AUTHORITY hereunder, such that the Software and other Equipment combined will perform and continuously attain the standards identified in the Scope of Work and Requirements; and

7. Accurately direct the operation of the BOS, as required by the Scope of Work and Requirements, and the descriptions, specifications and documentation set forth therein and herein.

D. Software Maintenance Services:

During the Term, CONTRACTOR shall, at its own cost and expense, provide Maintenance and Software Support Services to keep the Software in good working order and free from defects such that the BOS shall perform in accordance with this AGREEMENT, including Scope of Work and Requirements.

1. The CONTRACTOR shall provide technical support and shall, at its own cost and expense, timely remedy any failure, malfunction, defect or non-conformity in Software, in accordance with Scope of Work and Requirements.

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2. CONTRACTOR shall provide AUTHORITY the most current release of all Software available on the date of delivery of the BOS Software to maintain optimum performance pursuant to this AGREEMENT.

3. CONTRACTOR shall promptly provide Notice to AUTHORITY in writing of any defects or malfunctions in the Software, regardless of the source of information. CONTRACTOR shall promptly correct all defects or malfunctions in the Software or documentation discovered and shall promptly provide AUTHORITY with corrected copies of same, without additional charge. If Software can only be corrected in conjunction with additional or revised Hardware, CONTRACTOR shall provide such Hardware to AUTHORITY, and the cost of such Hardware shall be borne by CONTRACTOR, and not be reimbursable by AUTHORITY.

a. No Updates, Upgrades, or Enhancements shall adversely affect the performance of the BOS, in whole or in part, or result in any failure to meet any Requirements of the Scope of Work and Requirements.

b. The CONTRACTOR shall ensure continued satisfactory performance by the current operating system of the Software in accordance with all provisions of this Article.

c. In the event that the Software does not satisfy the conditions of performance set forth in the Scope of Work and Requirements, the CONTRACTOR is obligated to promptly repair or replace such Software at the CONTRACTOR's sole cost and expense or, if expressly agreed to in writing by AUTHORITY, provide different Software, and perform Work required to attain the performance Requirements set forth in the Scope of Work and Requirements.

d. In the event of any defect in the media upon which any tangible portions of the Software are provided, the CONTRACTOR shall provide AUTHORITY with a new copy of the Software.

e. Without releasing the CONTRACTOR from its obligations for warranty (during an applicable warranty period), support or Maintenance of the Software, AUTHORITY shall have the right to use and maintain versions of the Software provided by the CONTRACTOR which are one or

more levels behind the most current version of such Software and to refuse to install any Updates, Upgrades or Enhancements if, in AUTHORITY's discretion, installation of such Updates, Upgrades or Enhancements would interfere with its Operations. CONTRACTOR shall not, however, be responsible or liable for the effect of any error or defect in the version of the Software then in use by AUTHORITY that occurs after the CONTRACTOR has both (i) offered, by written Notice to AUTHORITY, a suitable correction (by way of Update, Upgrade, Enhancement, or otherwise) of such error or defect and (ii) provided AUTHORITY a reasonable opportunity to implement such existing correction, provided that the CONTRACTOR establishes that neither the implementation nor the use of such correction would limit, interfere with, adversely affect, or materially alter the interoperability, functionality or quality of the BOS.

E. Third-Party Warranties

CONTRACTOR shall assign to AUTHORITY, and AUTHORITY shall have the benefit of, any and all Subcontractors' and Suppliers' warranties and representations with respect to the BOS and Work provided hereunder. The CONTRACTOR's agreements with Subcontractors, Suppliers and any other third parties shall require that such parties (a) consent to the assignment of such warranties and representations to AUTHORITY, (b) agree to the enforcement of such warranties and representations by AUTHORITY in its own name, and (c) furnish to AUTHORITY, the warranties set forth herein. The CONTRACTOR shall obtain maintenance agreements for third-party Software. CONTRACTOR shall secure such maintenance agreements for the same duration and upon the same terms and conditions as the Maintenance provisions between the CONTRACTOR and AUTHORITY. At AUTHORITY's request, CONTRACTOR shall provide supporting documentation which confirms that these warranties are enforceable in AUTHORITY's name.

F. Data Accuracy

CONTRACTOR acknowledges and understands that the data and/or information it collects, processes and/or provides to AUTHORITY will be relied upon by AUTHORITY and other persons or entities that are now or will in the future be under agreement with AUTHORITY in accordance with the Scope of Work and Requirements. Should CONTRACTOR become aware that information derived and

provided by CONTRACTOR is inaccurate and may cause AUTHORITY to incur damages or additional expenses, the CONTRACTOR shall immediately place any applicable insurance carrier on notice of a potential claim. This provision shall survive termination of this AGREEMENT, and the CONTRACTOR agrees to waive any applicable limitation periods consistent with enforcement of this provision.

G. Neither Final Acceptance of the Implementation Phase of the BOS and Work or payment therefor, nor any provision in this AGREEMENT, nor partial or entire use of the BOS and Work by AUTHORITY shall constitute Approval of Work not performed in accordance with this AGREEMENT or relieve the CONTRACTOR of liability for any express or implied warranties or responsibility for faulty materials or workmanship.

H. The obligations set forth in this Article shall be in addition to any other warranty obligations set forth in this AGREEMENT. All provisions of this Article, referring or relating to obligations to be performed pursuant to an applicable warranty period that extends beyond the Term, shall survive the expiration, cancellation or earlier termination of this AGREEMENT.

ARTICLE 29. ADDITIONAL CONTRACTOR WARRANTIES

A. CONTRACTOR warrants that it is fully experienced and properly qualified, licensed, equipped, organized and financed to perform all the Work.

B. CONTRACTOR warrants that all Work will be provided in accordance with this AGREEMENT.

C. CONTRACTOR warrants that (1) all Work performed and all Equipment, Software, Hardware and other material provided under this AGREEMENT by CONTRACTOR or any of its Subcontractors or Suppliers conforms to the requirements herein and is free of any defects; and (2) Equipment, Software, and Hardware 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. For any Equipment, Software, or Hardware purchased within twelve (12) months of the end of the Term, such warranty shall continue for a period of one (1) year from the end of the Term or for the manufacturer's standard warranty, whichever is longer.

ARTICLE 30. DEFECTS/FAILURE

A. Upon discovery of any defect or failure in the Software, Equipment or Hardware, CONTRACTOR shall promptly provide AUTHORITY notice thereof and repair or replace same at its sole cost and expense. If expressly agreed to in writing by AUTHORITY, CONTRACTOR may provide different Software, Equipment or Hardware. In the event of any defect in the media upon which any tangible portions of the Software are provided, the CONTRACTOR shall provide AUTHORITY with a new copy of the Software. In addition, CONTRACTOR shall remedy at its own expense any damage to AUTHORITY owned or controlled real or personal property, when that damage arises out of such defects.

B. In the event AUTHORITY determines there is a defect or failure in the Software, Equipment or Hardware or damage to AUTHORITY property, AUTHORITY shall notify CONTRACTOR in writing within a reasonable time after the discovery of same. CONTRACTOR has seven (7) Calendar Days from receipt of notice from AUTHORITY to respond and indicate how CONTRACTOR will remedy the failure, defect, or damage. If AUTHORITY is not satisfied with CONTRACTOR'S proposed remedy, CONTRACTOR and AUTHORITY shall, within three (3) Business Days, 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 necessary to remedy the defect, failure or damage as required by AUTHORITY.

C. Should CONTRACTOR fail to remedy any failure, defect or damage within a reasonable time to the reasonable satisfaction of AUTHORITY, AUTHORITY shall have the right with its own forces or other contractors, to replace, repair or otherwise remedy such failure, defect or damage at CONTRACTOR's expense. In addition, CONTRACTOR shall be liable for all damages arising out its failure to promptly remedy the defect, failure or damage.

D. CONTRACTOR agrees to promptly remedy, at no cost to AUTHORITY, any defects determined by AUTHORITY to be Pervasive, such that if AUTHORITY determines that any Equipment, Hardware, component, sub-component or Software is experiencing continued or repetitive failure that requires constant replacement or repair, CONTRACTOR agrees that a "Pervasive Defect" shall be

deemed to be present in such affected types of Equipment, Hardware, or Software. CONTRACTOR shall perform an investigation of the issues and prepare a report that includes a reason for the failure and its plan for resolution. This report and a resolution plan shall be produced by CONTRACTOR and submitted to AUTHORITY within seven (7) Calendar Days of notification by AUTHORITY of the Pervasive Defect. The report and plan shall include the investigation results, remediation steps performed to-date, and a plan and schedule to complete the Pervasive Defect resolution. Such resolution shall be in a manner satisfactory to AUTHORITY and that permanently addresses the problem and corrects the defect so that such defect does not continue to occur. The status shall be updated and briefed in weekly meetings until resolution is complete. Notwithstanding the foregoing, AUTHORITY does not waive any of their other rights enumerated in paragraphs A through C of this Article.

E. The obligations set forth in this Article shall be in addition to any warranty obligations set forth in this AGREEMENT. The provisions of this Article shall survive the expiration or earlier termination of this AGREEMENT.

F. All Subcontractors, manufacturers, and Suppliers' warranties, expressed or implied, respecting any Work, Equipment, Software or Hardware furnished hereunder, shall, at the direction of AUTHORITY, be enforced by CONTRACTOR for the benefit of AUTHORITY.

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

H. The obligations and remedies specified in this Article shall not limit AUTHORITY's rights and remedies provided elsewhere in this AGREEMENT.

ARTICLE 31. COORDINATION WITH OTHER CONTRACTORS

A. During the course of this AGREEMENT, AUTHORITY may undertake or award other agreements for additional work, including but not limited to separate agreements with different contractors related to the Scope of Work and Requirements, including the Electronic Toll and Traffic Management (ETTM) System Contractor, the Design-Build Contractor for the 405 Improvement Project, and the Roadway Service Contractor for the I-405. It is critical that close coordination with interfacing contractors

occurs throughout the Term. CONTRACTOR shall fully cooperate with AUTHORITY and the parties to all other contracts and carefully integrate and schedule its own Work with said contractors.

B. CONTRACTOR shall be required to perform Work in the AUTHORITY's CSC Facility(ies). CONTRACTOR shall be subject to and shall comply with the terms of any associated leases and shall coordinate with the landlord in all aspects of its occupancy and operations at the Facility(ies).

C. Should problems in coordination with other contractor(s) occur, the CONTRACTOR shall make AUTHORITY aware of these problems immediately and shall take steps to address the problems and mitigate any delays or additional costs.

D. CONTRACTOR shall cooperate with such other contractors or forces performing construction or work of any other nature within or adjacent to the Sites specified in order to avoid any delay or hindrance to such other contractors or forces. AUTHORITY reserves the right to perform other or additional work at or near the Site (including material sources) at any time, by the use of other forces.

E. CONTRACTOR shall be responsible to other contractor(s) for all damage to work, to persons or property caused by CONTRACTOR, its Subcontractor(s), or its Suppliers, and losses caused by unnecessary delays or failure to finish the Work within the time specified for completion. Any damage to Work, persons or property of CONTRACTOR by other contractors shall be the responsibility of other contractor(s) and CONTRACTOR shall have no claim against AUTHORITY or Caltrans.

F. Upon Approval of the design, including Project infrastructure, construction, or installation design, CONTRACTOR shall assume responsibility for the design to the extent that if the Work is installed as designed and the BOS or CSC does not meet the Performance Measurements of this AGREEMENT, the CONTRACTOR shall be responsible for the costs of redesign, civil rework, and additional Equipment costs and any other costs associated with the sub-standard performance.

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ARTICLE 32. INSPECTION OF SITE

CONTRACTOR acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work including, but not restricted to, building locations, Facilities, conditions, size, layout, parking, transportation, disposal, availability of labor, roads, and other similar physical conditions at the Sites, and the character of Equipment and Facilities needed preliminary to and during prosecution of the Work. Any failure by CONTRACTOR to acquaint itself with the available information will not relieve it from responsibility for the difficulty or cost of successfully performing the Work. AUTHORITY assumes no responsibility for any conclusions or interpretations made by CONTRACTOR on the basis of the information made available by AUTHORITY.

ARTICLE 33. REQUIREMENTS FOR REGISTRATION OF DESIGNERS

All design and engineering Work furnished by CONTRACTOR shall be performed by or under the supervision of persons licensed to practice architecture, engineering or surveying (as applicable) in the State of California, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the AGREEMENT documents and who shall assume professional responsibility for the accuracy and completeness of the design documents and construction documents prepared or checked by them.

ARTICLE 34. SEISMIC SAFETY REQUIREMENTS

CONTRACTOR agrees to ensure that all Work performed under this AGREEMENT including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations.

ARTICLE 35. ASSIGNMENTS AND SUBCONTRACTS

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between AUTHORITY and any Subcontractor(s), and no subcontract shall relieve CONTRACTOR of its responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to AUTHORITY for the acts and omissions of its Subcontractor(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of

persons directly employed by CONTRACTOR. CONTRACTOR's obligation to pay its Subcontractor(s) is an independent obligation from AUTHORITY's obligation to make payments to the CONTRACTOR.

B. Neither this AGREEMENT nor any interest herein nor claim hereunder may be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this AGREEMENT be subcontracted by CONTRACTOR, without the prior written consent of AUTHORITY. Consent by AUTHORITY shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this AGREEMENT.

C. CONTRACTOR shall perform the Work contemplated with resources available within its own organization; and no portion of the Work pertinent to this AGREEMENT shall be subcontracted without written authorization by AUTHORITY's Contract Administrator, except that, which is expressly identified in the Approved Price Proposal.

D. CONTRACTOR shall pay its Subcontractors within seven (7) Calendar Days from receipt of each payment made to CONTRACTOR by AUTHORITY.

E. All subcontracts in excess of \$25,000 entered into as a result of this AGREEMENT shall contain all of the provisions stipulated in this AGREEMENT to be applicable to Subcontractors.

F. Any substitution or addition of Subcontractor(s) must be Approved in writing by the AUTHORITY's Contract Administrator, prior to the start of work by the Subcontractor(s).

G. AUTHORITY hereby consents to CONTRACTOR's subcontracting portions of the Scope of Work and Requirements to the parties identified below with their subcontract function described below. CONTRACTOR shall include in the subcontract agreement the stipulation that CONTRACTOR, not AUTHORITY, is solely responsible for payment to the Subcontractor for the amounts owing, and that the Subcontractor shall have no claim, and shall take no action, against AUTHORITY, its officers, directors, employees or sureties for nonpayment by CONTRACTOR.

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Subcontractor Name/Addresses	Subcontractor Function

H. CONTRACTOR shall engage the Collection Agency(ies) and Merchant Services Providers identified above as Subcontractors. The subcontracts between CONTRACTOR and such Collection Agency(ies) and Merchant Service Provider(s) shall name the AUTHORITY as an intended third-party beneficiary or alternatively as a party to the subcontract, as determined by AUTHORITY, and shall incorporate requirements for Collection Agency(ies) and Merchant Services Provider(s) set forth in the Scope of Work and Requirements. Notwithstanding paragraph G of this Article, payment to the Collections Agency(ies) and Merchant Services Provider(s) shall be as set forth in the subcontracts for this Work.

I. AUTHORITY shall have the right to Approve all of the terms and conditions of the Collection Agency(ies) and the Merchant Service Provider(s) agreements prior to execution.

ARTICLE 36. TRANSITION AND SUCCESSION

A. CONTRACTOR acknowledges that the Work and Scope of Work and Requirements are vital to AUTHORITY and must be continued without interruption. Upon termination of the AGREEMENT, a successor(s) (AUTHORITY or a new contractor(s)) may be responsible for providing this Work. The CONTRACTOR agrees to exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor(s).

B. Upon expiration of the Term or termination of the AGREEMENT, whether for cause or convenience, CONTRACTOR shall have accomplished a complete transition of the Work being terminated from CONTRACTOR and any Subcontractors to the successor(s) without any interruption of or adverse impact on the Work or any other services provided by third parties (the "Disentanglement"). CONTRACTOR shall cooperate with AUTHORITY and any successor(s) and otherwise promptly take all

steps required to assist AUTHORITY in effecting a complete Disentanglement. CONTRACTOR shall provide all information regarding the Work or as otherwise needed for Disentanglement, including data conversion, files, interface specifications, training staff assuming responsibility, and related professional services, to the successor(s), all included as a part of the CONTRACTOR Price Proposal. CONTRACTOR shall provide for the prompt and orderly conclusion of all Work, as AUTHORITY may direct, including completion or partial completion of projects, documentation of Work in process, and other measures to assure an orderly transition to the successor(s). All Work related to Disentanglement as may reasonably be requested by AUTHORITY shall be deemed a part of the base Work and shall be performed by CONTRACTOR at no additional cost to AUTHORITY. CONTRACTOR's obligation to provide the Work shall not cease until Disentanglement is satisfactory to AUTHORITY, including the performance by CONTRACTOR of all asset-transfers and other obligations of CONTRACTOR provided in this Article, has been completed.

C. The Disentanglement process shall begin on any of the following dates: (i) the date prior to end of AGREEMENT, which AUTHORITY has provided in its Notice that CONTRACTOR should commence Disentanglement (ii) the date, prior to the end of any initial or extended term when AUTHORITY provides Notice to CONTRACTOR that AUTHORITY elected not to extend pursuant to the AGREEMENT, or (iii) the date at which any Termination Notice is delivered, if AUTHORITY elects to terminate any or all of the Work pursuant to this AGREEMENT.

D. CONTRACTOR and AUTHORITY shall discuss in good faith a plan for executing CONTRACTOR's Disentanglement obligations and for the transfer of Work in accordance with the Scope of Work and Requirements, however, CONTRACTOR's obligation under this AGREEMENT to provide all Work necessary for Disentanglement shall not be lessened in any respect. CONTRACTOR shall develop with the new provider and/ or AUTHORITY staff, an End of Agreement Transition Plan as set forth in the Scope of Work and Requirements describing the nature and extent of transition Work required. An updated End of Agreement Transition Plan and dates for transferring responsibilities for each division of Work shall be submitted within thirty (30) Calendar Days of Notice provided under Paragraph C of this

Article. Upon completion of AUTHORITY review, all parties will meet and resolve any additional requirements/differences. CONTRACTOR shall be required to perform its Disentanglement obligations on an expedited basis, as determined by AUTHORITY, if AUTHORITY terminates the AGREEMENT for cause.

E. Specific Obligations

The Disentanglement shall include the performance of the following specific obligations:

1. Third-Party Authorizations:

Without limiting the obligations of CONTRACTOR pursuant to any other clause herein, CONTRACTOR shall, subject to the terms of any third-party contracts and licenses provided by CONTRACTOR, procure at no charge to AUTHORITY any third-party authorizations necessary to grant AUTHORITY the use and benefit of any third-party contracts and licenses between CONTRACTOR and third-party contractors used to provide the Work, pending their assignment to AUTHORITY.

2. Transfer of Assets:

CONTRACTOR shall convey to AUTHORITY all AUTHORITY assets in CONTRACTOR's possession and other CONTRACTOR Project assets as AUTHORITY may select, or dispose of such assets in accordance with the Article 42, Disposition of BOS as a Service.

3. Transfer of Leases, Licenses, and Contracts:

CONTRACTOR, at its expense, shall convey or assign to AUTHORITY such leases, licenses, and other contracts used by CONTRACTOR, AUTHORITY, or any other person in connection with the Work, as AUTHORITY may select. CONTRACTOR's obligation described herein, shall include CONTRACTOR's performance of all obligations under such leases, licenses, and other contracts to be performed by it with respect to periods prior to the date of conveyance or assignment and CONTRACTOR shall reimburse AUTHORITY for any losses resulting from any claim that CONTRACTOR did not perform any such obligations. CONTRACTOR shall also obtain for AUTHORITY the right, upon Disentanglement, to obtain maintenance (including all Enhancements , Updates, and Upgrades) and support with respect to the assets that are the subject of such leases and licenses at the price at which, and for so long as,

such maintenance and support is made commercially available to other customers of such third parties whose consent is being procured hereunder. CONTRACTOR shall transfer Intellectual Property in accordance with Articles 25, 26, and 27.

4. Delivery of Documentation:

CONTRACTOR shall deliver to AUTHORITY all documentation and data related to AUTHORITY, including AUTHORITY data held by CONTRACTOR. CONTRACTOR shall retain all data necessary to comply with the requirements for record retention and audit established in this AGREEMENT.

5. Hiring of CONTRACTOR Employees:

CONTRACTOR shall cooperate with (and shall cause its Subcontractors to cooperate with) AUTHORITY in offering employment, at the sole discretion of AUTHORITY, to any or all skilled or specially trained CONTRACTOR employees (and to any or all employees of CONTRACTOR's Subcontractors) that are substantially involved in the provision of Work whether such offers are made at the time of, after, or in anticipation of expiration or termination of the AGREEMENT Term.

6. Maintenance of Assets:

CONTRACTOR shall maintain all Hardware, Software, Systems, networks, technologies, and other assets utilized in providing Work to AUTHORITY (including leased and licensed assets) in good condition and in such locations and configurations as to be readily identifiable and transferable to AUTHORITY or its designees in accordance with the provisions of this AGREEMENT; additionally, CONTRACTOR shall insure such assets in accordance with this AGREEMENT.

7. Continued Provision of Staffing:

CONTRACTOR shall provide sufficient experienced personnel in each division of Work during the entire transition period to ensure that the Work is maintained at the level of proficiency required by the AGREEMENT.

F. CONTRACTOR shall remain obligated to provide Work at AUTHORITY's request for up to twelve (12) months after completion and Approval of the Disentanglement Work enumerated above,

and AUTHORITY shall pay for this Work at the rates set forth in the AGREEMENT for additional services. This paragraph F expressly survives the Term.

ARTICLE 37. CONFLICT OF INTEREST

A. CONTRACTOR agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, 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 and Requirements is or might be otherwise impaired; or CONTRACTOR has an unfair competitive advantage or is engaging in activities that AUTHORITY considers adverse to the 405 Express Lanes. 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 38. PROHIBITION

A. The firm, including all Subcontractors (at any tier), regardless of the level of service provided by said Subcontractor(s), awarded the program management services contract for the Highway Delivery Department, may not perform Work under this AGREEMENT.

B. The firm, including all Subcontractors (at any tier), regardless of the level of service provided by said Subcontractor(s), awarded the program management consultant contract for the I-405 Improvement Project, may not perform Work under this AGREEMENT.

C. The evaluation of team composition with regards to conflicts of interest will be done on a case-by-case basis.

ARTICLE 39. 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.

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ARTICLE 40. HEALTH AND SAFETY REQUIREMENTS

CONTRACTOR shall comply with all the requirements set forth in Exhibit F, titled "Level 1 HEALTH, SAFETY and ENVIRONMENTAL SPECIFICATIONS." As used therein, "CONTRACTOR" shall mean "CONTRACTOR," and "Subcontractor" shall mean "Sub-contractor."

ARTICLE 41. CONTRACTOR PURCHASED EQUIPMENT

A. Prior Approval by AUTHORITY's Project Manager shall be required before CONTRACTOR enters into any unbudgeted purchase order, or subcontract. CONTRACTOR shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in CONTRACTOR's Cost Proposal and exceeding \$2,500.00, three (3) competitive quotations must be submitted with the request, or the absence of bidding (sole source) must be adequately justified.

C. Any Equipment purchased as a result of this AGREEMENT is subject to the following: CONTRACTOR shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having useful life of at least one year and an acquisition cost of \$5,000.00 or more. Upon the expiration or termination of this AGREEMENT, AUTHORITY may elect to retain the Equipment, require CONTRACTOR to decommission and dispose of the Equipment at no cost to AUTHORITY, or require CONTRACTOR to sell such Equipment at the best price obtainable at a public or private sale, and credit AUTHORITY in an amount equal to the sale price. AUTHORITY may also elect to allow CONTRACTOR to keep the Equipment, in which case AUTHORITY and CONTRACTOR shall come to agreement on a mutually acceptable fair market value price. AUTHORITY may elect to require CONTRACTOR to hire an appraiser at CONTRACTOR's cost, in order to determine a basis for a fair market value price. If CONTRACTOR sells the Equipment, the terms and conditions of such sale must be Approved in advance by AUTHORITY. CFR, Title 49, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000.00 is credited to the project.

D. All subcontracts entered into as a result of this AGREEMENT shall contain all of the provisions of this Article.

ARTICLE 42. DISPOSITION OF BOS AS A SERVICE

AUTHORITY shall have the right to assume all required licenses, leases, and service agreements to allow uninterrupted use, operation and Maintenance of the Equipment and services under the same terms as those provided to CONTRACTOR for such services.

CONTRACTOR shall effect the transfer of title, or assignment of leases, service agreements and licenses, as applicable, as a part of the Disentanglement Work and AGREEMENT closeout.

ARTICLE 43. 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, and CONTRACTOR shall have no property right therein whatsoever. Copies may be made for CONTRACTOR's records but shall not be furnished to others without written authorization from AUTHORITY. Immediately upon termination, AUTHORITY shall be entitled to, and CONTRACTOR shall deliver to AUTHORITY, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONTRACTOR in performing this Agreement which is not CONTRACTOR's privileged information, as defined by law, or CONTRACTOR's personnel information, along with all other property belonging exclusively to City which is in CONTRACTOR's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by AUTHORITY.

B. Additionally, it is agreed that such deliverables shall be deemed works made for hire. CONTRACTOR acknowledges and agrees that the work (and all rights therein, including without limitation, copyright) belongs to and shall be the sole and exclusive property of AUTHORITY without restriction or limitation upon its use or dissemination by AUTHORITY.

C. 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 such performance.

D. CONTRACTOR acknowledges and agrees that privacy of 405 Express Lanes customers is of paramount importance to AUTHORITY and its customers. CONTRACTOR shall comply with AUTHORITY's privacy policies, all applicable Governmental Rules, and Business Rules pertaining to confidentiality, privacy, handling, retention, reporting and disclosure, and limiting or restricting collection, use or dissemination of PII and shall not sell, transfer, disclose or otherwise use such information for any purpose other than in performance of its duties under this AGREEMENT. CONTRACTOR shall indemnify AUTHORITY with regard to any failure to comply with this Article 43 in accordance with Article 14, Indemnification.

E. CONTRACTOR may only use AUTHORITY's Data to perform functions as defined by this AGREEMENT, including the Scope of Work and Requirements. Access to AUTHORITY's Data shall be restricted only to CONTRACTOR's and its Subcontractor's personnel who need the AUTHORITY's Data to perform their duties in the performance of this AGREEMENT, and shall not, at any time, be disclosed or divulged except as expressly provided herein.

F. CONTRACTOR shall inform all of its officers, employees, agents, and Subcontractors providing Work of the confidentiality provisions of this AGREEMENT. CONTRACTOR shall require that any CONTRACTOR personnel, Subcontractor(s) or other third party with whom CONTRACTOR will disclose or disseminate AUTHORITY Data, in whole or in part, execute and adhere to an agreement incorporating the provisions of this Section. Nothing in this Article shall allow CONTRACTOR to disclose or disseminate AUTHORITY Data without prior written consent and CONTRACTOR shall deliver to AUTHORITY all executed agreements with Subcontractors prior to any authorized disclosure and dissemination.

G. Subject to Paragraph C in the case of PII, CONTRACTOR may use such information for Violation processing and collection and shall release the PII to:

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1 1. AUTHORITY, upon request, for the purposes of carrying out this AGREEMENT
2 or functions with respect to the 405 Express Lanes Project; and

3 2. California DMV, other state DMVs, or other third parties Approved in advance by
4 AUTHORITY to receive PII as necessary to assist in collection of debt or payments owing.

5 H. CONTRACTOR shall implement physical, electronic and managerial safeguards to prevent
6 unauthorized access to PII and to implement destruction of records containing PII in accordance with the
7 records retention provisions of this AGREEMENT.

8 I. CONTRACTOR shall not use AUTHORITY's names, logos, branding, photographs of the
9 Project, or any other publicity pertaining to the Project in any professional publication, magazine, trade
10 paper, newspaper, seminar or other medium without the express written consent of AUTHORITY.

11 J. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be
12 released by CONTRACTOR to any other person or agency except after prior written Approval by
13 AUTHORITY, except as necessary for the performance of Work under this AGREEMENT. All press
14 releases, including graphic display information to be published in newspapers, magazines, etc., are to be
15 handled only by AUTHORITY unless otherwise agreed to by CONTRACTOR and AUTHORITY.

16 K. Applicable patent rights provisions regarding rights to inventions shall be included in the
17 AGREEMENT as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for
18 federal-aid contracts).

19 L. AUTHORITY may permit copyrighting reports or other agreement products. If copyrights are
20 permitted, the Agreement shall provide that the FHWA shall have the royalty-free nonexclusive and
21 irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for
22 government purposes.

23 **ARTICLE 44. AUDIT AND INSPECTION OF RECORDS**

24 A. CONTRACTOR and any subcontractor shall permit AUTHORITY, the State, and the
25 FHWA if federal participating funds are used in this Agreement, to review and inspect the project activities
26 and files at all reasonable times during the performance period of this Agreement.

B. For the purpose of determining compliance with the Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the AGREEMENT pursuant to Government Code 8546.7; CONTRACTOR, Subcontractors, and AUTHORITY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the AGREEMENT, including but not limited to, the costs of administering the AGREEMENT. All parties shall make such materials available at their respective offices at all reasonable times during the AGREEMENT period and for four (4) years from the date of final payment under the AGREEMENT. The State of California, State Auditor, AUTHORITY, FHWA, their duly authorized representative or other agents of AUTHORITY or any duly representative of the Federal Government shall have access to any books, records, payroll documents, facilities and documents of CONTRACTOR and its certified public accountants (CPA) work papers that are pertinent to the AGREEMENT and indirect cost rate (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

C. CONTRACTOR shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and the CFR, Title 48, Chapter 1, Part 31 of the Federal Acquisition Regulation System (FAR) and shall clearly identify and make such items readily accessible to such parties during CONTRACTOR's performance hereunder.

D. AUTHORITY's right to audit books and records directly related to this AGREEMENT shall also extend to all first-tier Subcontractors performing work identified in Article 35, Assignments and Subcontracts, of this AGREEMENT, and such language must be included in CONTRACTOR's agreements with its Subcontractors, resulting from this AGREEMENT.

ARTICLE 45. AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by agreement, shall be reviewed by AUTHORITY's Internal Audit.

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1 B. Not later than thirty (30) Calendar Days after issuance of the final audit report,
2 CONTRACTOR may request a review by AUTHORITY's Internal Audit of unresolved audit issues. The
3 request for review shall be submitted in writing.

4 C. Neither the pendency of a dispute nor its consideration by AUTHORITY will excuse
5 CONTRACTOR from full and timely performance, in accordance with the terms of this AGREEMENT.

6 **ARTICLE 46. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

7 A. CONSULANT agrees that the CFR, Title 48, Chapter 1, Part 31, Contract Cost Principles
8 and Procedures, shall be used to determine the cost allowability of individual terms of costs.

9 B. CONTRACTOR also agrees to comply with Federal procedures in accordance with CFR,
10 Title 2, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for
11 Federal Awards.

12 C. Any costs for which payment has been made to CONTRACTOR that are determined by
13 subsequent audit to be unallowable under CFR Title 48, Part 31 or CFR Title 2, Part 200, are subject to
14 repayment by CONTRACTOR to AUTHORITY.

15 **ARTICLE 47. CONTRACT WORK HOURS AND SAFETY STANDARDS**

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

21 1. Overtime requirements: CONTRACTOR, and any Subcontractor contracting for
22 any part of the Contract Work which may require or involve the employment of laborers or mechanics,
23 shall not require or permit any such laborer or mechanic in any workweek in which he or she is employed
24 on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic
25 receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all
26 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 48. 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 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. 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 subcontractor 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 2 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 49. 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 50. 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 51. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance under this AGREEMENT, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions 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.

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ARTICLE 52. STATEMENT OF COMPLIANCE

During the performance of this AGREEMENT, CONTRACTOR, for itself, its assignees and successors in interest agree as follows:

A. CONTRACTOR's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONTRACTOR has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

B. Nondiscrimination: During the performance of this AGREEMENT, CONTRACTOR and its Subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONTRACTOR and Subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONTRACTOR and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. CONTRACTOR and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

C. Compliance with Regulations: CONTRACTOR shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the State of California shall, on the basis of race, color, national origin, religion, sex,

age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:

CONTRACTOR, with regard to the Work performed by it during the AGREEMENT shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the AGREEMENT covers a program whose goal is employment.

E. Information and Reports: CONTRACTOR shall provide all information and reports

required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by AUTHORITY to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to AUTHORITY as appropriate, and shall set forth what efforts it has made to obtain the information.

F. Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with

nondiscrimination provisions of this AGREEMENT, AUTHORITY shall impose sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to CONTRACTOR under the AGREEMENT until

CONTRACTOR complies; and/or

2. Cancellation, termination, or suspension of the AGREEMENT, in whole or in part.

G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections

12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs,

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activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

H. Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (A) through (G) in every lower-tier subcontract, which exceeds \$100,000, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto, and that all such sub recipients shall certify and disclose accordingly. CONTRACTOR shall take such action with respect to any subcontract or procurement as AUTHORITY 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 Supplier as a result of such direction, the CONTRACTOR may request AUTHORITY to enter into such litigation to protect the interests of AUTHORITY, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 53. 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 54. CLEANING UP

A. CONTRACTOR shall at all times keep the Facilities and Sites, including storage areas used by it, clean and free from accumulations of waste material or rubbish. Upon completion of the Work, CONTRACTOR shall leave the Facilities and Sites in a clean, neat and workmanlike condition satisfactory to AUTHORITY.

B. After completion of all Work on the Project, and before making application for Final Acceptance of the Work in the Implementation Phase and Project closeout in the O&M Phase, Project closeout by AUTHORITY will be withheld until CONTRACTOR has satisfactorily complied with the

foregoing requirements for final cleanup of the Project.

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

ARTICLE 55. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED CONTRACTOR CONTRACTS

A. AUTHORITY or CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the 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 the CONTRACTOR from future proposing as non-responsible.

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

B. In conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," AUTHORITY has established a three (3%) percent Disadvantaged Business Enterprise (DBE) participation goal for the services required in this Agreement.

C. At the time of contract execution, the CONTRACTOR committed to utilize one or more Disadvantaged Business Enterprise (DBE) Firms in the performance of this DOT-assisted contract. CONTRACTOR agrees to enter into agreements with the DBE subcontractors listed on Attachment "CONTRACTOR Contract DBE Commitment Caltrans Exhibit 10-O2", Form D-1, and ensure they perform

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work and/or supply materials in accordance with original commitments. No changes to CONTRACTOR's DBE commitment shall be made until proper review and approval by AUTHORITY is rendered in writing.

D. CONTRACTOR must take appropriate actions to ensure that it will satisfy good faith efforts to attain the DBE goal and/or the DBE commitment made at award (whichever is higher), when change orders or other modifications alter the dollar amount of the Agreement or the distribution of work. CONTRACTOR must apply and report its DBE goal commitment against the total current Agreement value, including any change orders and/or amendments.

E. If there is a DBE goal and/or DBE commitment on the Agreement, CONTRACTOR must complete and submit within the specified timelines, DBE documentation electronically through an AUTHORITY-approved electronic reporting system.

F. CONTRACTOR shall comply with all the requirements set forth in Attachment A titled, "DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS", which is attached to and, by this reference, incorporated in and made a part of this Agreement.

ARTICLE 56. PROHIBITED INTERESTS

D. CONTRACTOR covenants that, for the Term of this AGREEMENT, no director, member, officer or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter, shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof.

E. No member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this AGREEMENT or to the benefits thereof.

ARTICLE 57. COVENANT AGAINST CONTINGENT FEES

CONTRACTOR warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONTRACTOR; to solicit or secure this AGREEMENT; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting

from the award, or formation of this AGREEMENT. For breach or violation of this warranty, AUTHORITY shall have the right to annul this AGREEMENT without liability, or at its discretion; to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 58. PROHIBITION OF EXPENDING LOCAL AGENCY, STATE OR FEDERAL FUNDS FOR LOBBYING

A. CONTRACTOR certifies to the best of his or her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONTRACTOR to any person for influencing or attempting to influence an officer or employee of any local, State or Federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding or making of this Agreement, or with the extension, continuation, renewal, amendment, or modification of this Agreement.

2. If any funds other than Federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by U.S. Code Title 31 Section 1352,. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand (\$10,000) dollars and not more than one hundred thousand (\$100,000) Dollars for each such failure.

C. CONTRACTOR also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed one hundred thousand (\$100,000) dollars, and that all such sub recipients shall certify and disclose accordingly.

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ARTICLE 59. 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. §552a. Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that 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 its subcontracts at any tier.

ARTICLE 60. INCORPORATION OF FEDERAL TERMS

All contractual provisions required by United States Department of Transportation (USDOT), including the Federal Highway Administration (FHWA), whether or not expressly set forth in this document, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all federally 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 requests, which would cause AUTHORITY to be in violation of the USDOT or FHWA terms and conditions.

ARTICLE 61. FEDERAL CHANGES

CONTRACTOR shall at all times comply with all applicable USDOT regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between AUTHORITY and USDOT, 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 AGREEMENT.

ARTICLE 62. NO FEDERAL 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 these requirements in all of its Subcontracts.

ARTICLE 63. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing 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 FHWA assisted project for which this AGREEMENT's work is being performed. CONTRACTOR also 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.

B. CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or part with Federal assistance awarded by FHWA under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. on the CONTRACTOR, to the extent the Federal Government deems appropriate. CONTRACTOR agrees to include this requirement in all of its subcontracts.

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ARTICLE 64. RECYCLED PRODUCTS

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

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

ARTICLE 65. ENERGY CONSERVATION REQUIREMENTS

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 66. CLEAN AIR

A. CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONTRACTOR shall report each violation to AUTHORITY, who will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONTRACTOR agrees to include this requirement in all of its Subcontracts.

B. CONTRACTOR agrees to include this requirement in each subcontract exceeding \$150,000.

ARTICLE 67. CLEAN WATER REQUIREMENTS

A. 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 USDOT and US EPA.

B. CONTRACTOR agrees to include this requirement in each subcontract exceeding \$150,000.

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ARTICLE 68. FLY AMERICA REQUIREMENT

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 sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for the 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. 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 69. BUY AMERICA

A. If the maximum cumulative payment obligation of this AGREEMENT exceeds one hundred fifty thousand dollars (\$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.

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 70. DEBARMENT AND SUSPENSION CERTIFICATION

A. CONTRACTOR's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONTRACTOR or any person associated therewith

in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed in writing to the AUTHORITY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONTRACTOR responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and the dates of agency action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

ARTICLE 71. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, CONTRACTOR hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONTRACTOR within the immediately preceding two-year period because of CONTRACTOR's failure to comply with an order of a federal court that orders CONTRACTOR to comply with an order of the National Labor Relations Board.

ARTICLE 72. CONFIDENTIALITY OF DATA

A. All financial, statistical, personal, technical, or other data and information relative to the AUTHORITY's operations, which are designated confidential by the AUTHORITY and made available to the CONTRACTOR in order to carry out this Agreement, shall be protected by the CONTRACTOR from unauthorized use and disclosure.

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B. Permission to disclose information on one occasion, or public meeting held by the AUTHORITY relating to the Agreement, shall not authorize the CONTRACTOR to further disclose such information or disseminate the same on any other occasion.

C. CONTRACTOR shall not comment publicly to the press or any other media regarding the Agreement or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONTRACTOR's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.

D. CONTRACTOR shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the AUTHORITY, and receipt of the AUTHORITY's written permission.

ARTICLE 73. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONTRACTOR warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any AUTHORITY employee. For breach or violation of this warranty, AUTHORITY shall have the right in its discretion, to terminate the Agreement without liability, to pay only for the value of the work actually performed, or to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE 74. EVALUATION OF CONTRACTOR

CONTRACTOR's performance will be evaluated by AUTHORITY. A copy of the evaluation will be sent to CONTRACTOR for comments. The evaluation together with any comments shall be retained as part of the Agreement record.

ARTICLE 75. 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.

ARTICLE 76. NO THIRD-PARTY BENEFICIARIES

Unless otherwise expressly stated herein, it is not intended under this Agreement to create any third-party beneficiaries under the Agreement or to authorize anyone not a Party to the Agreement to maintain any legal action or other proceeding for any cause of action or claim based on the Agreement.

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2 This AGREEMENT shall be made effective upon execution by both parties.

3 **IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT No. C-0-2690 to be
4 executed on the date first above written.

5 **CONTRACTOR**

ORANGE COUNTY TRANSPORTATION AUTHORITY

6
7 By: _____

By: _____

8 Darrell Johnson
Chief Executive Officer

9
10 APPROVED AS TO FORM:

11
12 By: _____

13 James M. Donich
General Counsel

14
15 APPROVED:

16
17 By: _____

18 Kirk Avila
General Manager
Express Lanes Programs

19
20 Date: _____

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS

I. DBE Participation

It is the CONTRACTOR'S responsibility to be fully informed regarding the requirements of 49 CFR, Part 26 and AUTHORITY's DBE program developed pursuant to these regulations.

If CONTRACTOR has committed to utilize a DBE in the performance of this U.S. DOT-assisted contract, CONTRACTOR'S submitted "DBE Participation Commitment Form," in combination with the executed subcontract and/or purchase order will be utilized to monitor CONTRACTOR'S DBE commitment. Unless otherwise directed and/or approved by AUTHORITY prior, CONTRACTOR must not effectuate any changes to its DBE participation commitment.

CONTRACTOR must complete and submit all required DBE documentation to effectively capture DBE utilization on AUTHORITY's U.S. DOT-assisted contracts whether achieved race neutrally or race consciously. No changes to CONTRACTOR'S DBE commitment shall be made until proper review and approval by AUTHORITY is rendered in writing.

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

- A. Take appropriate actions to ensure that it will satisfy good faith efforts to meet the DBE agreement goal and continue to meet the DBE commitment made at award, when change orders or other modifications alter the dollar amount of the Agreement or the distribution of work. CONTRACTOR must apply and report its DBE goal commitment against the total Agreement value, including any 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"), 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 Financial Assistance Programs".

The project is subject to these stipulated regulations and AUTHORITY's DBE Program. To ensure that AUTHORITY achieves its overall DBE Program goals and objectives, AUTHORITY encourages the participation of DBEs as defined in 49 CFR, Part 26, in the performance of agreements financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of AUTHORITY to:

Fulfill the spirit and intent of the DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have an equitable opportunity to compete for and participate in AUTHORITY's U.S. DOT-assisted contracts and subcontracts. AUTHORITY is firmly committed to the DBE Program objectives, which are designed to:

- A. Ensure non-discrimination in the award and administration of AUTHORITY's U.S. DOT-assisted contracts;
- B. Create a level playing field by which DBE's can fairly compete for AUTHORITY's U.S. DOT-assisted contracts;
- C. Ensure that AUTHORITY's DBE Program and Overall Goals are narrowly tailored in accordance with applicable law;
- D. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBE's in the AUTHORITY's DBE Program;
- E. Help remove barriers which impede the participation of DBE's in AUTHORITY's U.S. DOT-assisted contracts;
- F. Promote the use of DBE's in all types of U.S. DOT-assisted contracts and procurement activities conducted by AUTHORITY;
- G. Provide training and other assistance through our resource partners to address capital, bonding, and insurance needs;
- H. Assist in the development of DBE firms that can compete successfully in the marketplace outside of the DBE Program; and
- I. Establish and provide opportunities for DBEs by providing flexibility in the implementation of AUTHORITY's DBE Program.

CONTRACTOR must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontractor. 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 AUTHORITY's DBE Program with respect to U.S. DOT-assisted contracts, the Regulations must prevail.

III. AUTHORITY's DBE Policy Implementation Directives

Pursuant to the provisions associated with Title 49 CFR, Part 26, the Disadvantaged Business Enterprise ("DBE") Program exists to ensure participation, equitable competition, and assistance

to participants in the U.S. DOT DBE program. Accordingly, based on the AUTHORITY's analysis of its past utilization data, coupled with Overall Goal Methodology findings and examination of similar Agencies' disparity studies, AUTHORITY's DBE Program is implemented utilizing both race-conscious and race-neutral means. When a contract-specific DBE goal is assigned to a project, 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.

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 fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least fifty-one percent (51%) 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 Small Business Administration (SBA) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
3. ***"Socially and Economically Disadvantaged Individuals"*** means any individual who is a citizens (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
 - a) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
 - b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa";
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race";

- iii. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaskan Natives, or Native Hawaiians";
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong";
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;"
 - vi. Women; and
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- c) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.
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 CONTRACTOR.
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 Agreement 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 attempts to participate in a U.S. 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. 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. AUTHORITY may refer cases of identified fraud to the Department of Justice, for prosecution under 18 U.S.C. 1001, or any other applicable provisions of law. Any person who makes a false or fraudulent statement in connection with participation of a DBE in any U.S. 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 AUTHORITY 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 and/or DBE commitment on the Agreement, CONTRACTOR must complete and submit within the specified timelines, the following DBE documentation, electronically through e-mail or an AUTHORITY-approved electronic reporting system consistent with CONTRACTOR'S DBE goal commitment:

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

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

The CONTRACTOR is required to complete and submit this form to AUTHORITY by the 10th of each month until completion of the Agreement. CONTRACTOR must submit first Form 103 following the first month of Agreement activity. Even if no DBE participation will be reported within a period, CONTRACTOR must execute and return the form.

The Form 103 must include the following information:

1. General Agreement Information – Including Agreement Number and Title, CONTRACTOR Name and the following:
 - a) Original Agreement Amount
 - b) Running Total of Change Order Amount
 - c) Current Agreement Amount
 - d) Amount Paid to CONTRACTOR during Month
 - e) Amount Paid to CONTRACTOR from Inception to Date
 - f) DBE Contract Goal
 - g) Total Dollar Amount of DBE Commitment

h) DBE Commitment as Percentage of Current Agreement Amount

2. Listed and Proposed CONTRACTOR/Subcontractor Information – For All DBE participation being claimed either race-neutrally or race-consciously, regardless of tier:

- a) DBE Firm Name, Address, Phone Number, DBE Capacity Type, Certification Type and Certification Number.
- b) DBE Firm Contract Value Information:
Original Contract Amount, running total of change order amount, Current Contract Amount, Amount Paid to CONTRACTOR or Subcontractor(s) During Month and Amount Paid to CONTRACTOR or Subcontractor(s) to date.

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

3. CONTRACTOR Assurance of Full Compliance with Prompt Payment Provisions

CONTRACTOR must sign the prompt payment assurance statement of compliance contained within the Monthly Form 103, providing assurance that timely payments have been issued to all Subcontractors in accordance with regulatory mandates and as required by 49 CFR Part 26.29.

4. CONTRACTOR Payment Verification Summary

CONTRACTOR is to further maintain and submit a Verification of Payment Summary inclusive of 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 payment made. The Verification of Payment Summary must also include:

DBE(s) and non DBE(s) invoice number, invoice amount, invoice date, CONTRACTOR'S invoice number that incorporated the corresponding DBE and non-DBE invoice(s) for billing purposes, date of invoice submission to AUTHORITY, date and amount AUTHORITY paid on CONTRACTOR'S Invoice. The report must 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 DBEs and non-DBEs.

CONTRACTOR to submit a Verification of Payment Summary with the Monthly Form 103 submission for each DBE firm in which CONTRACTOR has reflected a value

paid within the reporting period. Verification of Payment Summary must be signed by the applicable DBE and submitted with Form 103 to authenticate reported payments.

B. "Monthly DBE Trucking Verification" Form

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

CONTRACTOR must also obtain and submit documentation to 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.

C. DBE Subcontract Agreements

CONTRACTOR must submit to AUTHORITY copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten (10) working days of award. CONTRACTOR must immediately notify AUTHORITY in writing, of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

D. Semi-Annual Subcontractor Paid Report Summary

AUTHORITY will require CONTRACTOR (inclusive of DBE primes) to report payment data to lower-tiers on a semi-annual basis each year, using the "Semi-Annual Subcontractor Paid Report Summary." These reports will capture payments to CONTRACTOR and payments to non-DBEs within the respective reporting period. Reported payments to lower-tiers must include a signed payment verification form.

CONTRACTOR will adhere to the following submittal schedule:

- April 10th Report, reporting period: October 1st through March 31st
- October 10th Report, reporting period: April 1st through September 30th

E. Final Report-Utilization of Disadvantaged Business Enterprises (DBE)

Upon completion of the project, CONTRACTOR must complete and submit a "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), Subcontractors," certified correct by CONTRACTOR or the CONTRACTOR'S authorized representative,

to facilitate reporting and capturing DBE attainments at conclusion of the project. The form must be furnished to AUTHORITY within thirty (30) days from the date of the project. The amount of ten-thousand dollars (\$10,000) will be withheld from payment until a satisfactory form is submitted.

F. Disadvantaged Business Enterprises (DBE) Certification Status Change

If a DBE Subtractor is decertified during the life of the project, the decertified Subcontractor must notify the CONTRACTOR in writing with the date of decertification. If a Subcontractor becomes a certified DBE during the life of the project, the Subcontractor must notify CONTRACTOR in writing with the date of certification (Attach DBE certification/decertification letter). CONTRACTOR must furnish the written documentation to AUTHORITY within ten (10) days of receipt. Upon completion of the project, the "Disadvantaged Business Enterprises (DBE) Certification Status Change" must be signed and certified correct by the CONTRACTOR indicating the DBEs' existing certification status. If there are no changes, indicate "No Changes." The signed and certified form must be furnished to AUTHORITY within thirty (30) days from the date of project acceptance.

Failure to submit any of the required submittals above and their support documentation within the specified timeline shall result in a penalty of ten dollars (\$10) per day, per submittal document.

AUTHORITY requires CONTRACTOR to maintain records and documents of payments to lower-tiers, including DBEs, for a period of four (4) years from the date of final payment by AUTHORITY, unless otherwise provided by applicable record retention requirements for CONTRACTOR'S agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of AUTHORITY. This reporting requirement extends to all lower-tiers, both DBE and non-DBE.

AUTHORITY reserves the right, at its sole discretion, to demonstrate responsiveness to requirements of CFR 49 Part 26.37 by implementing the following method(s):

- a) Posting CONTRACTOR payment data to a website, database, or other place accessible to Subcontractors to assist them in determining when they should expect to receive payment.
- b) Requiring CONTRACTOR to use an automated reporting system, inclusive of, but not limited to, real time entry of payments made and received by CONTRACTOR and their lower-tiers.

V. DBE Eligibility and Commercially Useful Function Standards

A DBE must be certified at the time of bid/proposal submission:

1. A DBE must be a small business firm defined pursuant to 13 CFR Part 121 and be certified through the California Unified Certification Program ("CUCP") at the time of bid submission. A listing of DBEs certified by the CUCP is available at the following source:

The CUCP web site, which can be accessed at <http://www.dot.ca.gov/hq/bep>.

2. A DBE may participate as a prime CONTRACTOR, Subcontractor, joint venture partner, 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 work 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. The use of joint-checks for DBE firms must be approved by AUTHORITY prior to execution, and a joint-check agreement must accompany the request to AUTHORITY.
5. A DBE must perform a commercially useful function in accordance with 49 CFR Part 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 Agreement, at any tier, only the value of the work proposed to be performed by the DBE with its own work force may be counted towards DBE participation. If CONTRACTOR 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 Subcontractor, the value of the subcontracted work may be counted toward DBE participation only if the Subcontractor is a certified DBE and performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the CONTRACTOR'S DBE attainment.
 2. CONTRACTOR is to calculate and credit participation by eligible DBE vendors of equipment, materials, and supplies toward DBE attainment as follows:
 - a) Sixty percent (60%) of expenditures for equipment, materials, and supplies

- required under the Agreement obtained from a regular dealer; or
- b) One hundred percent (100%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a DBE manufacturer.
3. The following types of fees or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward CONTRACTOR'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 Agreement;
 - 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 Agreement.
4. CONTRACTOR 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 equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by the DBE-owned trucks or leased trucks with DBE drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - f) The DBE may lease trucks without drivers from a non-DBE truck leasing

company and if the DBE uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

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 CONTRACTOR listed a non-certified, 1st tier Subcontractor to perform work on this Agreement, and the non-certified Subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward DBE participation on the Agreement. If a DBE CONTRACTOR performs the installation of purchased materials and supplies, they are eligible for full credit of the cost of the materials.
6. CONTRACTOR is advised not to report the participation of DBE(s) toward the CONTRACTOR'S DBE attainment until the amount being claimed has been paid to the DBE.

VII. DBE Substitution, Termination and On-Going Good Faith Efforts

AUTHORITY requires that CONTRACTOR not terminate a DBE without AUTHORITY's prior written consent. This includes, but is not limited to, instances in which CONTRACTOR seeks to perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, or with another DBE firm.

AUTHORITY will provide such written consent only if it agrees, for reasons stated in the concurrence document, that CONTRACTOR has good cause to terminate the DBE firm. For purposes of this section, good cause includes the following circumstances:

- A. The listed DBE subcontractor fails or refuses to execute a written contract;
- B. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE Subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of CONTRACTOR;
- C. The listed DBE subcontractor fails or refuses to meet CONTRACTOR'S reasonable, nondiscriminatory bond requirements;
- D. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

- E. The listed DBE Subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 108, 215 and 1,200 or applicable state law;
- F. CONTRACTOR has determined that the listed DBE Subcontractor is not a responsible CONTRACTOR;
- G. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- H. The listed DBE is ineligible to receive DBE credit for the type of work required;
- I. A DBE owner dies or becomes disabled with the result that the listed DBE CONTRACTOR is unable to complete its work on the contract;
- J. Other documented good cause that you determine compels the termination of the DBE. Provided, that good cause does not exist if CONTRACTOR seeks to terminate a DBE it relied upon to obtain the Agreement so that CONTRACTOR can self-perform the work for which the DBE CONTRACTOR was engaged or so that CONTRACTOR can substitute another DBE or non-DBE CONTRACTOR after Agreement award.

Before transmitting to AUTHORITY its request to terminate and/or substitute a DBE subcontractor, CONTRACTOR must give notice in writing to the DBE, with a copy to AUTHORITY, of its intent to request to terminate and/or substitute, and the reason for the request.

CONTRACTOR must give the DBE five (5) days to respond to CONTRACTOR'S notice and advise AUTHORITY and CONTRACTOR of the reasons, if any, why it objects to the proposed termination of its subcontract or purchase order and why AUTHORITY should not approve CONTRACTOR'S action. If required in a particular case as a matter of public necessity (e.g. safety), CONTRACTOR may provide a response period shorter than five (5) days.

In the event of an approved DBE substitution, termination, or failure of a DBE to complete its work on the contract for any reason, the DBE must be substituted with another DBE or adequate good faith efforts must be documented by CONTRACTOR within five (5) days, to the extent needed to meet the contract-specific DBE goal. Note: The five (5) day period may be extended for an additional five (5) days if necessary, at the request of the CONTRACTOR.

The substitute DBE must be certified as a DBE at the time of request for substitution. CONTRACTOR shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section and is approved by AUTHORITY.

Should CONTRACTOR elect to submit a good faith effort documentation in lieu of proposing

additional DBE participation, AUTHORITY will review the documentation and provide a written determination to CONTRACTOR stating whether or not good faith efforts have been adequately demonstrated.

The substitute DBE cannot work on the Agreement until its work eligibility has been confirmed and required subcontracts, supplies, trucking commitments, or other services have been approved by AUTHORITY.

VIII. Additional DBE Subcontractors

In the event CONTRACTOR identifies additional DBE Subcontractors or suppliers not previously identified by CONTRACTOR for DBE participation under the Agreement, CONTRACTOR must notify AUTHORITY by submitting "Request for Additional DBE Firm," to enable AUTHORITY to verify the firm's eligibility, capacity, CUF and ensure there is not a scope conflict with another listed firm. Proposed firms cannot be applied towards CONTRACTOR'S DBE participation until approved by AUTHORITY.

CONTRACTOR 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 specific 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 U.S. DOT-assisted contracts. CONTRACTOR is 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. Dispute Resolution

All contracts in excess of five-hundred thousand dollars (\$500,000) shall contain provisions or conditions which will allow for dispute resolution remedies in instances where CONTRACTORs violate or breach DBE Program requirements, inclusive but not limited to, prompt payment and provide for such sanctions and penalties as may be appropriate.

CONTRACTOR shall incorporate this Section into each subcontract related to work arising under this Agreement and shall not incorporate by reference.

CONTRACTOR and subcontractor agree to notify AUTHORITY within five (5) business days of any prompt payment and/or DBE Program disputes which cannot be settled by discussions

between the parties involved.

CONTRACTOR and subcontractor further agree to proceed through informal meetings, mediation, or any combination thereof as further detailed below. Dispute submittals shall include the method(s) of dispute resolution selected, terms, timeframes, and a detailed summary of assistance being requested (as applicable).

I. INFORMAL MEETINGS:

AUTHORITY is available to assist CONTRACTOR with coordination of informal meeting requests to assist in the resolution of disputes between CONTRACTOR and subcontractor. AUTHORITY's DBELO or a designated DBE support representative will conduct the informal meetings with parties in dispute. Representatives from CONTRACTOR and subcontractor for the purpose of dispute resolution, must include individuals authorized to bind each interested party. All parties must agree to the procedure.

II. Mediation

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. AUTHORITY's DBELO and her designated support staff is considered an independent third party. Submission to informal mediation is voluntary; it is not binding and offers advisory opinions.

Performance During Dispute: Unless otherwise directed by AUTHORITY, CONTRACTOR and its sub tiers shall continue performance under the Agreement while matters in dispute are being resolved.

Flow Down Requirements: The dispute resolution provisions flow down to all tiers.

These provisions shall not apply to disputes between CONTRACTOR and AUTHORITY. These provisions do not alter in any way or waive compliance with other provisions in the Agreement.

XI. Administrative Remedies and Enforcement

CONTRACTOR 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 subcontractors, regardless of tier, are also fully compliant. 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 AUTHORITY deems appropriate, which may include, but is not limited to:

Withholding monthly progress payments;

Assessing sanctions;

Liquidated damages; and/or

Disqualifying CONTRACTOR from future bidding/proposing as non-responsible.

In instances of identified non-compliance, a Cure Notice will be issued to CONTRACTOR identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

CONTRACTOR 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 AUTHORITY to reconsider AUTHORITY's DBE determination.

Failure to respond within the ten (10) working day period will constitute a waiver of CONTRACTOR'S right to appeal. If CONTRACTOR files an appeal, 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 CONTRACTOR'S appeal, AUTHORITY decides to uphold the decision to impose DBE administrative remedies on CONTRACTOR, the written determination must state the specific remedy(ies) 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 the Agreement and is subject to administrative remedies including withholding at a 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, AUTHORITY will release all withholdings.

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

EXHIBIT F: MILESTONE PAYMENT SCHEDULE

Milestone Payment Schedule

A. Payments for System Costs (Excluding Hardware, Equipment and Off-the-Shelf Software)				
Payment Number	Payment Milestone	% Paid	Cum % Paid	\$
A-1	Notice to Proceed (Mobilization)	5.00%	5.00%	\$
A-2	Baseline Project Management Plan, Baseline Implementation Schedule, Software Development Plan and Quality Assurance Plan Approved	4.00%	9.00%	\$
A-3	I-405 CSC and WIC Facility Design Inputs	2.00%	11.00%	\$
A-4	Requirements Traceability Matrix Approved	3.00%	14.00%	\$
A-5	Business Rules Approved	3.00%	17.00%	\$
A-6	System Detailed Design Document Approved	8.00%	25.00%	\$
A-7	Approval of all Remaining BOS Design, Installation, End of Agreement Transition, Training, Disaster Recovery, Business Continuity, Maintenance Plans	5.00%	30.00%	\$
A-8	CSC Operations and Facility Mobilization Plan, Staffing and Human Resources Plan, Reporting and Reconciliation Plan and SOPs Approved	4.00%	34.00%	\$
A-9	Master Test Plan Approved	4.00%	38.00%	\$
A-10	All Manuals and Third-Party Documentation	2.00%	40.00%	
A-11	Software Walkthrough and Update of RTM Approved	4.00%	44.00%	\$
A-12	Unit Testing Approved	4.00%	48.00%	\$
A-13	System Integration Testing Approved	4.00%	52.00%	\$
A-14	User Acceptance Testing Approved	5.00%	57.00%	\$
A-15	Approval of all Training Plans Materials and Manuals	3.00%	60.00%	\$
A-16	Training Completed	3.00%	63.00%	\$
A-17	Achieve Commencement or Ramp-up/Customer Services	3.00%	66.00%	\$
A-18	Onsite Installation and Commissioning Testing (includes updated SDDD, traceability matrix and business rules documents), and Go-Live Testing Approved	5.00%	71.00%	\$
A-19	Acceptance of Operational Readiness Demonstration	4.00%	75.00%	\$
A-20	Go-Live	10.00%	85.00%	\$
A-21	Operational and Acceptance Testing Approved	10.00%	95.00%	\$
A-22	BOS Acceptance	5.00%	100.00%	\$

B. Payments for Hardware, Equipment and Off-the-Shelf Software				
Payment Number	Payment Milestone	% Paid	Cum.% Paid	\$
B-1	Ordering Approved by Authority and Verified	10.00%	10.00%	\$
B-2	Verified Received	45.00%	55.00%	\$
B-3	Verified Installed in Final Configuration and Location	45.00%	100.00%	\$

**EXHIBIT G: LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL
SPECIFICATIONS**

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

PART I – GENERAL

1.1 GENERAL HEALTH, SAFETY & 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, bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work, contracts or agreements with the Authority. 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 safety standards, non-conformance of Authority health, safety and environmental compliance department (HSEC) requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor or its subcontractors may be cause for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. The health, safety, and environmental 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 planned and performed, and safe conditions shall be maintained during the course of this work scope.
- D. The Authority Project Manager shall be responsible to ensure a safety orientation is conducted of known potential hazards and emergency procedures for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to commencement of the project.
- E. The Contractor shall ensure that all Contractor vehicles, including those of its subcontractors, suppliers, vendors and employees are parked in designated parking areas, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.
- F. California Code of Regulations (CCR) Title 8 Standards are minimum requirements; each Contractor is encouraged to exceed minimum requirements. When the Contractor's safety requirements exceed statutory standards, the more stringent requirements shall be achieved for the safeguard of public and workers.

G. INJURY AND ILLNESS PREVENTION PLAN

The Contractor shall submit to the Authority, a copy of their company Injury and Illness Prevention Plan (IIPP) in accordance with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors.

- H. Contractor shall provide a copy of the Policy or Program of Company's Substance Abuse Prevention Policy that complies with the most recent Drug Free Workplace Act.

1.2 HEAT ILLNESS PREVENTION PROGRAM

- A. Contractor shall provide a copy of their company Heat Illness Prevention Program in accordance with CCR Title 8, Section 3395, Heat Illness Prevention.

1.3 HAZARD COMMUNICATION

- A. Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to use on Authority property and/or project work areas Contractor shall provide the Authority Project Manager copies of MSDS for all applicable products used, if any.
- B. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.
- C. The Contractor shall protect property and water resources from fuels and similar products throughout the duration of the contract. Contractor shall comply with Storm Water Pollution Prevention Plan (SWPPP) requirements.

1.4 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 immediate verbal notice followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.
- C. 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 lead 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.

1.5 PERSONAL PROTECTIVE EQUIPMENT

- A. The Contractor, its subcontractors, suppliers, and employees are required to comply with applicable personal protective equipment (PPE) requirements while performing work at any Authority project or property. Generally minimum PPE requirements include eye protection; hearing protection, head protection, class 2 safety reflective vests, and appropriate footwear.
- B. The Contractor, its subcontractors, suppliers, and employees are required to provide their own PPE, including eye, head, foot, and hand protection, safety vests, or other PPE required to perform their work safely on Authority projects or property. The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.

1.6 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 14050 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. OCTA Yard Safety Rules

END OF SECTION

FORM A: OFFEROR'S QUESTIONS FORM

Offeror Name:

Offeror's Questions Form

Question No.	Page	Section	Section Description	Offeror's Question	Authority Response
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

FORM B: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

The attached Campaign Contribution Disclosure Form must be completed by applicants for, or persons who are the subject of, any proceeding involving a license, permit, or other entitlement for use pending before the Board of Directors of the OCTA or any of its affiliated agencies. (Please see next page for definitions of these terms.)

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

- A. If you are an applicant for, or the subject of, any proceeding involving a license, permit, or other entitlement for use, you are prohibited from making a campaign contribution of more than \$250 to any board member or his or her alternate. This prohibition begins on the date your application is filed or the proceeding is otherwise initiated, and the prohibition ends three months after a final decision is rendered by the Board of Directors. In addition, no board member or alternate may solicit or accept a campaign contribution of more than \$250 from you during this period.
- B. These prohibitions also apply to your agents, and, if you are a closely held corporation, to your majority shareholder as well. These prohibitions also apply to your subcontractor(s), joint venturer(s), and partner(s) in this proceeding. Also included are parent companies and subsidiary companies directed and controlled by you, and political action committees directed and controlled by you.
- C. You must file the attached disclosure form and disclose whether you or your agent(s) have in the aggregate contributed more than \$250 to any board member or his or her alternate during the 12-month period preceding the filing of the application or the initiation of the proceeding.
- D. If you or your agent have in the aggregate contributed more than \$250 to any individual board member or his/or her alternate during the 12 months preceding the decision on the application or proceeding, that board member or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the board member or alternate returns the campaign contribution within 30 days from the time the director knows, or should have known, about both the contribution and the fact that you are a party in the proceeding. The Campaign Contribution Disclosure Form should be completed and filed with your proposal, or with the first written document you file or submit after the proceeding commences.

1. A proceeding involving "a license, permit, or other entitlement for use" includes all business, professional, trade and land use licenses and permits, and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor or personal employment contracts), and all franchises.
2. Your "agent" is someone who represents you in connection with a proceeding involving a license, permit or other entitlement for use. If an individual acting as an agent is also acting in his or her capacity as an employee or member of a law, architectural, engineering, consulting firm, or similar business entity, both the business entity and the individual are "agents."
3. To determine whether a campaign contribution of more than \$250 has been made by you, campaign contributions made by you within the preceding 12 months must be aggregated with those made by your agent within the preceding 12 months or the period of the agency, whichever is shorter. Contributions made by your majority shareholder (if a closely held corporation), your subcontractor(s), your joint venturer(s), and your partner(s) in this proceeding must also be included as part of the aggregation. Campaign contributions made to different directors or their alternates are not aggregated.
4. A list of the members and alternates of the Board of Directors is attached.

This notice summarizes the major requirements of Government Code Section 84308 of the Political Reform Act and California Code of Regulations, Title 2 Sections 18438-18438.8.

ORANGE COUNTY TRANSPORTATION AUTHORITY
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: _____ RFP Title: _____

Was a campaign contribution made to any OCTA Board Member within the preceding 12 months, regardless of dollar amount of the contribution by either the proposing firm, proposed Subcontractors and/or agent/lobbyist? Yes _____ No _____

If no, please sign and date below.

If yes, please provide the following information:

Prime Contractor Firm Name: _____

Contributor or Contributor Firm's Name: _____

Contributor or Contributor Firm's Address: _____

Is Contributor:

- | | | |
|---|-----------|----------|
| <input type="radio"/> The Prime Contractor | Yes _____ | No _____ |
| <input type="radio"/> Subcontractor | Yes _____ | No _____ |
| <input type="radio"/> Agent/Lobbyist hired by Prime
to represent the Prime in this RFP | Yes _____ | No _____ |

Note: Under the State of California Government Code section 84308 and California Code of Regulations, Title 2, Section 18438, campaign contributions made by the Prime Contractor and the Prime Contractor's agent/lobbyist who is representing the Prime Contractor in this RFP must be aggregated together to determine the total campaign contribution made by the Prime Contractor.

Identify the Board Member(s) to whom you, your Subcontractors, and/or agent/lobbyist made campaign contributions, the name of the contributor, the dates of contribution(s) in the preceding 12 months and dollar amount of the contribution. Each date must include the exact month, day, and year of the contribution.

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Date: _____

Signature of Contributor

Print Firm Name

Print Name of Contributor

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

Board of Directors

Steve Jones, Chairman
Andrew Do, Vice Chairman
Lisa A. Bartlett, Director
Doug Chaffee, Director
Laurie Davies, Director
Barbara Delgleize, Director
Michael Hennessey, Director
Gene Hernandez, Director
Joseph Muller, Director
Mark A. Murphy, Director
Richard Murphy, Director
Miguel Pulido, Director
Tim Shaw, Director
Harry S. Sidhu, Director
Michelle Steel, Director
Donald P. Wagner, Director

FORM C: STATUS OF PAST AND PRESENT CONTRACTS