

Bids due at 3:00 P.M. with Bids to be opened at 3:15 P.M.  
on October 22, 2019  
at RTA Main Office  
179 Cross Street  
San Luis Obispo, CA 93401

## **SPECIFICATIONS**

### **San Luis Obispo Transit Center Improvements**



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General Conditions  
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Contract

Geoff Straw  
Executive Director

Wallace Group  
San Luis Obispo, California

September 30, 2019

**San Luis Obispo Regional Transit Authority**  
**NOTICE INVITING SEALED BIDS FOR**  
**SAN LUIS OBISPO TRANSIT CENTER**

San Luis Obispo Regional Transit Authority (RTA) invites sealed bids for construction of improvements to the Transit Center at the Corner of Palm and Osos Streets in San Luis Obispo.

All bids submitted shall meet the following terms and conditions:

1. Bids shall be delivered to the RTA main office at 179 Cross Street, Suite A, San Luis Obispo, not later than 3:00 p.m., on October 22, 2019, at 3:15 p.m. on this date all bids will be publicly opened and examined. Bids shall be submitted in a sealed envelope, and the outside of the envelope shall be clearly marked, **REGIONAL TRANSIT AUTHORITY TRANSIT CENTER**. It is sole responsibility of the bidder to see that his/her bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids may be rejected.

**A non-mandatory pre-bid job conference is scheduled for October 7, 2019 at 9 am, at the project site, located at the corner of Palm and Osos Streets in San Luis Obispo, California.**

2. Any bidder may withdraw his or her bid, either personally or by telegram or written request at any time prior to the scheduled closing time for receipt of bids, but no bidder may withdraw his or her bid for a period of thirty (30) days after the opening thereof.

3. All bids submitted shall include a completed "Proposal", which is included in the Bidder Package. Each bid must be accompanied by Cash, Cashiers' Check, Certified Check or Bidder's Bond in an amount equal to not less than 10% (ten percent) of the total amount of the bid price. The work performed under this contract must conform to requirements of the project Technical Specifications and Special Provisions, which are described in the Bidder Package.

4. The contract will be awarded to the lowest responsible bidder (as defined in the RTA purchasing regulations) whose work, in the opinion of the RTA, will best meet the requirements of the RTA. It is clearly understood by all bidders that the RTA reserves the right to reject any and all bids and to waive informalities in said bids.

5. A contractor or 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, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5.

6. In accordance with the provisions of California Labor Code Sections 1770, 1773, 1773.1, 1773.2, 1773.6, and 1773.7, the current prevailing wages in San Luis Obispo County, California, as determined by the Director of the California Department of Industrial Relations as required to be paid to workers, employed directly upon the site of the work.

Pursuant to the provisions of Section 1773 of the California Labor Code, the RTA Board of Directors has obtained from the Director of the California Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work for the locality in which the work is to be performed for each needed craft, classification, or type of workman. Copies of said prevailing rate of per diem wages are on file in the RTA offices and available at the California Department of Industrial Relations' website address at: [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD) . As this is an FTA

funded project it is subject to Federal Prevailing wages in addition to California Prevailing wages as well as all other FTA requirements in Section 16 of the Supplementary General Conditions. Contractor to pay the higher of the two prevailing wages.

Bidders are advised that any contractor who is awarded an RTA construction project and intends to use a craft or classification not shown on the general prevailing wage determination may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of the call for bids.

Travel and Subsistence Payments shall be in accordance with Section 1773.1 of the Labor Code. Wage rates for holiday and overtime work shall be in accordance with Section 1773 of the Labor Code. Attention is directed to the provisions in Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor. Attention is directed to the provisions in Section 1776 of the Labor Code concerning payroll records.

Attention is directed to the provisions in Sections 1810 – 1815 of the Labor Code concerning work hours. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations, pursuant to Labor Code Section 1771.4.

7. Time is of the essence for this project and bidders should review the project time frame contained in the "Special Provisions" to insure they can meet the project guidelines concerning scheduling of work and special actions required in the course of work.

8. A Bidder Package, including plans and specifications, special provisions, sample contract, and bid forms are available electronically at no charge to the Bidder via the RTA website <http://www.slorta.org/about-rtarequest-for-proposals/> A copy of the Bidder Package is also on file at the RTA offices 179 Cross Street, Suite A, San Luis Obispo, CA as well as the SLO Builders Exchange.

9. The contact for technical questions concerning project plans and specifications is Tom Zehnder, Wallace Group, at (805) 544-4011, or by email at tomz@wallacegroup.us. Questions concerning the bid process and general project information should be directed to Geoff Straw, Executive Director, (805) 781-4472, gstraw@slorta.org

Dated: \_\_\_\_\_

\_\_\_\_\_  
Geoff Straw, Executive Director



**NOTICE TO CONTRACTORS  
FOR  
Transit Center**

**CRITICAL DATES AND REQUIREMENTS\***

<b>Advertise:</b>	<b>September 30, 2019</b>
<b>Non-Mandatory Pre-Bid Meeting/ Job Walk:</b>	<b>October 7, 2019 at 9 am at the corner of Palm St and Osos St, San Luis Obispo, California. Attendance is highly recommended, but not mandatory.</b>
<b>Questions/Clarifications Due</b>	<b>October 8, 2019 at 12 pm (noon)</b>
<b>Answers Posted to RTA Website</b>	<b>October 10, 2019 at 5 pm</b>
<b>Bids Due/Bid Opening:</b>	<b>October 22, 2019 at 3:00 pm at RTA Office, Public Opening at 3:15 pm</b>
<b>Contractor License Requirement(s)</b>	<b>Class "A" and City Business License</b>
<b>Project Completion Time:</b>	<b>60 working days</b>
<b>Proposed Board Action to Award:</b>	<b>November 6, 2019 RTA Board Meeting</b>
<b>Pre-Construction Meeting/ Notice to Proceed:</b>	<b>November 13 at 10:00 AM at RTA Office</b>
<b>Construction Start Date:</b>	<b>November 14, 2019</b>
<b>Construction End Date:</b>	<b>February 13, 2020</b>
<b>Notice of Completion Board Action:</b>	<b>March 4, 2020</b>

\*Subject to change upon previous notice

# SUPPLEMENTARY GENERAL CONDITIONS

## SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY TRANSIT CENTER

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## **SUPPLEMENTARY GENERAL CONDITIONS**

The work embraced herein is shown on a set of plans for Transit Center improvements for the RTA, entitled " **REGIONAL TRANSIT AUTHORITY (RTA) TRANSIT CENTER, dated May 23, 2019**

The work, as indicated by the plans shall be done in accordance with the Supplementary General Conditions/Technical Specifications and the Contract annexed hereto, including the General Conditions, which are hereby incorporated by reference. The project shall be completed in 60 working days.

Document Precedence: In case of conflict between documents, the following documents take precedence in the following order.

- Contract between RTA and Contractor
- Supplementary General Conditions
- General Conditions, EJCDC 2018
- Technical Specifications
- Project Plans

### **1. SCOPE**

The Work to be performed under this Contract shall consist of furnishing everything necessary for the fulfillment of the Contract in strict accordance with the requirements of the Contract Documents. The Work shall be complete, and anything not expressly shown or called for in the Contract Documents which may be necessary for the complete and proper construction of the Work in good faith shall be accomplished by the Contractor as though originally so indicated in the Contract Documents, at no increase in cost to the OWNER. The Contractor shall obligate him/herself to satisfactorily complete the Work within the time stipulated in Article 2 of the Instructions to Bidders. The date of the Notice to Proceed issued by the OWNER shall constitute the starting date of the Contract. Upon issuance of the Notice to Proceed, the Contractor shall immediately begin and diligently prosecute the work to completion.

### **2. GENERAL**

These Supplementary General Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated. All provisions which are not so amended or supplemented remain in full force and effect.

### **3. SUPPLEMENTARY DEFINITIONS**

Wherever in these Contract Documents the following terms are used, the intent and meaning shall be shown herein. All terms not listed in the following amended or supplementary definitions shall have the meanings assigned to them in the Standard General Conditions of the Construction Contract:

- 3.1 OWNER as referred to in ARTICLE 1 of the STANDARD GENERAL CONDITIONS of the Construction Contract shall be the SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY. The official address of the OWNER is:

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY  
179 Cross Street, Suite A, San Luis Obispo, CA 93401

- 3.2 ENGINEER as referred to in ARTICLE 1 of the STANDARD GENERAL CONDITIONS of the Construction Contract shall be WALLACE GROUP acting either directly or through properly authorized agents acting within the scope of their particular duties delegated to them or when designated in the Contract.

The official address of the Engineer is:

WALLACE GROUP  
612 Clarion Court  
San Luis Obispo, California 93401

- 3.3 SUBSTANTIAL COMPLETION as defined in ARTICLE 1 of the STANDARD GENERAL CONDITIONS of the Construction Contract is hereby deleted and the following substituted therefore:

Substantial Completion shall exist when there has been no willful departure from the terms of the Contract, and no omission in essential points, and the Contract has been honestly and faithfully performed in its material and substantial particulars, and the only variance from the strict and literal performance consists of technical or unimportant omissions or defects, and that the Work may be utilized for the purposes for which it is intended. Substantial Completion shall mean Completion as evidenced by a certificate of completion filed by the SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY pursuant to the requirements of Sections 3086 and 3093 of the California Civil Code. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

#### **4. AMENDMENTS OR SUPPLEMENTS TO STANDARD GENERAL CONDITIONS**

- 4.1 California Code Requirement: The provisions of ARTICLE 3.02 of the STANDARD GENERAL CONDITIONS of the Construction Contract are hereby amended to be in conformance with the provisions of Section 4215 of the California Government Code. Wherever the term "public agency" is used it shall mean the OWNER. Any repairs or alterations (other than for emergency situations) shall be under the direction of the OWNER.
- 4.2 Nothing herein shall be deemed to require the public agency to indicate the presence of existing utilities wherever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities such as buildings, meter and junction boxes, vaults, pull boxes, etc., on or adjacent to the site of construction; provided, however, that nothing herein shall relieve the public agency from identifying know utilities in the plans and specifications.
- 4.3 If the Contractor, while performing the Contract, discovers utility facilities not identified by the OWNER, he shall immediately notify the OWNER and the utility owner in writing.

- 4.4 The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price at the utility owner's expense.
- 4.5 Partial Payments: The provisions of ARTICLE 15 of the STANDARD GENERAL CONDITIONS of the Construction Contract are hereby amended to include the following provisions.
- 4.5.1 The Contractor shall, once each month, accurately measure and submit in writing, the total amount of the work completed for each line item of the Bid Schedule at the time of such estimate. The OWNER will retain 5 percent of such estimated value of all work done as part security for the fulfillment of this Contract by the Contractor and shall pay monthly to the Contractor, while carrying on the Work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained, under the provisions of this Contract. No such estimate or payment will be required to be made when, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of this Contract, or when in the Engineer's judgment the total value of the work done since the last estimate amounts to less than \$1000. No partial payment shall be made for materials on hand but not installed.
- 4.5.2 In order to confirm the amounts due under this paragraph, the Contractor shall file with the Engineer a schedule of values of the work completed, based upon the unit price set forth in the Bid Schedule, in the manner specified in ARTICLE 15.01 of the STANDARD GENERAL CONDITIONS of the Construction Contract provided that where the Schedule of Values is referred to, it shall mean the Bid Sheet.
- 4.5.3 The retained percentage as specified herein will be held by the OWNER and will be due and payable to the Contractor 35 calendar days after final acceptance of the Work by action of the SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY; provided, there have been no Stop Notices served upon the OWNER, as set forth in ARTICLE 4.5.1 of these SUPPLEMENTARY GENERAL CONDITIONS.

## **5. CONSTRUCTION DRAWINGS**

- 5.1 The location of the Work, its general nature and extent, and the form and general dimensions of the Project and appurtenant work is shown on the Contract Drawings and are hereby made a part of these Contract Documents.
- 5.2 The Contractor shall submit Shop Drawings of all variations between the Work as actually constructed. Such shop drawings shall be made accessible to the Engineer at all times during the construction period and shall be delivered to the Engineer upon completion of the work. No monthly progress payments will be made covering any work which has not been recorded "as constructed" on the Shop Drawings.
- 5.3 Article 2.02.A of the General Conditions is modified as follows: "Owner will not furnish to Contractor printed or hard copies of the Drawings and Project Manual.



Any copies desired by Bidder shall be reproduced by Bidder at Bidders' expense, from the electronic bid documents provided by Owner."

## **6. LIQUIDATED DAMAGES**

- 6.1 Per article 6.01(a) of the Contract between Owner and Contractor.
- 6.2 California Code Requirements: In accordance with the requirements of Paragraph (b) of Section 4215 of the California Government Code, the Contractor will not be assessed liquidated damages for delay in completing the Work to the extent that such delay is caused by the failure of the Owner or of a utility company, OWNER, or other agency to provide for or accomplish the relocation of an existing utility facility in a street, sidewalk or on the project site.

## **7. PERMITS AND INSURANCE REQUIRED UNDER SUCH PERMITS**

- 7.1 A City of San Luis Obispo Encroachment Permit for this Work is required. Refer also to Section 01 11 00, Summary of Work.

## **8. DELIVERY AND STORAGE OF MATERIALS**

- 8.1 All packaged manufactured products for use on the Work shall be delivered to the Work site in their original, unopened packages, bearing thereon the manufacturer's name and the brand name of the product.
- 8.2 Whenever any product or material is selected to be used on the Work, all such products or materials shall be of the same brand and manufacture throughout the Work.
- 8.3 All materials shall be stored in such a manner that they will be completely protected from weather damage.

## **9. APPLICABLE ORDINANCES AND REGULATIONS**

- 9.1 The Work is located in the City of San Luis Obispo, California. In the performance of the Work the Contractor shall comply with all ordinances, regulations, and other lawful requirements of said OWNER and County and of the State, Federal, and other public authorities within their respective jurisdictions governing work on public property. In particular, the Contractor's attention is directed to the fact that all work hereunder shall conform to or exceed all requirements of the Construction Safety Orders of Cal-OSHA.
- 9.2 Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street, alleyway, or parking area during the performance of the Work hereunder.

## **10. ADDITIONAL CALIFORNIA CODE REQUIREMENTS**

- 10.1 Deposit of Securities in Lieu of Retainage: On written request of the Contractor, and at the sole expense of the Contractor, the Contractor may deposit securities in an amount equivalent and in lieu of any monies retained by the OWNER pursuant to the terms of the Contract. Said deposits shall be made pursuant to and in accordance with the terms and provisions of Chapter 13 of the Division 5 of Title I of the Government Code, commencing at Section 4590. The securities

may be deposited with the OWNER or with a State or Federally-chartered bank as an escrow agent. If the securities are deposited with a bank, the Contractor shall furnish the OWNER with written proof of said deposit and an executed counterpart of the escrow or deposit instructions. Said instructions must contain a statement that said securities will not be released to anyone except upon written instructions of an authorized representative of the OWNER, which statement must recite that the purpose for which the deposit was made has been satisfied. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

- 10.2 Securities eligible for deposit under this section shall be those listed in Section 16430 of the Government Code, or bank or savings and loan certificates of deposit.
- 10.3 The Contractor shall be the beneficial owner of any securities substituted for monies retained, and the Contractor shall receive any interest that is paid thereon.
- 10.4 Assignment of Antitrust Claims: The Contractor offers and agrees to assign to the OWNER all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (14 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700 of Part 2 of Division 7 of the California Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract. This assignment shall become effective at the time that the OWNER tenders final payment to the Contractor, without further acknowledgment by the parties. The Contractor shall have the rights set forth in Sections 4553 and 4554 of the California Government Code.
- 10.5 Labor Discrimination: No discrimination shall be made in the employment of persons on the Work by the Contractor or by any subcontractor because of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, mental disability, sexual orientation or sex except as permitted by Section 12940 of the California Government Code.
- 10.6 Fair Employment Practice: In the performance of this Contract, the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, physical disability, mental disability, medical condition or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated, without regard to their race, color, religion, ancestry, sex, sexual orientation, age, national origin, physical handicap, medical condition, or marital status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. See Chapter 6 of Part 2.8 of Division 3 of the California Government Code commencing at Section 12940 for further details.
- 10.7 The Contractor shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California, for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract.

- 10.8 The OWNER may determine a willful violation of the Fair Employment Practices provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which the Contractor was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the Fair Employment and Housing Act and has issued an order, which has become final, or obtained an injunction.
- 10.9 For willful violation of this Fair Employment Practices provision, the OWNER shall have the right to terminate this Contract either in whole or in part, and any loss or damage sustained by the OWNER in securing the goods or services hereunder shall be borne and paid for by the Contractor and by its surety under the Performance Bond, if any, and the OWNER may deduct from any monies due or that thereafter may become due to the Contractor, the difference between the price named in the Contract and the actual cost thereof to the OWNER.
- 10.10 Notice to Labor Unions: The Contractor, and any subcontractors, shall give written notice of their obligation under this Fair Employment Practice section of this Contract and of the applicable sections of the California Fair Employment and Housing Act to the labor organization with which they have a collective bargaining or other agreement. (See California Government Code Section 12990).
- 10.11 Payroll Records: The Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor in the manner provided in Labor Code Section 1776. In the event of noncompliance with the requirements of this Section, the Contractor shall have 10 calendar days to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty, forfeit to the OWNER 25 dollars for each worker for each calendar day or portion thereof, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this Section is with the Contractor.
- 10.12 Wage Rates: As required under Sections 1770 et seq of the California Labor Code, the Contractor shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). The Contractor shall post a copy of such determination at each job site. Refer to the Notice Inviting Sealed Bids for further California Labor Code requirements for Contractor registration with DIR in accordance with California Labor Code Section 1725.5. As this is an FTA funded project it is subject to Federal Prevailing wages in addition to California Prevailing wages. Contractor to pay the higher of the two prevailing wages
- 10.13 The Contractor shall, as a penalty to the OWNER, forfeit \$25.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing

rates as determined by the Director for such work or craft in which such worker is employed for any public work done under the Contract by the Contractor or by any subcontractor under it.

- 10.14 Working Hours: The Contractor shall comply with all applicable provisions of Section 1810 to 1815, inclusive of the California Labor Code relating to working hours. The Contractor shall, as a penalty to the OWNER, forfeit \$25.00 for each worker employed in the execution of the Contract by the Contractor or by any subcontractor for each calendar day during which such worker was required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of 8 hours at not less than 1-1/2 times the basic rate of pay.
- 10.15 First Aid For Employees: Pursuant to the provisions of the California Labor Code Section 6708, each Contractor and Subcontractor shall maintain or make available adequate emergency first aid treatment for its employees, agents, and representatives. As used herein, the word "adequate" shall be construed to mean sufficient to comply with the Federal Occupational Safety and Health Act (P.L. 91-596 OSHA) and the applicable requirements of Cal-OSHA. (See 29 USCA Section 651 et seq.)
- 10.16 Apprentices on Public Works: The Contractor shall comply with all applicable provisions of Section 1777.5 and 1777.6 of the California Labor Code relating to the employment of apprentices on public works.
- 10.17 Unpaid Claims: If at any time prior to the expiration of the period for service of a Stop Notice, there is served upon the OWNER a Stop Notice as provided in Sections 3170 through 3210 of the California Civil Code, the OWNER shall, until the discharge thereof, withhold the monies under its control so much of said monies due or to income due the Contractor under this Contract which shall be sufficient to answer the claim stated in such Stop Notice and to provide for the reasonable cost of any litigation thereunder; provided, that if the Engineer shall, in its discretion, permit the Contractor to file with the OWNER the Bond referred to in Section 3196 of the California Civil Code, said monies shall not thereafter be withheld on account of such Stop Notice.
- 10.18 Travel and Subsistence Pay: As required under Section 1773.8 of the California Labor Code, the Contractor shall pay travel and subsistence payments to each worker needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with said Section 1773.8.

## **11. INSURANCE**

- 11.1 General: In all insurance policies required hereunder, the insurance certificate shall evidence a firm commitment by the insurance company to notify the OWNER and Engineer of the expiration or cancellation of any of the insurance policies required hereunder not less than 30 calendar days before such expiration or cancellation is effective.
- 11.2 Insurance Amounts:

Policy Limits: In accordance with the RTA Contract, Article 9.

Additional Named Insureds: All such insurance shall include as additional named insureds: the OWNER; the Engineer and its Consultants.

- 11.3 Article 6.06 of the General Conditions is modified, to delete the requirements for the specified property insurance. All other provisions of Article 6.06 shall remain the same.

## **12. ACCESS TO PROJECT SITE**

- 12.1 The Contractor shall give the OWNER a minimum of 5 working days notice prior to arriving at the project site at the start of construction.

## **13. INTERRUPTION TO UTILITY SERVICES**

- 13.1 48-Hour Notice: The Contractor shall give the OWNER a minimum of 48 hours notice prior to the interruption of any utility service.
- 13.2 The interruption of utility services shall be only made during off-peak hours, with the expressed written permission of the OWNER. Off peak hours are defined as 9:00 p.m. to 5:00 a.m. Monday through Friday.

## **14. MODIFICATIONS; PERFORMANCE; PAYMENT**

(Timely progress payments; legislative intent; payment requests)

- 14.1 It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.

It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.

- 14.2 Any local agency which fails to make any progress payment within 30 calendar days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.
- 14.3 Upon receipt of a payment request, each local agency shall act in accordance with both of the following:

Each payment request shall be reviewed by the local agency as soon as possible as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven calendar days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

14.4 The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).

14.5 For purposes of this article:

A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.

A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.

A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.

14.6 Each local agency shall require that this article, or a summary thereof, be set forth in terms of any contract subject to this article.

14.7 Bid Schedule:

All pay line items will be paid for at the unit prices named in the Bid Schedule for the respective items of work. The quantities of work or material stated as unit price items on the Bid Schedule are supplied only to give an indication of the general scope of the Work: The OWNER does not expressly nor by implication agree that the actual amount of work or material will correspond therewith, and reserves the right after award to increase or decrease the quantity of any item of work by an amount up to and including 25 percent of any bid item in its entirety, or to add additional bid items up to and including an aggregate total amount not to exceed 25 percent of the contract price.

Quantity variations in excess of the allowable quantity changes specified herein shall be subject to the provisions of Article 13 of the STANDARD GENERAL CONDITIONS.

Payments to DBEs will not be withheld

## 15. DISPUTE RESOLUTION

15.1 Per Contract between RTA and Contractor, Article 15.05.

## 16. FEDERALLY REQUIRED CONTRACT CLAUSES

16.1 **Access to Records and Reports.** The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and

papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

**16.2 Bonding Requirements.** Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. This section supersedes Article 6.01 of the Standard General Conditions. Sample certifications and forms are provided at the end of this section. The following minimum requirements apply:

- a. Bid Guarantee – Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the RTA. The amount of such guaranty shall be equal to 5% of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the RTA reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of RTA.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [90] days after the bid opening without the written consent of the RTA, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent the RTA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense the RTA for the damages occasioned by default, then the undersigned bidder agrees to indemnify the RTA and pay over to the RTA the difference between the bid guarantee and the RTA's total damages so as to make the RTA whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

- b. Performance Guarantee – A Performance Guarantee in the amount of 100% of the Contract value is required by the RTA to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the RTA within ten (10) business days from Contract execution. The RTA requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the RTA and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. The RTA may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The RTA may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the RTA if:

1. A bank in good standing issues it. The RTA will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The RTA is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract.



7. The expiration date of the Letter of Credit coincides with the term of this Agreement.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the RTA and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in this section) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

- c. Payment Bonds – A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to the RTA as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to the RTA and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

**16.3 Clean Air Act and Federal Water Pollution Control Act.** The Contractor agrees:

- a. It will not use any violating facilities;
- b. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- c. It will report violations of use of prohibited facilities to FTA; and
- d. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

**16.4 Civil Rights Laws and Regulations.** The following apply:

Civil Rights and Equal Opportunity

The RTA is an Equal Opportunity Employer. As such, the RTA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the RTA agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof:

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

Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

b. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

16.5 **Disadvantaged Business Enterprise (DBE)**. For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the RTA's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

### Overview

It is the policy of the RTA and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBEs"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the RTA to:

- a. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- b. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- d. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBEs;
- e. Help remove barriers to the participation of DBEs in DOT assisted contracts;
- f. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and

- g. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The RTA shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the RTA may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the RTA.

#### Contract Assurance

The Contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the RTA deems appropriate.

#### DBE Participation

For the purpose of this Contract, the RTA will accept only DBEs who are:

- a. Certified, at the time of bid opening or proposal evaluation, by the Caltrans; or
- b. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
- c. Certified by another agency approved by the RTA.

#### DBE Participation Goal

The DBE participation goal for this Contract is set at 5.1%. This goal represents those elements of work under this Contract performed by qualified DBEs for amounts totaling **not less than** 5.1% of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

#### Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

- a. A completed DBE Utilization Form (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.

- b. A list of those qualified DBEs with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the DBE Participation Schedule (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the RTA.
- c. An original DBE Letter of Intent (see below) from each DBE listed in the DBE Participation Schedule.
- d. An original DBE Affidavit (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

#### Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the RTA will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the RTA will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

- a. Documented communication with the RTA's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
- b. Pre-bid meeting attendance. At the pre-bid meeting, the RTA generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
- c. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
- d. Written notification to DBEs encouraging participation in the proposed Contract; and
- e. Efforts made to identify specific portions of the work that might be performed by DBEs.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBEs for elements of the Contract:

- a. The names, addresses, and telephone numbers of DBEs that were contacted;

- b. A description of the information provided to targeted DBEs regarding the specifications and bid proposals for portions of the work;
- c. Efforts made to assist DBEs contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

#### Administrative Reconsideration

Within five (5) business days of being informed by the RTA that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the RTA's Civil Rights Officer, Tania Arnold. Ms. Arnold will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The RTA will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the RTA's prior written consent. The RTA may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the RTA in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this

procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

#### Continued Compliance

The RTA shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the RTA that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- a. DBE utilization established for the Contract;
- b. Total value of expenditures with DBE firms for the quarter;
- c. The value of expenditures with each DBE firm for the quarter by race and gender;
- d. Total value of expenditures with DBE firms from inception of the Contract; and
- e. The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the RTA Civil Rights Officer. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- a. The RTA to have access to necessary records to examine information as the RTA deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- b. The authorized representative(s) of the RTA, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- c. All data/record(s) pertaining to DBE shall be maintained as stated in Section 16.1.

#### Sanctions for Violations

If at any time the RTA has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the RTA may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- a. Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- b. Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

Below are sample certifications and forms that will be included in the underlying Contractor agreement.



### DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offeror is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

### DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBEs participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

#### DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm

- 16.6 **Employee Protections.** The RTA has provided a copy of the current prevailing wage determination issued by the Department of Labor in this solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

#### Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the 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. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. 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." The 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.

#### Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 this clause in the sum of \$10 for each calendar day on which such individual was required or permitted

to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

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

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

- 16.7 **Energy Conservation.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

16.8 **Government-Wide Debarment and Suspension.** The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;
- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the RTA. If it is later determined by the RTA that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the RTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16.9 **Lobbying Restrictions.** Upon award, the undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b. 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 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name & Title of Contractor's Authorized Official

\_\_\_\_\_ Date

16.10 **No Government Obligation to Third Parties.** The RTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the RTA, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

16.11 **Program Fraud And False or Fraudulent Statements and Related Acts.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud

Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

16.12 **Recycled Products.** The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

16.13 **Safe Operation of Motor Vehicles.** The following apply:

Seat Belt Use – The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or the RTA.

Distracted Driving – The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

16.14 **Termination.** The following apply:

Termination for Convenience

The RTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the RTA’s best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to RTA to be paid the Contractor. If the Contractor has any property in its possession belonging to RTA, the Contractor will account for the same, and dispose of it in the manner RTA directs.

### Opportunity to Cure

The RTA, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to RTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from the RTA setting forth the nature of said breach or default, the RTA shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the RTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### Waiver of Remedies for any Breach

In the event that the RTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the RTA shall not limit the RTA's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, the RTA may terminate this contract for default. The RTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the RTA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the RTA resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the RTA in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

- a. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the RTA, acts of another contractor in the performance of a contract with the RTA, epidemics, quarantine restrictions, strikes, freight embargoes; and
- b. The Contractor, within [10] days from the beginning of any delay, notifies the RTA in writing of the causes of delay. If, in the judgment of the RTA, the delay is excusable, the time for completing the work shall be extended. The judgment of the RTA shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the RTA.

**16.15 Violation and Breach of Contract.** The following apply:

Rights and Remedies of the RTA

The RTA shall have the following rights in the event that the RTA deems the Contractor guilty of a breach of any term under the Contract.

- a. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
- b. The right to cancel this Contract as to any or all of the work yet to be performed;
- c. The right to specific performance, an injunction or any other appropriate equitable remedy; and
- d. The right to money damages.

For purposes of this Contract, breach shall include failure to abide by the terms and conditions described in the Contract, Supplementary General Conditions, General Conditions, Technical Specifications and/or Project Plans.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the RTA, the Contractor expressly agrees that no default, act or omission of the RTA shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the RTA directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the RTA will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the RTA takes action contemplated herein, the RTA will provide the Contractor with sixty (60) days written notice that the RTA considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.



### Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the RTA Deputy Director. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the RTA Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the RTA's direction or decisions made thereof.

### Performance during Dispute

Unless otherwise directed by the RTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

### Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the RTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the County of San Luis Obispo, California.

### Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the RTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such

action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**END SUPPLEMENTARY GENERAL CONDITIONS**

# **CONDITIONS OF THE CONTRACT (GENERAL CONDITIONS)**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*
    - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
  13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
  14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
  15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
  16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
  17. *Cost of the Work*—See Paragraph 13.01 for definition.
  18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
  19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
  20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - 1. does not conform to the Contract Documents;
  - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
  - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2—PRELIMINARY MATTERS**

### **2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance***

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### **2.02 *Copies of Documents***

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

### **2.03 *Before Starting Construction***

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
  - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.



## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in



Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
  - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
  - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
  - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

#### 6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);



4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
  2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

**ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3) has a proven record of performance and availability of responsive service; and
  - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 *Substitutes*

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
  - a. will certify that the proposed substitute item will:
    - 1) perform adequately the functions and achieve the results called for by the general design;
    - 2) be similar in substance to the item specified; and
    - 3) be suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.



#### 7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
  2. *Samples*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

*E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
  - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
  2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

**7.17 Contractor's General Warranty and Guarantee**

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
1. Observations by Engineer;
  2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Shop Drawing or Sample submittal;
  6. The issuance of a notice of acceptability by Engineer;
  7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **ARTICLE 8—OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.



- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02 *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

### **9.03 *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **9.04 *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
  - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
  - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
  - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

### 10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

### 10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

## **ARTICLE 11—CHANGES TO THE CONTRACT**

### **11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

### **11.02 *Change Orders***

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

### **11.03 *Work Change Directives***

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.



#### 11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

#### B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### **ARTICLE 12—CLAIMS**

#### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
  1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
  - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
  5. Other costs consisting of the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

**ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.



- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

**14.07 Owner May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

**ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

**15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

**D. *Payment Becomes Due***

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

**E. *Reductions in Payment by Owner***

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

#### 15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.



- d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  2. agree with the other party to submit the dispute to another dispute resolution process; or
  3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18—MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **18.02 *Computation of Times***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

- a. DBE utilization established for the Contract;
- b. Total value of expenditures with DBE firms for the quarter;
- c. The value of expenditures with each DBE firm for the quarter by race and gender;
- d. Total value of expenditures with DBE firms from inception of the Contract; and
- e. The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the RTA Civil Rights Officer. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- a. The RTA to have access to necessary records to examine information as the RTA deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- b. The authorized representative(s) of the RTA, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- c. All data/record(s) pertaining to DBE shall be maintained as stated in Section 16.1.

#### Sanctions for Violations

If at any time the RTA has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the RTA may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- a. Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- b. Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

Below are sample certifications and forms that will be included in the underlying Contractor agreement.

**SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY**  
San Luis Obispo County, California

**REGIONAL TRANSIT AUTHORITY TRANSIT CENTER**

**TECHNICAL SPECIFICATIONS**

These technical specifications were prepared by various professionals qualified in their respective disciplines. The following professionals were responsible for preparing these technical specifications, and their initials are indicated by each specification section as being the responsible engineer of record (EOR) for corresponding sections prepared by each respective EOR. Profession seals on these technical specifications correspond to the Specification Divisions noted:

- Thomas Zehnder (TKZ) C72702



**SPECIFICATIONS GROUP**

**GENERAL REQUIREMENTS SUBGROUP**

**Division 01 – General Requirements**

01 11 00	Summary of Work.....	TKZ
01 20 00	Price and Payment Procedures .....	TKZ
01 30 00	Administrative Requirements .....	TKZ
01 33 00	Submittal Procedures.....	TKZ
01 35 00	Special Project Procedures.....	TKZ
01 50 00	Temporary Facilities and Controls.....	TKZ
01 55 26	Traffic Control .....	TKZ
01 57 23	Temporary Storm Water Pollution Control .....	TKZ
01 60 00	Product Requirements .....	TKZ
01 70 00	Execution and Closeout Requirements .....	TKZ
01 75 00	Starting and Adjusting.....	TKZ

**FACILITY CONSTRUCTION SUBGROUP**

**Division 02 – Existing Conditions**

02 21 00	Surveys.....	TKZ
02 42 00	Removal and Salvage of Construction Materials.....	TKZ

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SECTION 01 11 00  
SUMMARY OF WORK

PART 1 GENERAL

1.1 WORK INCLUDED

- A. The Work includes construction of improvements to the existing RTA Transit Center as shown in the Contract Documents:

The supply of all labor, supervision, equipment and materials necessary to renovate and commission the Transit Center in San Luis Obispo, California. The scope shall include, but not be limited to the removal of the existing structures, grading as denoted, utilities to and from the improvements, placement of structures and construction of flatwork and landscaping as outlined in these documents. Refer to Section 01 20 00 for further definition.

1.2 WORK NOT INCLUDED

- A. Except for such auxiliary work as is shown or specified or is necessary as a part of the construction, the following work is NOT included in this Contract.

1. Work shown but marked "NIC" (Not in Contract) or otherwise designated to be performed by others.

1.3 EQUIPMENT PROVIDED BY RTA

- A. The following equipment is provided by RTA and is available at the RTA Yard on Cross Street

1. LED signs
2. Ticket Vending Machine
3. Kiosk
4. Bus Shelters
5. Benches
6. Trash Receptacles

- B. This equipment shall be installed by the Contractor utilizing anchor bolts provided by the contractor.

- C. Electrical equipment once placed by the contractor shall be connected/terminated by the equipment vendor who is under contract by the RTA.

1.4 LOCATION OF SITE

- A. The project site is located at the intersection of Palm and Osos Streets in the City of San Luis Obispo, CA California.

1.5 SPECIFICATIONS

- A. The Specifications are those bound in the Project Manual and shown on the project drawings. All sections of the Project Manual, including Notice Inviting Bids and Instructions to Bidders, are part of the Contract Documents for this Work. The Project Manual consists of the Notice Inviting Bids, Instructions to Bidders, Contract and State Board Grant Agreement, General Conditions of the Contract for Construction, Supplementary General Conditions, Division 01, and Division 02 technical specifications.

1.6 DRAWINGS

- A. The Drawings consist of 20 sheets prepared by Wallace Group and GECE, Inc.

1.7 INTERRUPTION OF SERVICES

- A. Interruptions to any services for the purpose of making or breaking connection shall be made only after consultation with the RTA and Engineer a minimum of one week in advance of connection break and shall be at such time and of such duration as may be directed.
- B. Existing County Fiber and Electrical services shall remain fully operational during the Work, with no disruptions whatsoever.

1.8 SEQUENCE OF CONSTRUCTION OPERATIONS

- A. Submit Construction Work Plan at Pre-Construction Meeting, dovetailing sequencing details with Schedule as required in Section 01 32 16, Construction Progress Schedule. RTA and Engineer will approve such plan prior to Contractor starting construction operations. Work Plan shall describe in detail how RTA bus operations and County Fiber and Electrical Services will be maintained and protected during construction. Work plan will also coordinate on the installation of the ITS items (LED signs, and Ticket Vending Machine) with Connexionz and GFI, respectively. These vendors will need to do the on-site hook ups/validation, and their lead-time needs to be considered. Contractor coordinate onsite hook up and validation with them but that they are under contract with RTA.
- B. Prior to commencement of Work and within 7 calendar days of Notice to Proceed, verify and confirm, to the RTA's Representative in writing, the existing grades, elevations and conditions of the site. Any discrepancies between existing conditions and the contract documents must be brought to the RTA's attention during that time frame.
- C. Prepare schedules as set forth in Section 01 32 16, Construction Progress Schedule.

1.9 HOURS OF WORK

- A. Perform Work of this Contract on normal workdays and within normal work hours; 8:00 am to 6:00 pm Monday through Friday, and as specified for night work. For road closure restrictions, see Section 01 55 26. After hours work and work on Saturdays, Sundays, and RTA holidays, may be permitted if approval is received from the RTA Executive Director or Designee at least 3 working days in advance, at no additional

cost to RTA. When Contractor schedules Work on non-working days or after hours work, the Contractor shall be responsible for the overtime costs incurred by the RTA, County, City for inspections or other related activities, unless such scheduled was requested by Engineer.

- B. Continuously keep existing drainage facilities, walks, and paved areas clean and free of mud and dirt, obstacles, etc., and protect against damage.
- C. Schedule the Work to accommodate RTA occupancy and use of the Site, including facilities owned by the County.
- D. Closeout Timetable. Coordinate with RTA to establish dates for equipment, testing, acceptance periods, and on-site instructional periods (as required under the Contract). Such dates shall be established not less than one week prior to beginning any of the foregoing items, to allow the RTA and their authorized representatives sufficient time to schedule attendance at such activities. Refer to Section 01 75 00, Starting and Adjusting.
- E. Final Submittals: Prior to requesting final payment, obtain and submit the following items to the Engineer for transmittal to the RTA:
  - 1. Written guarantees, where required.
  - 2. Operating manuals and instructions.
  - 3. Completed record drawings per Section 01 70 00.
  - 4. Certificates of inspection and acceptance by local governing agencies having jurisdiction, including but not limited to RTA, County of San Luis Obispo and City of San Luis Obispo.
  - 5. Releases from all parties who are entitled to claims against the subject project, property, or improvement pursuant to the provisions of law.

#### 1.10 PERMITS

- A. Contractor shall be responsible for securing identified permits, paying associated fees, bonds and charges associated with such permits, application submittals and re-submittals.
  - 1. Encroachment Permit. A City of San Luis Obispo encroachment permit for the Work is required of the Contractor.
  - 2. Provide detailed stormwater pollution control plan, see Section 01 57 20, Temporary Stormwater Pollution Control, Paragraph 1.04.

#### 1.11 SITE ACCESS

- A. All Work is in the City of San Luis Obispo right-of-way, or on County property.

#### 1.12 EXCAVATIONS OR TRENCHING FOR UNDERGROUND UTILITIES AND STORM DRAINS

- A. Time intervals between excavation or trenching and installation of conduit or piping or other work concerned, and backfilling operations shall be kept to absolute minimum.
- B. Excavations or trenching crossing roadways and other traffic areas shall be provided with skid-resistant traffic bearing steel plates; pedestrian and bicycle paths shall be provided with skid-resistant traffic bearing steel plates, or other materials approved by RTA.

1.13 PROTECTION OF EXISTING STRUCTURES AND UTILITIES

- A. Refer to the General Conditions and other Division 01 Sections for Contractor responsibilities.
- B. Damage to existing improvements caused by Contractor's operations, either on-site or on adjacent sites, shall be repaired to restore damaged items to their original condition. Cost of such repair shall be borne entirely by Contractor.
- C. Drawings indicate existing structures, drainage lines, water, gas, electrical and other similar items and utilities that are known to the RTA.
- D. Locate known existing structures and utilities before proceeding with construction. Maintain them in service, except as otherwise specified. Provide protection and repair damage to them caused by the Work at no increase in Contract price.

1.14 GEOTECHNICAL INVESTIGATION

- A. Geotechnical investigations have not been performed for the RTA

1.15

END OF SECTION

## SECTION 01 20 00

### PRICE AND PAYMENT PROCEDURES

#### PART 1 GENERAL

- 1.01 This Section describes the methods of measurement and payment for the specific bid items. All other provisions of the Contract Documents which relate to measurement and payment are applicable, except that where conflicts occur between this section and other provisions of the technical specifications or reference specifications, this measurement and payment section shall prevail.

#### PART 2 PRODUCTS

Not Used.

#### PART 3 EXECUTION

##### 3.01 GENERAL

- A. All work shown, described, or otherwise required by the Contract Documents, shall be included within the given bid items.
- B. Payment for all bid items shall include full compensation for all equipment, materials, labor, tools, trucking, and all other incidental work necessary to construct complete and operational systems which conform to the Contract Documents.

##### 3.02 MEASUREMENT AND PAYMENT FOR BID ITEMS

- A. All lengths shall be measured in a horizontal plane (plan view dimensions), unless otherwise specified. All areas measured shall be based on the specified measurement definition included in each bid item description.
- B. All work shown, described, or otherwise required by the Contract Documents, shall be included within the given bid items.
- C. Basis for the submitted bid shall be on the quantities shown for the items on the Bid Sheet.
- D. Unit definitions of Measurement and Payment
  - 1. "Lump Sum", or "LS", shall mean a single Lump Sum Payment for the identified bid item. Partial payments may be made, based on the Engineer's estimate of the percent completion of the specified item. Provide schedule of values for lump sum bid items with pay designation of "SV" on the bid schedule. Refer to Section 01 30 00, Administrative Requirements, Para. 1.04 for submittal requirements for Schedule of Values.
  - 2. "Each" shall mean the actual number of identified bid items provided. Payment for the identified bid item will be based on providing each item, complete and in place in accordance with the contract documents.

3. Measurable units of quantity expressed in “Linear Feet” or “LF”; “Cubic Yard or CY”; “Ton”; “SF” or “SY” shall mean the number of indicated measurable quantities of the bid item. Payment for the identified bid item will be based on actual and measured quantities of the bid item installed.
4. For quantity changes for unit price work, refer to the General Conditions, Paragraph 11.03, and the Supplemental Conditions, Paragraph 14.7.

E. Final Pay Quantities.

1. Bid items that are designated a Final Pay Quantity bid item by having the notation (F) or (S-F) shown on the bid sheet or by designation in this Section 01 20 00, Measurement and Payment.
2. The quantity shown on the bid sheet for a Final Pay Quantity shall be the final pay quantity used for the purpose of payments, unless the dimensions of any portion of the item are modified by the Engineer, or the item or any portion of the item is eliminated.
3. If the dimensions of any portion of a Final Pay Quantity bid item are changed, and the changes result in an increase or decrease in the quantity of the item, the final pay quantity will be revised by the change in quantity.
4. If a portion of a Final Pay Quantity item, or the item is eliminated, the final pay quantity will be adjusted by the quantity eliminated.
5. The estimated quantity shown on the bid sheet for a Final Pay Quantity bid item shall be considered as an estimate only and no guarantee is made that a quantity computed based on the details and the plans, will equal the estimated quantity shown on the bid sheet. No allowance is made in the event that a computed quantity does not equal the estimate quantity.
6. In the case of a discrepancy between a quantity shown on the plans, and an estimated quantity shown on the bid sheet for a Final Pay Quantity item, payment will be based on the quantity shown on the bid sheet.

**Bid Item No. 1 – Traffic Control**

- A. Units: Lump Sum (LS)
- B. Measurement: Partial payments based on Engineer’s determination.
- C. Payment: Payment includes full compensation for all work required to complete the contract requirements for traffic control
- D. Scope of bid item: traffic control includes, but is not limited to the following:
  1. Preparation of approved traffic control plans, specific to Bid Schedule
  2. Managing and notifying public and safety personnel (fire, police), utility services (US mail, garbage, etc.) of road closures, parking restrictions and other traffic related matters.
  3. Providing traffic control including flagmen, warning signs, cones, warning devices and other such labor, materials and equipment to provide traffic control for the Work.
  4. All other incidental work necessary to complete traffic control in accordance with the Contract Documents.

## **Bid Item No. 2 – Storm Water Pollution Control/SWPPP**

- A. Units: Lump Sum (LS)
- B. Measurement: Partial payments based on Engineer's determination.
- C. Payment: Payment includes full compensation for all work required to complete the contract requirements for storm water pollution control/SWPPP
- D. Scope of bid item: storm water pollution control/SWPPP includes, but is not limited to the following:
  - 1. Proper management of storm water in accordance with local and State requirements, specifically relating to the project.
  - 2. SWPPP preparation, compliance with all SWPPP requirements including QSP inspections during construction. Complying with all reporting, monitoring, inspection and permitting requirements for protection of water quality.
  - 3. All other incidental work necessary to complete storm water pollution control/SWPPP in accordance with the Contract Documents.

## **Bid Item No. 3 – Mobilization/Demobilization**

- A. Units: Lump Sum
- B. Measurement: Partial payments based on Engineer's determination. Payment: Payment includes full compensation for all work required to complete the contract requirements for mobilization/demobilization.
  - 1. No payment for mobilization/demobilization - A work will be made until all the listed items have been completed to the satisfaction of the RTA.
  - 2. Contractor shall be compensated no more than 70% of total bid value for Mobilization/Demobilization for mobilization; the remaining 30% of the total bid value will be paid for as part of the Final Payment.
- C. Scope of bid item: Mobilization/demobilization includes, but is not limited to the following:
  - 1. Mobilization/demobilization at the Project site
  - 2. Obtaining all required bonds, insurance, and permits.
  - 3. Posting all Cal-OSHA required notices and establishment of safety programs and injury and illness prevention plan (IIPP).
  - 4. Moving onto the site of all Contractors' plant and equipment required for project operations.
  - 5. Arranging for and erection of Contractor's work areas and storage yards.
  - 6. Coordination with utility companies during construction activities adjacent to utility agency facilities.
  - 7. Providing and installing temporary communication facilities.
  - 8. Potholing existing utilities to verify locations of subsurface utilities
  - 9. Providing construction water and on-site sanitary facilities.

10. Designation of the Contractor's superintendent who will be present at the job site full time.
11. Documenting construction progress, including pre- and post-construction photographs, and progress photographs.
12. Preparing and submitting field record drawings.
13. Removing equipment, personnel, temporary facilities, and other construction resources at job completion.
14. Site cleanup.
15. All other incidental work as specified in Division 01 of the Specifications, and as necessary to complete mobilization/demobilization in accordance with the Contract Documents.

**Bid Items No. 4-5 – Site Clearing, Demolition and Earthwork**

- A. Units: As Indicated on Bid Schedule
- B. Measurement: Partial payments based on Engineer's determination.
- C. Payment: Payment includes full compensation for all work required to complete the contract requirements for Site Clearing, Demolition and Earthwork
- D. Scope of bid item: Site Clearing, Demolition and Earthwork includes, but is not limited to the following:
  1. Excavation of material as required to achieve design grades and elevations
  2. Removal of existing concrete as show on the project plans
  3. All other incidental work as specified in Division 01 of the Specifications, and as necessary to complete mobilization/demobilization - A in accordance with the Contract Documents.

**Bid Items No. 6-19 – Site Work/Facilities**

- A. Units: As Indicated on Bid Schedule
- B. Measurement: Partial payments based on Engineer's determination.
- C. Payment: Payment includes full compensation for all work required to complete the contract requirements for Site Work/Facilities
- D. Scope of bid item: Site Work/Facilities includes, but is not limited to the following:
  1. Construction of 4" concrete sidewalk with associated tiles and curb
  2. Construction of Shelter Footings
  3. Installation of Shelters, Benches, Kiosk, Ticket Vending Machine, LED signage, Bike Rack and repair station, Trash receptacles, and site fencing
  4. All other incidental work as specified in Division 01 of the Specifications, and as necessary to complete Site Work/Facilities in accordance with the Contract Documents.



## **Bid Item No. 20 – Electrical/Communications**

- E. Units: Lump Sum (LS)
- F. Measurement: Partial payments based on Engineer’s determination.
- G. Payment: Payment includes full compensation for all work required to complete the contract requirements for Electrical/Communications
- H. Scope of bid item: Electrical/Communications includes, but is not limited to the following:
  - 1. Installation of conduit, conductors, terminal boxes, vaults, as well as the termination of conductors, communication cabling and other related appurtances Construction of 4” concrete sidewalk with associated tiles and curb
  - 2. Contractor coordinate on the installation of the ITS items (LED signs, and Ticket Vending Machine) with Connexionz and GFI, respectively. These vendors will complete the on-site hook ups/validation. As they are under contract with RTA.
  - 3. All other incidental work as specified in Division 01 of the Specifications, and as necessary to complete Electrical/Communications in accordance with the Contract Documents.

## **Bid Items No. 21-27 – Landscape Planting**

- I. Units: As Indicated on Bid Schedule
- J. Measurement: Partial payments based on Engineer’s determination.
- K. Payment: Payment includes full compensation for all work required to complete the contract requirements for Landscape Planting
- L. Scope of bid item: Landscape Planting includes, but is not limited to the following:
  - 1. Installation of new tree with associated tree guard
  - 2. Retrofit existing irrigation
  - 3. Planting of shrubs
  - 4. Placement of bend a board, new sod and mulch
  - 5. All other incidental work as specified in Division 01 of the Specifications, and as necessary to complete Landscape Planting in accordance with the Contract Documents.

## **Bid Item No. 28 - Construction Survey**

- A. Units: Lump Sum (LS)
- B. Measurement: Partial payments based on Engineer’s determination.
- C. Payment: Payment includes full compensation for all work required to complete the contract requirements for construction survey.
- D. Scope of bid item: Construction survey includes, but is not limited to the following:
  - 1. All survey work related to the project

2. All other incidental work necessary to complete construction survey in accordance with the Contract Documents.

## TESTING

- A. RTA will perform or will contract for the performance of the following tests. The RTA will pay for the costs of the initial tests. Should test results show that any work, construction, materials, or methods is unacceptable, the Contractor shall pay for all costs associated with any necessary retesting before or after corrective measures have been made. Such costs will be deducted from payments due to the Contractor.
  1. Compaction Test - Testing for soil compaction will be provided by a Soils Engineer under separate contract with the RTA.
- B. The Contractor shall furnish and pay for all labor, materials, tools, and supplies required to make the following performance tests in the presence of the Engineer:
  1. Electrical testing for the electrical system

All tests must be passed, and any test reports requested by the RTA shall be provided to the RTA prior to acceptance of the work.

**END OF SECTION**

## SECTION 01 30 00

### ADMINISTRATIVE REQUIREMENTS

#### PART 1 GENERAL

##### 1.01 PROJECT CONTROL

- A. The RTA's Representative will outline and detail communication, correspondence and coordination procedures at the Project pre-construction meeting.
- B. Given that three public agencies are involved in the project (RTA – lessee of property and source of project funds, County – Property Owner, City of San Luis Obispo – ROW), the County take the lead in inspecting and signing off on the project (in coordination with RTA's project manager during construction)
- C. Condition of Work in Place: Inspect and take responsibility for previously prepared or installed work of other contractors before applying subsequent materials or finishes. If work is in unsatisfactory condition, notify the RTA. Do not proceed until defective work has been corrected.
- D. Coordination:
  - 1. Subletting and Subcontracting Responsibilities: Refer to General Conditions of the Contract for Construction, Article 7.07.
  - 2. Perform and complete checking and coordination before commencing construction in the affected areas.
  - 3. Carefully examine Drawings relating to entire work with actual conditions so that Work will be accommodated in spaces provided. General arrangement and location of elements of various systems is shown on the Drawings or specified. Final locations, levels, etc., shall be governed by actual material size used, by conditions encountered, and by work of all trades. Space conflicts and interferences shall be resolved before work is installed.
  - 4. Utilize the Contract Documents, submittals, and layout drawings of the various trades to check and coordinate the Work so that no interferences or conflicts between trades will occur. This checking and coordination shall be performed and completed before construction is commenced in each affected area.
  - 5. Coordinate the work to assure efficient and orderly sequence of installation of construction elements. Make provisions for accommodating items installed by the RTA or under separate contracts.
  - 6. Verify that the characteristics of interrelated operating equipment are compatible, and coordinate all Work required for installing, connecting and placing such equipment into service.

##### 1.02 LOCATIONS, ELEVATIONS, AND LAYOUT OF WORK

- A. Property lines, location ties, and elevations of components of the Project to be built under this Contract are shown on the Drawings. Grade elevations shown for various parts of the Work are taken from a bench mark shown on the Drawings, or if not shown, will be designated by the RTA. In case of conflict therein, notify the RTA in writing before starting work.

- B. Lay out the Work and furnish surveys required for alignment and elevations of the Work, and pay all costs therefore. Provide necessary lines, levels, locations, measurements and markers for all on the Work and be responsible for their accuracy.

#### 1.03 SCHEDULES AND MEETINGS

- A. Planning and Scheduling: Provide a project schedule as outlined herein.
- B. Provide updated project schedules per Paragraph 1.03.C below, including realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings, and samples and purchase and delivery of products requiring long lead-time procurement. This schedule will be broken down into activities of 4 weeks maximum duration, with the exception of procurement. Each activity shall be explicit in definition and location of work.
- C. The schedule shall be updated 1) once per month, 2) whenever work is behind schedule to an extent greater than 14 days, and 3) to add change order work which impacts schedule.
- D. Project and Pre-installation Meetings: Contractor or his duly appointed representative shall attend project meetings at regular intervals as set by the RTA and shall attend pre-installation meetings as required by pertinent Specification Sections. Attendance shall be limited to the Contractor and his immediate subordinates, subcontractors where so specified, the RTA, and representatives of the Engineer and Consultants, as requested. RTA, or RTA's duly appointed representative, will keep minutes of meetings; with copies sent to all who attend. Meetings shall be held at the job site, or RTA offices depending on meeting agenda, duration of meeting or other considerations by RTA.

#### 1.04 SCHEDULE OF VALUES

- A. Provide a Schedule of Values for those contract lump sum items identified in the Bid Schedule designated by "SV". Submit Schedule of Values to the Engineer for review and approval within 15 working days following notice to proceed, or at the pre-construction kickoff meeting, whichever occurs first. Schedule of Values will be approved, in writing, by the Engineer before any partial payment will be made for the applicable lump sum items of Work.
- B. Submit to the RTA for acceptance, in the form directed by or acceptable to the RTA, a complete schedule of the values of the various portions of the Work, including quantities and unit prices if required by the RTA, aggregating the Contract Price (except in cases and to the extent that accepted unit prices form the basis for payment). The schedule shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction and to coordinate with the progress schedule required for this Work, and shall be supported by such data to substantiate its correctness as the RTA may require. Each item in the schedule of values shall include its proper share of overhead and profit. An unbalanced breakdown providing for overpayment to the Contractor on items of Work which would be performed first will not be approved. The schedule of values, when accepted by the RTA, shall be used only as a basis for the Contractor's applications for payment and not for additions to or deductions from the Contract Price. The initial

submittal for the schedule of values shall be provide at the preconstruction conference or within 10 days of the Notice to Proceed, whichever comes sooner.

- C. Determine the quantities required to complete the Work shown on the plans. The quantities and their values shall be included in the cost breakdowns submitted to the Engineer for approval. The Contractor shall be responsible for the accuracy of the quantities and values used in the cost breakdowns submitted for approval. The sum of the amounts for the line items of work listed in each cost breakdown table for the lump sum items shall be equal to the contract lump sum price bid for same items.
- D. No adjustment in compensation will be made in the contract lump sum prices paid for these lump sum bid items resulting from differences between the quantities shown in the cost breakdowns furnished by the Contractor and the quantities required to complete the Work as shown on the plans and as specified in these Technical Specifications.
- E. Individual line item values in the approved cost breakdown tables will be used to determine partial payments during the progress of the Work and as the basis for calculating an adjustment in compensation for the contract lump sum items due to changes in line items of work ordered by the Engineer.

#### **END OF SECTION**

SECTION 01 33 00  
SUBMITTAL PROCEDURES

PART 1 GENERAL

1.01 DESCRIPTION

This Section covers requirements for submittals in addition to those stated in elsewhere in the Contract Documents and forms a part of all other Specification Sections in which submittals are specified or required. Refer to the specific Sections and Divisions of the Specifications for additional submittal requirements.

- A. Submittal Requirements Included in this Section.
  - 1. Number of submittal copies required.
  - 2. CPM progress schedule.
  - 3. Shop drawings.
  - 4. Samples.
  - 5. Materials lists and equipment data.
  - 6. Instruction (operation and maintenance) manuals.
  - 7. Installation instructions.
  - 8. Seismic calculations.
  - 9. Record drawings and specifications.
  - 10. Certificates.
  - 11. Schedule of values.
  
- B. Submittal Requirements in General Conditions and Other Sections.
  - 1. Applications for payments Section 00700, Article 15.
  - 2. Section 00700, Article 15, Closeout Submittals (and Section 01 70 00), Execution and Closeout Requirements
  - 3. Schedule of testing laboratory services.
  - 4. Written guarantees and warranties.
  - 5. Factory test reports.
  - 6. Manufacturers' certified reports.
  - 7. System validation test procedures and results.

## PART 2 PRODUCTS (NOT USED)

## PART 3 EXECUTION

### 3.01 SUBMITTAL - GENERAL REQUIREMENTS

All items required to be submitted for review shall be furnished by and at the expense of the Contractor and any work affected by them shall not proceed without such review. Except for record documents, test plans, and instructional manuals for operation and maintenance, submittal shall be approved before the material or equipment covered by the submittal is delivered to the site.

#### A. Number of Submittals.

1. General. Except for manufacturer's instruction manuals and samples, the RTA shall require and retain a complete PDF copy of all submittals plus one hard copy, specified or required in this and all other Sections of these Specifications, for Contractor's and Contractor's representatives' use, unless otherwise specifically noted in a specific Specification section. The Contractor may at Contractor's own expense, submit additional hard copies, not to exceed 3, to be reviewed and returned for Contractor's use.
2. Samples. Provide the number of samples for each material or equipment item in accordance with Paragraph 3.04 herein and as required in the respective section of these Specifications.
3. Manufacturer's Instruction Manuals. Provide the number of copies of the submittals in accordance with Paragraph 3.01A above. Upon approval of the preliminary submittals, deliver one PDF plus 1 hard copy of each manual to the RTA, unless otherwise specified or directed.

B. Method of Submittal. Equipment which is specified in one section of the Specifications shall not be combined in a single submittal with equipment specified in other Sections of the Specifications, unless unit responsibility for a package system is required. In each transmittal the Contractor shall state the RTA's Project Number and Name, Name and Address of Contractor, Name and Address of Subcontractor, Manufacturer, Supplier or Distributor as applicable, Plan Reference and Specification Section, Articles, and paragraphs to which the submittal pertains; accompanying data sheets, catalogs, and brochures shall be identified in the same manner. Submittal transmittals shall fully index all items submitted.

C. Piecemeal Submittals. Except for reinforcing steel submittals, piecemeal submittals will be returned unreviewed. However, for mechanical equipment and the like, separate submittals for embedded items, embedded metal work and anchors will be accepted for review.

D. Number of Submittal Re-Reviews. The RTA will provide required submittal/re-submittal review up to three occurrences per submittal. Contractor shall reimburse the RTA the cost of RTA's, RTA's Representative's, and Engineer's time required for all subsequent reviews beyond three reviews. Such costs for excessive review of incomplete or non-conforming submittals shall be deducted from Contractor's monthly pay requests at the time such charges are incurred.

- E. Engineer's Submittal Review Schedule. Engineer will review and return submittals within 10 working days from date of receipt from RTA's Representative. Engineer will review and return re-submittals within 3 working days from the date of receipt from RTA's Representative.

3.02 NOT USED

3.03 SHOP DRAWINGS

- A. Title Block and Identification. On each shop drawing, provide a space for the Engineer's approval or correction stamp and a title block showing the following:
1. Name and address of Contractor.
  2. Name and address of Subcontractor, manufacturer, supplier, or distributor, as applicable.
  3. Name and address of RTA.
  4. Date, scale of drawings, and identification number.
  5. Contractor's review and approval stamp.
  6. RTA's Project Number (if applicable).
  7. Drawing Reference and Specification Section reference.
  8. Project Name.
- B. Preparation and Size. Details and information shall be clearly drawn, dimensioned, noted, and cross referenced. Unless otherwise approved, prepare shop drawings shall be PDF copies.
- C. Data. Unless the following data is included in instruction manuals or equipment data submitted prior to or with the shop drawings, submit with the shop drawings complete catalog and technical data for all manufactured products, materials, machinery, and equipment covered by the shop drawing submittal. Include data showing for each item, as applicable, the following information:
1. Manufacturer's specifications and details.
  2. Applicable technical data and performance curves.
  3. Preparation, assembly, and installation instruction with allowable tolerances.
  4. Connection requirements.
  5. Pre-start-up servicing and operating methods.
  6. Other data and information necessary to demonstrate that the proposed items conform to the Contract Documents.
- D. Information Required. Shop drawings shall contain details and information fully developing the pertinent Contract Document requirements and such other information as may be specified or required for approval, including but not limited to:
1. Related work with cross references to applicable portions of the Contract Documents.
  2. Dimensions, including variations between indicated dimensions and actual conditions.



3. Physical configurations with critical dimensions for clearance, access, and servicing.
  4. List of materials, including fasteners and connectors.
  5. Structural construction and assemblies, welds shown by AWS symbols, and each fastener and connector shown by type and class.
  6. Grouting work, including grouting space and material.
  7. Anchor bolt details showing type and class, sizes, embedments, projections, and locations measured with respect to permanent structural features. An anchor bolt template shall be shown on the Shop Drawings and shall be furnished unless waived in writing by the RTA.
  8. Protective coatings and factory finishes fully described as to materials, number of coats, plated and metallic coating finishes, treatments, and similar information, all based on specified requirements. The term "as specified" is not acceptable for this purpose.
  9. Location of auxiliary items that are parts of machinery and equipment including sight glasses, petcocks, gauges, lubrication fittings and access, and maintenance monitoring devices.
  10. Piping systems and piping including layout, fittings, valves, appurtenances, hangers and supports, and sleeves.
  11. Electrical equipment showing plans, elevations, sections, arrangements, materials, anchor bolts, supports, weights, wiring and circuit diagrams, internal connections, busses, grounding, conduit spaces, layout of instruments, gauges, meters, and other components.
  12. Underground duct banks showing typical details of conduits, joints, spacers, and means of securing conduits in place during concrete placement.
  13. Dielectric connections, and materials and methods to be used to isolate dissimilar materials.
  14. Full-size lettering layouts for data plate and nameplate inscriptions.
  15. Written descriptions fully describing the operation of all control circuits, start-up sequencing, shutdown sequencing, and alarms.
- E. Details and Connections. Satisfactorily detail all connections required to complete the Work, including details necessary to make indicated or specified additions to existing work or to provide connections for future work. Design connections and parts of strength to withstand, without adverse deflection or stress, all loads or pressures to which they may be subjected and to develop the strength of the members or parts connected. In no case shall the connections, parts, or details be inferior to those required by the Contract Documents.
- F. Related Work. Clearly note by name or description the Contractor, Subcontractor, or trade to provide such related Work; where such name or description is missing, it shall be understood and agreed that the Contractor is to furnish and install such related Work.
- G. Clearances. Do not proceed with any related Work that may be affected by piping, machinery, equipment, or other work therein until shop drawings and data showing all components, with acceptable clearances have been approved.

- H. Composite Shop Drawings with Installation Layouts. Prepare and submit drawings, wherever specified or required, to resolve tight or conflicting field conditions. Show dimensional plans and elevations of the materials or equipment of all trades in the involved area or space, and include complete information as to arrangements, locations, clearances, avoidance of interferences, access, sizes, supports, connections, services, assembly, disassembly, and installation. Composite shop drawings and layouts shall be coordinated in the field by the Contractor and his Subcontractors for proper relationship to the Work of all trades, based on field conditions, and shall be checked and approved by them before submittal. Contractor shall have competent technical personnel readily available for such coordinating and checking.

### 3.04 SAMPLES

- A. Identification. Label or tag each sample or set of samples identifying the manufacturer's name and address, brand name, catalog number, intended use and other data specified in Article 3.01.B herein.
- B. Colors, Patterns, and Textures. For items required to be of selected and approved colors, patterns, textures, or other finish, submit sufficient samples to show the range of shades, tones, values, patterns, textures, or other features corresponding to the instructions and requirements specified.
- C. Field-Applied Paint and Coatings. Submit samples of finishes at least 60 days prior to start of such finishing operations in conformance with requirements specified in Section 09 90 00, Painting and Coating.
- D. Factory Finish Colors. Colors of material specified to be furnished with a factory finish are subject to approval. Submit duplicate samples of factory finishes showing the full range of available colors for selection and approval when requested by the RTA.

### 3.05 MATERIALS LISTS AND EQUIPMENT DATA

Materials lists and equipment data shall be submitted for all items proposed to be incorporated into the Work. In determining acceptability, consideration will be given to the availability of maintenance and replacement parts and materials, the availability of manufacturer's technical representatives, other factors that relate to the maintenance and repair of installed items without excessive inconvenience to the RTA, guarantees and warranties, as well as determination of conformance with the Contract Documents.

- A. Material Lists. Submittal copies of Material Lists shall be provided where specified in other Sections, and the number of copies submitted shall be as stated in Paragraph 3.01.A herein.
- B. Equipment Data. Submittal copies of equipment data shall be provided in accordance with other Sections and the number of submittals shall be as stated in Paragraph 3.01.A herein. Submittals for equipment incorporating logic circuits shall include a draft of a detailed theory of operation. Data shall be submitted in sets covering complete systems or functioning units.

### 3.06 INSTRUCTION (OPERATIONS AND MAINTENANCE) MANUALS

Instruction Manuals shall comply with the requirements of other Sections, and the following

- A. The manufacturer's instruction, or O&M, manuals required by these Specifications shall be specific to this project and to the equipment being furnished.
- B. It is the intent that the instruction manuals be a complete document on the respective equipment item(s), independent of any separate shop drawing submittals, for the information and use by operation and maintenance personnel. As such, the manuals shall contain at a minimum, all approved shop drawing data necessary to describe the respective equipment and conform to the requirements of these Contract Documents, wiring diagrams and detailed circuit operation description; and performance curves and data.
- C. The index furnished for each manual shall address all of the content categories to facilitate their being located by the reader. Categories which are considered to be not applicable or not required shall be identified as such in the index.
- D. For each class of equipment or machinery identify the name, address and telephone number of the manufacturer, supplier and closest authorized service organization or company. Include this information at the beginning of each respective equipment manual.

### 3.07 INSTALLATION INSTRUCTIONS

Submit two copies of manufacturers' installation instructions for material and equipment incorporated in the Work to the extent specified in other Sections and Divisions of the Specifications or requested by the RTA for its review. Installation instructions will be reviewed for general adequacy only. After review, the Contractor shall distribute copies to all those involved with the installation.

Submit this information sufficiently in advance of the Work to ensure proper coordination of the respective equipment installation into the Work. In no case furnish this information later than delivery of the respective material or equipment. Payment for materials and equipment delivered will not be approved without submittal of the respective manufacturer's installation instructions.

### 3.08 EARTHQUAKE DESIGN AND RESTRAINT

- A. Not applicable

### 3.09 OTHER SUBMITTALS

Provide copies of other submittals such as calculations, manufacturer's certified reports, operational demonstration and system validation reports specified in other Sections and Divisions of the Specifications.

### 3.010 STORAGE INSTRUCTIONS

For each equipment and material item furnished, provide for the RTA's records 2 copies of the manufacturer's recommended instructions for storage of the respective equipment or material. The instructions shall address conditions both before installation and (for mechanical, electrical and instrumentation equipment) after installation but before placing into continuous operation.

Submit manufacturer's storage instructions either prior to delivery of the material/equipment or with the request for payment of materials delivered. Payment for materials delivered will not be approved without submittal of the manufacturer's storage instructions.

### 3.011 FORM OF APPROVAL

- A. Copies of submittals which are returned to the Contractor and which are subject to approval will be marked with notations noted below. These notations are defined as follows:
1. NET. No Exceptions Taken: Conforms to intent of the design plans and specifications. Accepted subject to its compatibility with future submissions and additional partial submissions for portions of the work not covered in this submission. Does not constitute approval or deletion of specified or required items not shown in the partial submission.
  2. MCN. Make Corrections Noted (Resubmittal Not Required): Similar to NET, except that only minor corrections are noted, shall be made by the Contractor, but do not require re-submittal and re-review by Engineer.
  3. A&R. Amend and Resubmit: Major inconsistencies or error which require to be addressed in a re-submittal, to be resolved or corrected by the Contractor prior to subsequent review by the Engineer.
  4. Rejected. (Resubmit): Submitted material does not conform to Drawings and Specifications in major respect, i.e., wrong size, model, capaRTA, or material, and an entirely new submittal prepared for review by Engineer.
  5. Received for Record Purposes Only: Applies to submittals which are required but not reviewed by Engineer, such as shoring submittals.
- B. Returned copies of drawings marked with either notation NET or MCN authorize the Contractor to proceed with the fabrication, installation or construction, or any combination thereof, covered by such returned drawings, provided, that such fabrication, installation or construction shall be subject to the comments, if any, shown on such returned copies and to the Contract requirements whether or not specifically referenced. Although fabrication may proceed on a notation MCN, Contractor shall incorporate the comments, resubmit, and obtain notation A before release for shipment can be granted. Failure to satisfactorily address the review comments, shall result in designation of the resulting as being defective.
- C. Returned copies of drawings marked with notation A&R, or Rejected shall be corrected as necessary and revised drawings shall be submitted in the same manner as before.

### 3.012 RECORD DRAWINGS AND SPECIFICATIONS

- A. Refer to Section 01 70 00, Execution and Closeout Requirements.

### 3.013 CERTIFICATES

Each certificate required under the Contract or in any of the following Sections shall be signed by the individual, office, or agent lawfully authorized to execute the certificate, and such authority shall be cited in the certificate by title, description, or other acceptable evidence. All certificates shall be sworn as to the correctness and validity of the contents. Where

specifically required in the respective Section of the Specifications, certificates shall be notarized and duplicate copies of required certificates shall be notarized to be true copies.

**END OF SECTION**

## SECTION 01 35 00

### SPECIAL PROJECT PROCEDURES

#### PART 1 - GENERAL

##### 1.1 SUMMARY

- A. Section Includes:
  - 1. Protection of improvements
  - 2. Protection of private and public Property
  - 3. Utility potholing
  - 4. Existing utilities
  - 5. Protection of existing pavement
  - 6. Protection of existing hardscape
  - 7. Protection of existing trees
  - 8. Excavation notification.
  - 9. Construction Documentation/Photographs/Videos

#### PART 2 - PRODUCTS - NOT USED

#### PART 3 - EXECUTION

- 3.1 Protect all existing utilities and improvements not designated for removal and restore damaged or temporarily relocated utilities and improvements, immediately, to a condition equal to or better than they were prior to such damage or temporary relocation, all in accordance with requirements of the contract documents.
- 3.2 Protect all private and public property from damage due to its activities. If any damage does occur to public or private property as a result of the Contractor's operations, the Contractor shall be responsible for the repair of the property, to pre-construction conditions or better.
- 3.3 POTHOLING
  - A. Non-designated Potholing: The Contractor shall perform exploratory excavations sufficiently ahead of construction for all known crossings, either shown on the plans, or marked on the pavement, so as to identify any unforeseen conflicts with the proposed construction a sufficient time in advance of construction to avoid possible delays to the Contractor's works. The number of exploratory excavations required shall be that number which is sufficient to determine the alignment and grade of the utility. The cost of non-designated potholing shall be considered appurtenant to the bid items requiring such excavation. There will be no separate payment for non-designated potholing.

### 3.4 EXISTING UTILITIES, WATER, SEWER AND DRAINAGE

- A. General: The Contractor shall protect all above ground and underground utility, water, sewer and drainage improvements that may be impaired during construction operations. Facilities requiring modification as indicated in these contract documents, shall be protected at all times and/or Contractor provisions made for temporary controls, so as to allow full functionality of these systems at all times.
- B. Contractor shall be responsible for coordination and communication with all utility agencies during construction.
- C. Locations shown: The known existing buried utilities are shown on the Drawings in their approximate location, and also may be marked in the field by the utility representatives. The Contractor shall exercise reasonable care in avoiding damage to all utilities and be held responsible for their repair if buried facilities so located are damaged.
- D. Services Assumed: When underground distribution mains are shown on the plans or marked by the utility companies, the Contractor shall assume that every property parcel will be served by a service connection of each type of facility. Not all laterals are shown on the drawings.
- E. Work by Utilities: During the course of the Contract, work may be performed by the utility companies or by the RTA to inspect, operate, relocate, abandon or install facilities. The Contractor shall coordinate with the utility companies regarding such work. Such coordination shall be included within the Contract bid and there will be no separate payment therefore.
- F. Utilities to be moved: Should it become necessary to move the property of any public utility or franchise holder, the Contractor shall notify the Engineer a sufficient time in advance for the necessary measures to be taken to prevent interruption of service.
- G. Right of Access: The right is reserved to the RTA and to the owners of public utilities and franchises to enter at any time upon any public street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the work of this Contract.
- H. Approval of Repairs: All repairs to a damaged utility or improvement are subject to inspection and approval by an authorized representative of the utility or improvement owner before being concealed by backfill or other work.
- I. Maintaining Service: All pipelines, power, telephone, communication cable, gas, water, irrigation, sewer, and storm drain systems within the work area shall remain continuously in service during all the operations under the Contract, unless specifically shown otherwise in the Contract Documents, or unless other arrangements satisfactory to the Engineer are made (by the Contractor) with the owner of said system.

### 3.5 RIGHTS-OF-WAY

- A. The Contractor shall not perform work within the right of way of any agency without first obtaining approval by the City of San Luis Obispo.

### 3.6 RESTORATION OF PAVEMENT

- A. General: All paved areas cut or damaged during construction shall be replaced with similar materials and of equal thickness to match the existing adjacent undisturbed areas, except where specific resurfacing requirements have been called for in the Contract Documents.
- B. All temporary and permanent pavement shall conform to the requirements of the affected pavement owner. All pavements that are subject to partial removal shall be neatly saw cut in straight lines.

### 3.7 EXISTING HARDSCAPE

- A. General: All surface concrete or other hardscape areas cut or damaged during construction shall be replaced with similar materials and of equal material and quality to match the existing adjacent undisturbed areas, except where specific resurfacing requirements have been called for in the Contract Documents. All such repairs and replacements shall conform to the requirements of the affected hardscape owner.
- B. Partial removal: All concrete and PCC pavement that is subject to partial removal shall be neatly saw cut in straight lines. The saw cut lines shall be extended to align with existing score lines or similar feature so as to provide a uniform appearance.

### 3.8 TREES WITHIN PROJECT LIMITS

- A. Contractor shall exercise all necessary precautions so as not to damage or destroy any trees or shrubs in the Project Area. Only trees designated for removal, shall be removed. All other trees shall be protected in place.
- B. The RTA shall be contacted prior to any root pruning. Protection of trees and tree roots, including actions directed by the RTA, shall be considered part of the defined Work and corresponding Bid Items, and no additional compensation shall be allowed therefor.
- C. Trees shall be protected from damage during construction. Root severing or pruning shall be avoided when possible. Tunneling under roots is preferred. Roots of 2 inch or larger diameter are considered major or significant roots. After grading or trenching to the required depth, any roots exposed should be cut with a saw and sealed with a recommended tree seal compound. Pruning roots in this manner will avoid any root damage by heavy equipment. Following removal of the soil in cut area, exposed roots shall be inspected by the RTA for stability, smoothness of pruning cut and sealing. Any additional damage shall be repaired in the same manner, or in the manner specified by the RTA.



- D. Whenever cuts are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out. After these steps are taken, top pruning is essential. Compute approximate percent of size of roots, then green foliage should be pruned in an equal amount to the area cut in roots.
- E. Never sever more than one third of the large supporting roots during any root pruning operation. Make smooth clean cuts on large roots and apply recommended dressings to prevent decay of remaining portion of root. Prune equal foliage from the tree to compensate for root loss. If further root pruning is necessary, allow the tree one year to develop new fibrous roots and then proceed with the second root pruning and thinning operation. Timely pruning, during the growth season, will develop healthy fibrous roots and full compacted foliage. Torn or bruised roots shall be cut back to sound undamaged wood and a recommended wound dressing applied. Trimming roots back to lateral root junction will promote new growth of lateral roots resulting in a dense root system. Cuts shall be made flush with the junction or smaller lateral roots so that stubs or snags are not left to decay.
- F. If any tree during the course of, or as a result of construction operations is injured to extent of causing its permanent disfigurement or death within the one year guarantee period, it is agreed by the parties to this Contract that actual damage to the RTA will be impossible to determine, and in lieu thereof, Contractor shall pay to RTA as fixed, agreed, \$1,000 for each tree so injured.
- G. Tree Trimming:
  - a. Trim trees only to the extent required for construction, equipment and personnel access, and as directed by RTA.
  - b. Properly remove and dispose of trimmings.

### 3.9 EXCAVATION NOTIFICATION

- A. Notify Prior to Excavation: Prior to any excavation the Contractor shall notify the respective authorities representing the owners or agencies responsible for such facilities not less than 3 days nor more than 7 days prior to excavation so that a representative of said owners or agencies can be present during such work if they so desire.
- B. Call USA: The Contractor shall also notify Underground Service Alert (USA) at **811** at least 2 working days, but no more than 14 calendar days, prior to such excavation. If a utility owner is not equipped to locate its utility, the Contractor shall locate it.

### 3.10 CONSTRUCTION PHOTOGRAPHS

- A. Provide pre-construction, construction progress, and post-construction photographs as part of the Work. Photographs shall be taken with a minimum 5 megapixel digital camera, and all photos shall be provided to RTA on CDs or thumb drives. Photos shall be arranged in folders on the CDs or thumb drives by date taken and clearly identified by location of Work. Provide further cataloging of

photographs as required to clearly identify subject matter, if not self-evident on the photograph (such as utility identification).

- B. **Pre-Construction Photographs.** Arrange a meeting time with RTA and Engineer, 2 working days prior to taking photographs, to allow RTA and Engineer the opportunity to accompany Contractor on the pre-construction photograph session. Provide pre-construction photographs during this walk-through of the existing project site conditions at locations directed by RTA and Engineer. Submit the CD or thumb drive of pre-construction photographs within 10 working days following the date photographs are taken. Include at a minimum, the following:
- 1) photographs and documentation of condition of all existing improvements in the areas of Work.
  - 2) Existing condition of all storm drain and sewer manholes and inlets to be modified as part of the Work, in their pre-construction conditions.
  - 3) Condition of all pipeline alignments, haul routes, locations of proposed diversion storage reservoirs;
  - 4) Condition of all driveways and property frontages that may be impacted by the Work.
1. **Post-Construction Photographs.** Provide same coverage as required in the pre-construction photographs. Arrange a meeting time with RTA and Engineer, 2 working days prior to taking photographs, to allow RTA and Engineer the opportunity to accompany Contractor on the post-construction photograph session. Submit final photographs as part of close-out submittals specified in Section 01 70 00.
2. **Progress Photographs.** Provide photographs of the progress of the Work, to be provided to the RTA throughout progress of the Work. Progress photographs shall be taken at a minimum, on a weekly basis. Photographs shall be taken at a minimum:
- a. At utility appurtenant features, such as tie-in points, fittings, manholes, inlets, vaults, storage reservoirs;
  - b. Existing facilities to remain, new facilities to be constructed.
  - c. Property improvements, driveways in the area of the Work.
  - d. Staging and construction haul routes.

**END OF SECTION**

SECTION 01 50 00

TEMPORARY FACILITIES AND CONTROLS

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Provide temporary facilities as hereunder specified, plus other unspecified temporary facilities, including labor, materials, services, utilities, and equipment, as may be required for proper performance of Contract, except as otherwise provided. Temporary facilities shall be approved by the RTA and other authorities having legal jurisdiction. Locate facilities where and as directed and maintain in safe and sanitary condition at all times until completion of Work.
- B. At completion of work, or sooner when no longer needed, remove all temporary facilities, except where certain facilities are specified to remain or to be relocated for use under future contracts.
- C. All Work required and specified in this Section shall be included in Contractor's price for mobilization, and therefore no separate or additional payment will be made, therefore.

1.02 CONSTRUCTION EQUIPMENT

- A. Erect, equip, operate, and maintain construction equipment in strict accordance with applicable statutes, laws, ordinances, rules, and regulations of authorities having jurisdiction.

1.03 SAFETY PRECAUTIONS

- A. Provide and maintain barricades, fencing, shoring, pedestrian walkways including attached lights, other lights, and other safety precautions to properly guard against personal injury and property damage as prescribed by authority having jurisdiction.
- B. Maintain such items for duration of Work, and repair, replace, and relocate them as necessary for safe protection.
- C. Provide such additional safety precautions as may be prescribed by authorities having jurisdiction.
- D. Attention is directed to Safety Orders issued by State of California, Division of Industrial Safety. Contractor shall obtain copies of Safety Orders applicable to type of work to be performed and shall be governed by requirements thereof in construction operations.
- E. Fully inform each subcontractor and material supplier as to requirements of applicable Safety Orders.

#### 1.04 ROADS AND ACCESSWAYS

- A. Maintain access roads and parking areas in satisfactory condition during Contract time, and repair damages attributable to Work of this Project at intervals as needed. At completion of Contract, roads, parking areas and entrance ways shall be left in condition at least equal to that existing at start of Contract, except as may be otherwise required by Contract documents.
- B. Permanent Improvements: Where Contract calls for permanent sidewalk, road, and other ground improvements, and such permanent improvements are completed, or essentially completed within construction period, Contractor does not have vested right to use such improvements as temporary facilities.
- C. Retain responsibility of permanent improvements pursuant to General Conditions. Use of permanent improvements by Contractor shall be subject to approval by the RTA.

#### 1.05 USE OF COUNTY PROPERTY

- A. On-Site Storage and Work Areas: The County/RTA will allocate available on-site storage and work areas to Contractor if available, subject to change as may be necessary by job progress, such as site development or other intervening work. Contractor shall be responsible for ultimately securing appropriate staging areas.
- B. County Property and City Right-of-Way: Operations shall be confined to County property and City right-of-way to greatest possible extent, and shall not encroach on areas other than those designated or approved for such use by the RTA.
  - 1. Ascertain, observe, and comply with rules and regulations in effect, including, but not restricted to, parking and traffic regulations, hours of allowable ingress and egress as to main arteries, and the like.
- C. Existing Improvements in Streets and Parking Area: Existing signs, fire hydrants, underground valves and meter boxes, manholes, and other items occurring adjacent to the site shall be left undisturbed, unobstructed, and easily accessible at all times during construction, except as otherwise indicated or agreed to between Contractor, RTA, City of San Luis Obispo and other corresponding utility agencies.
- D. Covering, moving, trimming, or altering which may become necessary shall be done only with consent of and in cooperation with RTA authorities having jurisdiction. Contractor shall pay costs that may be incurred.
- E. Make detailed examination of such City and County property at start of work and conditions shall be noted by Contractor and confirmed by RTA.
  - 1. City streets and other existing improvements therein adjacent to site, if damaged by this work, shall be repaired by Contractor at intervals as needed. At completion of project, all such items not included in Contract shall be left in condition at least equal to that at start of operations.
  - 2. Repair work shall conform to requirements of public authorities having jurisdiction. This includes, but is not restricted to, temporary walks for pedestrians, cleaning of mud and debris, air pollution control, and traffic control.
- F. TEMPORARY FENCE (TYPE ESA)

1. Where called for on the drawings, provide temporary ESA type fencing to protect existing trees, sensitive landscaping or other improvements shown. Install at the drip line or otherwise as shown on the drawings or directed by Engineer.
2. ESA fencing shall be high visibility fabric, containing ultraviolet inhibitors, and consisting of one of the following:
  - a. Polyethylene
  - b. Polypropylene
  - c. Combined polyethylene and polypropylene
3. Testing Requirements:
  - a. Sample under ASTM D 4354, Procedure C.
  - b. Test under ASTM D 4759. All properties shall be based on Minimum Average Roll Value.
  - c. Identify, store, and handle under ASTM D 4873.
4. Product shall comply with the following:

Property	Specifications	Requirements
Width, inches, Min	Measured	48
Opening size inches	Measured	1" x 1" (Min) 2" x 2" (Max)
Color	Observed	Orange
Grab breaking load 1-inch grip, lb, Min. in each direction	ASTM D4632	260
Apparent elongation percent, Min., in each direction	ASTM D4632	5
Ultraviolet Degradation percent of original unexposed grab breaking load 500 hr, minimum	ASTM D4355	70

5. Posts shall be wood or steel, complying with the following:
  - a. Wood Posts shall be:
    - 1) Untreated fir, redwood, cedar, or pine and cut from sound timber
    - 2) Straight and free of loose or unsound knots and other defects that would render the stakes unfit for use
    - 3) Pointed on the end to be driven into the ground
    - 4) At least 2" x 2" in size and 6 feet long
  - b. Steel Posts shall be:
    - 1) "U," "T," "L," or other cross sectional shape that can resist failure from lateral loads.
    - 2) Be pointed on the end to be driven into the ground.
    - 3) Weigh at least 0.75-pound per foot.
    - 4) Be at least 6 feet long.
    - 5) Have a safety cap attached to the exposed end. The safety cap must be yellow, orange or red plastic and fit snugly to the metal post.

- G. Protection of Existing Utilities: Protect from damage, existing utility lines not specified to be altered by Work of this Contract; any such features damaged shall be repaired or replaced to condition equal to that existing prior to commencing work of this Contract.

Unless otherwise specified, maintain existing utility service at all times during construction. Utility service lines found entering site and not indicated to remain or to be incorporated in new Work, shall be plugged, capped, or otherwise abandoned by Contractor in manner satisfactory to Utility Companies whose services are involved, except as otherwise required.

#### 1.06 CONTRACTOR'S STAGING AREA

- A. Contractor shall coordinate and provide suitable staging area for the Work.

#### 1.07 CLEAN UP OF WORK AND DISPOSAL OF TRASH

- A. Attention of Contractor is directed to General Conditions, Article 5.02.B, and Specification Section 01 70 00. Keep work and storage areas clean and free of rubbish and perform protective and clean up work within one day of being so notified by RTA.
- B. Dispose of trash resulting from work. Recycle materials to the extent practicable. Remove and dispose of trash resulting from work in appropriate receptacles provided by Contractor, and dispose of at an approved facility. Do not use existing nearby trash containers for depositing trash and rubbish.

#### 1.08 DUST ABATEMENT

- A. Use water wagons or spray from hoses to control dust created by outdoor work operations in areas on project property during entire period of this Contract as directed by RTA; also, satisfactorily control dust created by operations on property used, other than project property, to satisfaction of all concerned.

#### 1.09 EROSION AND SEDIMENT CONTROL

- A. Implement applicable measures for erosion and sediment control during construction, and prepare Site Specific Stormwater Management Plan to address construction activities and the control of erosion and sediments at the Work site. Refer to Section 01 57 23.
- B. Submit Detailed Erosion Control Plan

#### 1.010 SANITARY FACILITIES

- A. Toilet Facilities: Provide sufficient suitably enclosed chemical toilets, conforming to ANSI Z4.3., with urinal for workmen.
- B. Drinking Water Facilities: Provide clean, sanitary and adequate drinking water.

#### 1.011 TEMPORARY WATER

- A. Make arrangements for temporary construction water (recycled water) available from the City of San Luis Obispo. Such water shall be purchased by Contractor at the City's established rate. Do not use potable water for construction and dust control purposes.

## 1.012 TEMPORARY ELECTRICAL

- A. Provide such temporary electrical facilities as necessary for the Work, and to supply temporary lighting for work operations and temporary power for portable power driven tools.
- B. Construction Requirements: If needed, construct and maintain temporary electrical service facilities in accordance with California Code of Regulations, Title 24, Part 3, Basic Electrical Regulations, Public Utilities Commission "Rules for Overhead Line Construction" (G.O.95), and requirements of Pacific Gas and Electric (PG&E). Contractor shall be responsible for contacting and coordinating with PG&E and to provide necessary applications for obtaining temporary electrical service in conformance with the project schedule. Materials, devices, and equipment used for these facilities shall be in good and safe condition but need not be new. Electrical service equipment and utility feed shall be of adequate amperage and voltage ratings to serve electrical loads necessary to complete the Work and to serve other required loads listed in this specification. Materials, devices, equipment and temporary electrical service facilities shall be removed from the site prior to final field observation and project closeout.
- C. Contractor-Installed Construction Power Facilities: Temporary electrical materials and equipment furnished and installed by Contractor for required facilities hereunder shall be removed after serving their purpose.

## 1.013 DEWATERING FACILITIES

- A. Not applicable

## 1.014 SECURITY

- A. Contractor shall be responsible for security of Work involved in this Project, during entire time of Contract. Make good all damages to work and loss of materials due to vandalism or theft, within this responsibility.

END OF SECTION

TRAFFIC CONTROL

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Preparation and implementation of a traffic control plan
- B. Provisions for Public Safety
- C. Provisions for Public Convenience
- D. Provisions for maintaining access
- E. Construction Area Signs

1.02 REFERENCES

- 1. Caltrans Standard Specifications
- 2. Caltrans Standard Plans
- 3. Ca-MUTCD, the Manual of Uniform Traffic Control Devices with the California Supplement

1.03 SUBMITTALS

- A. Traffic Control Plan for approval by RTA. Prepare and submit a detailed traffic control and staging plan that is correlated with the overall construction schedule. The traffic control plan shall be submitted within 15 working days of the notice to proceed, and will be reviewed by the Engineer within 5 working days. Address all comments and resubmit the plan for approval within 3 working days. The Engineer shall have 3 working days for the final review.
- B. Traffic control plan shall include Notification Plan, to notify all affected agencies, businesses and safety personnel of all road closures for any specified night-time construction and work day construction, and for general notification and coordination of businesses that may be affected by construction activities. All residences and businesses affected by construction activities shall be notified a minimum of 72 hours in advance of construction work crossing driveways and intersections, by placing door hangers on the front entrance of each property.
- C. Material submittals for temporary and permanent markers and markings.

PART 2 PRODUCTS

- A. All traffic control products shall be in conformance with the Ca-MUTCD and Section 12, Construction Area Traffic Control Devices of the Caltrans Standard Specifications.
- B. Portable changeable message signs if used shall be in conformance with Section 12-3.12 of the Caltrans Standard Specifications.



## PART 3 EXECUTION

### 3.01 TRAFFIC CONTROL PLAN

- A. Coordinate traffic control plan with Work Plan submittal required by Section 01 11 00, Summary of Work. Traffic control plan shall delineate required detail of all traffic control devices, controls, signage, traffic management and routing, that will be necessary.
- B. Provide specific traffic control plan addressing required road closures during construction.
- C. Full road closures shall not be allowed.
- D. On all public streets, maintain two way traffic at all times, except where insufficient lane width is available. Temporary no parking on road shoulders is allowable to allow for two way traffic. Limit length of such parking disruption to no more than 200 feet length. Only when restricted by lane widths for 2-lane traffic, provide one-way traffic with flagmen, subject to approval by the RTA.
- E. RTA will be responsible to establishing an alternate bus stop location with applicable signage during the course of construction. RTA will work with the City of SLO Parking Department to block off the paid parking spaces on Palm toward Santa Rosa. The RTA will work with the City to place City signs on the parking meters, and RTA will be responsible for developing/placing temporary RTA signs and other marketing outreach.

### 3.02 TEMPORARY PAVEMENT MARKERS

- A. Provide temporary pavement markers, where existing markers and striping are impacted or obliterated by trench excavation activities. Temporary pavement markers, including underlying adhesive, and removable traffic tape that are applied to the final layer of surfacing or existing pavement to remain in place or that conflicts with a subsequent or new traffic pattern for the area shall be removed when no longer required for the direction of public traffic, as determined by the Engineer.

### 3.03 TEMPORARY LANELINE AND CENTERLINE DELINEATION

- A. When lane lines or centerlines are obliterated and temporary pavement delineation to replace the lines is not shown on the plans, the minimum lane line and centerline delineation to be provided for that area shall be temporary pavement markers placed at longitudinal intervals of not more than 24 feet. The temporary pavement markers shall be the same color as the lane line or centerline that the pavement markers replace. Temporary pavement markers shall be subject to the approval of the RTA.

### 3.04 MAINTAINING TRAFFIC

- A. Public pedestrian, bicycle and vehicular traffic shall be maintained at all times however the sidewalk and existing bus stop fronting the project can be closed to the public.

### 3.05 PUBLIC SAFETY

- A. It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.

- B. Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the RTA, furnish, erect and maintain those fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures that are necessary to prevent accidents or damage or injury to the public.
- C. The Contractor shall also furnish flaggers as necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered. The Contractor shall bear the full cost of flaggers.
- D. Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in Part 6 of the MUTCD and of the MUTCD California Supplement. Signs or other protective devices furnished and erected by the Contractor, at the Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the specifications. Signs furnished and erected by the Contractor, at the Contractor's expense, shall be approved by the Engineer as to size, wording and location.
- E. Lanes, ramps and shoulders shall be closed in accordance with the details of the approved traffic control plan.
- F. No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.
- G. Temporary facilities which the Contractor uses to perform the work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.
- H. Should the Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures as above provided, the RTA or Engineer may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed and protective measures taken by the Contractor at the Contractor's expense. Should the RTA or Engineer point out the inadequacy of warning devices and protective measures, that action on the part of the RTA or Engineer shall not relieve the Contractor from responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.
- I. Full compensation for conforming to all of the provisions in this Specification shall be considered as included in the bid price for Traffic Control, and no additional compensation will be allowed therefor.

### 3.06 PUBLIC CONVENIENCE

- A. The Contractor shall not be relieved of the responsibilities as set forth for Public Safety by reason of conformance with any of the provisions in this Specification.
- B. Except as shown on the approved traffic control plan, all public traffic shall be permitted to pass through the work zones with as little inconvenience and delay as possible.

- C. Maintain access to emergency vehicles, service vehicles including mail trucks and garbage trucks, at all times. Notify City police and fire departments, and Public Works Department, of any scheduled temporary road closures or traffic impacts requiring traffic control, 3 working days prior to the scheduled closure or impact, and again at the beginning of each work day that such temporary closures will occur.
- D. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.
- E. Existing road lighting shall be kept in operation for the benefit of the traveling public during progress of the work, and other forces will continue routine maintenance of existing systems.
- F. Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners and businesses. Supply and deliver notices of the work to all properties adjacent to and within 100 feet of the work areas. The notice shall briefly describe the work, potential impacts on the adjacent property, and shall include the Contractor's phone number. Notices shall be placed at least 7 calendar days in advance of the work and shall state the dates and hours of scheduled construction operations. Wording for the notice shall be approved by the Engineer prior to distribution. Notices shall NOT be placed inside mail boxes. Notices shall be hand delivered as a door hanger. The Contractor shall furnish and place "No Parking" signs, 12 inches by 18 inches minimum size and approved by the Engineer, throughout the area of work at fifty foot intervals three working days prior to the start of construction. The signs shall include the date and time during which parking is prohibited. The Contractor shall remove these signs immediately when they are no longer needed.
- G. Convenient access to buildings along the line of the work shall be maintained. When the abutting property owner's access across the right of way line is to be impacted, provide minimum of 3 working days advanced notice to impacted property owner. Maintain driveways open at all times, between the hours of 4:00 pm to 9:00 am. Temporary closures of driveways, at intervals of no longer than 30 minutes, are allowable between the hours of 9:00 am to 4:00 pm, subject to notification requirements specified herein. Contractor shall endeavor to allow access to businesses along the street right-of-way at all times. All approaches to public and private driveways, and intersecting streets shall remain open at all times during non-construction periods.

END OF SECTION

## SECTION 01 57 13

### TEMPORARY STORM WATER POLLUTION CONTROL

#### PART 1 GENERAL

##### 1.01 Work of This Section

- A. This section covers the work necessary for to stabilize the Site soils to mitigate wind blown dust, prevent soil erosion and sediment discharges off-site during and after construction, demolition, and land disturbing Work activities. The work shall include the furnishing of all labor, materials, tools, and equipment to perform the work and services necessary as specified in these Specifications and as indicated on the Drawings. This shall include installation, maintenance, and final removal of all temporary soil erosion and sediment control measures.
- B. The areas requiring soil erosion and sediment control measures are the areas involving earthwork as shown on the Drawings, and the area where imported material is stockpiled. The right is reserved to modify the use, location, and quantities of soil erosion and sediment control measures based on activities of the Contractor and as the Engineer considers to be to the best interest of the Owner.
- C. See additional information noted on the Drawings.

##### 1.02 General

- A. The RTA may assume the responsibilities of the Engineer.
- B. The BMPs set forth in the referenced Manuals, that apply to the Work are listed in Table 1 furnished at the end of this section.
- C. The table listings may not be all inclusive of the BMPs required for the Work, especially under different seasons and weather conditions, and depending on the Contractor's construction methods and operations.
- D. The Contractor shall utilize all BMPs required to perform the Work in accordance with these Contract Documents, the referenced Manual, and all local, state and federal laws and regulations.
- E. The Contractor shall be responsible for phasing Work, as required by the SS-1 BMP, so that the soil erosion and sediment control facilities and practices are in place before the start of the Work requiring those facilities and practices. This includes installation of all temporary BMPs required to comply with these Specifications and BMP practices used during construction.
- F. The areas set aside for the Contractor's use during the Project may be temporarily developed to provide satisfactory working, staging, equipment and material storage areas for Contractor's exclusive use. Preparation of these areas shall be in accordance with other requirements contained within these Specifications and shall be done in a manner to both control all soil erosion,

sediment transport, wind blown dust and runoff that may migrate from the Work site during the course of construction.

- G. Contractor shall follow the WE-1 BMP practices to reduce dust during Site grading and construction activities, and at any other time to minimize soil dust from being blown off the Site. The WE-1 BMP practices shall also be used by the Contractor for controlling dust off-site on unpaved roadways used to access the Site and for off-site material hauling. Contractor shall regularly sweep or vacuum paved roadways to mitigate dust, and to keep the roadways clean of construction materials and debris. Contractor shall employ these BMP practices as directed by the Engineer at any time during construction of the Work to achieve the environmental goals and objectives intended by this Specification section.
- H. Contractor shall follow the WM-3 BMP for all temporary material stockpiles.
- I. If required by construction, the Contractor shall establish a point of ingress and egress for the Site and use that access point for all of its construction activities. Contractor shall construct a TC-1 stabilized entrance/exit at that location. Contractor shall remove this BMP at the completion of construction of the Work, and re-establish the area to its original condition prior to the start of construction.
- J. All non-salvageable material shall be handled on-site and disposed of off-site in accordance with the requirements of WM-5 BMP. This requirement also applies to material cleared and grubbed from the site in preparation for the Site earthwork and grading, and excess excavated soil that is not to be stockpiled.
- K. Contractor shall maintain the existing soil erosion and sediment control measures on the existing material stockpile, which involves maintenance of the fiber rolls on the side slopes and perimeter silt fence. Contractor's maintenance activities shall include the application of two soil binder treatments to the surface of the stockpile as directed by the Engineer. The surface of the material stockpile up to 20 feet beyond the toe of the stockpile is to be treated with the soil binder in accordance with the SS-5 BMP to prevent wind blown erosion of the stockpiled soil. The second soil binder treatment shall be effective for a minimum period of four months after completion of construction.
- L. Temporary sanitary facilities shall be maintained in accordance with the WM-9 BMP requirements.
- M. Vehicles and/or equipment are not to be washed on-site
- N. If vehicles and/or equipment are to be maintained on-site, the Contractor shall comply with the NS-10 BMP requirements.

#### 1.03 References

- A. The following is a list of standards and references which may be used in this Section:
  - 1. State of California Department of Transportation (Caltrans) Construction Site Best Management Practices (BMPs) Manual, latest edition;

2. Caltrans Standard Specifications, latest edition;
3. Caltrans Standard Special Provisions, latest edition;
4. Caltrans Standard Plans, latest edition;
5. In the event of a conflict, the more stringent requirement shall apply.

#### 1.04 Submittals

- A. Action Submittal: Contractor shall prepare a Soil Erosion and Sediment Control Plan (Plan) for the project that describes the Best Management Practices (BMPs) Contractor intends to utilize to mitigate soil erosion, wind blown dust and sediment impacts resulting from Contractor's construction activities and methods. The Plan shall meet the requirements of the Manual, and local and county Stormwater Pollution Prevention Program (SWPPP) requirements. Engineer will review and accept the Plan. Submit Plan in conjunction with Work Plan specified in Paragraph 1.05, Section 01 11 00, Summary of Work.
- B. Submittal of the Plan shall be made in accordance with Section 01 33 00, Submittal Procedures.

### PART 2 PRODUCTS (NOT USED)

### PART 3 EXECUTION

#### 3.01 Preparation

- A. The Contractor shall prepare Soil Erosion and Sedimentation Control Plan for the project which shall be reviewed and accepted by Engineer before the start of construction of the Work. If required Contractor shall submit the Plan to local and county agencies that have jurisdiction over construction-related environmental activities and shall obtain their approval before the start of construction of the Work.
- B. Contractor shall keep a copy of the approved Plan at the Site.
- C. Soil Erosion and Sedimentation Control activities to be performed by the Contractor shall consist of the at least the following components:
  1. Construction of new temporary storm drainage berms, channels and piping systems and other facilities, as necessary, to maintain existing Site drainage patterns and to direct runoff to the adjacent roadways.
  2. Construction of temporary soil erosion and sedimentation control facilities and use of procedures, as needed, to minimize windblown dust, off-site runoff to adjacent properties, and to mitigate the off-site discharge of sediment.
  3. Maintenance of temporary storm drainage berms, channels and piping systems and facilities during construction, as necessary, or as directed by

Engineer. This requirement includes the removal and disposal of accumulated sediment.

4. Removal of the temporary soil erosion and sedimentation control facilities and drainage facilities at the completion of construction of the Work that are not to remain in place.
5. Construction and utilization of material and waste management practices during the construction of the Work.

### 3.02 Installation

- A. Contractor shall adhere to the Plan at all times during construction of the Work, and shall install and/or arrange for the BMPs required for each portion of the Work and/or construction activity associated with the Work prior to start of any portion of the Work or construction activity.
- B. Contractor shall not start any portion of the Work, or construction activity until all required BMPs are in place to the satisfaction of the Engineer.

### 3.03 Maintenance

- A. The Contractor shall maintain all elements of the Soil Erosion and Sedimentation Control systems for the duration of construction activities on the Project. Formal inspections made jointly by the Contractor and the Engineer shall be conducted every week to evaluate the Contractor's conformance to the requirements of both these Specifications, and local, state and federal laws and regulations. Noted deficiencies shall be corrected by the Contractor within two days of notification by the Engineer, and as directed by the Engineer.
- B. All silt traps and silt fences shall be cleaned of collected sediment after every storm or as determined from the weekly inspections. Cleaning shall be done in a manner that will not direct the sediment into the storm drain piping system. Removed sediment shall be taken to an area selected by the Engineer where it can be allowed to dry before it is disposed of off-site. Contractor shall dispose of the dried sediment and debris in a lawful manner.
- C. Replacement or repair of failed, damaged or overloaded temporary BMPs shall be accomplished by the Contractor within two days after receiving written notice from the Engineer.
- D. If the Contractor has not complied with any of the above maintenance efforts to the satisfaction of the Engineer within two working days after receiving written notification from the Engineer, the RTA shall have the prerogative of engaging others to perform, or performing itself, any needed maintenance, cleanup or corrective measures, including removal of accumulated sediment at constructed erosion control facilities, and deduct from the Contractor's monthly partial payment the costs for such efforts plus the Owner's costs to administer the work.

Table 1		
Designation	BMP Name	Usage
SS-1	Scheduling	BMP and Construction Planning
SS-2	Preservation of Existing Vegetation	Soil Stabilization and Sediment Control
SS-7	Geotextiles, Plastic Covers, & Erosion Control Blankets/Mats	Soil Stabilization and Wind Erosion Control
SS-9	Earth Dikes/Drainage Swales & Lined Ditches	Runoff Protection and Soil Stabilization
SC-1	Silt Fence	Sediment Control
SC-3	Sediment Trap	Sediment Control
SC-5	Fiber Rolls	Soil Stabilization and Sediment Control
SC-6	Gravel Bag Berm	Sediment Control
SC-7	Street Sweeping and Vacuuming	Soil Stabilization, and Sediment and Tracking Control
SC-8	Sandbag Barrier	Sediment Control
SC-9	Straw Bale Barrier	Sediment Control
SC-10	Storm Drain Inlet Protection	Sediment Control
WE-1	Wind Erosion Control	Soil Stabilization, and Sediment and Wind Erosion Control
TC-1	Stabilized Construction Entrance/Exit	Soil Stabilization, and Tracking and Wind Erosion Control
TC-2	Stabilized Construction roadway	Soil Stabilization, and Tracking and Wind Erosion Control
WM-1	Material Delivery and Storage	Materials Management
NS-8	Vehicle and Equipment Cleaning	Non-Storm Water Management
NS-9	Vehicle and Equipment Fueling	Non-Storm Water Management
NS-10	Vehicle and Equipment Maintenance	Non-Storm Water Management
WM-3	Stockpile Management	Soils Stabilization, Sediment Control and Materials Management
WM-4	Spill Prevention and Control	Materials and Waste Management
WM-5	Solid Waste Management	Materials Management
WM-6	Hazardous Waste Management	Materials Management
WM-9	Sanitary/Septic Waste Management	Materials and Waste Management
WM-10	Liquid Waste Management	Materials and Waste Management

**END OF SECTION**



## SECTION 01 60 00

### PRODUCT REQUIREMENTS

#### PART 1 GENERAL

##### 1.01 SUMMARY

- A. This section provides the requirements for product substitution. The procedure for requesting substitution approval applies to products defined in the Contract Documents by reference to one or more of the following:
1. Name of manufacturer
  2. Name of vendor
  3. Trade name
  4. Catalog number
- B. Requests for Substitution - General:
1. Base all bids on materials, equipment, and procedures specified, and as approved by addendum. Refer to Article 7.06 of the General Conditions.
  2. Certain types of equipment and kinds of material are described in specifications by means of references to names of manufacturers and vendors, trade names, or catalog numbers. When this method of specifying is used, it is not intended to exclude from consideration other products bearing other manufacturer's or vendor's names, trade names, or catalog numbers, provided said products are capable of accomplishing the same tasks as the products specifically indicated.
  3. Other types of equipment and kinds of material may be acceptable.

##### 1.02 QUALITY ASSURANCE

- A. In making request for substitution or in using an approved product, Contractor represents:
1. Contractor has investigated proposed product and has determined that it is equal or superior in all respects to that specified, and that it will perform function for which it is intended.
  2. Contractor will provide same guarantee for substitute item as for product specified.
  3. Contractor will coordinate installation of accepted substitution into work, to include building modifications if necessary, making such changes as may be required for work to be complete in all respects.
  4. Contractor waives all claims for additional costs related to substitution which subsequently arise.

##### 1.03 DEFINITIONS

- A. Product: Manufactured material or equipment.

#### 1.04 PROCEDURE FOR REQUESTING SUBSTITUTION

- A. Considered after award of Contract, or by addenda during bidding. See Paragraph 1.01.B of this Section.
- B. Written requests may be made by the Contractor only.
- C. Transmittal Mechanics:
  - 1. Follow the transmittal mechanics prescribed for shop drawings in Section 01 33 00, Submittal Procedures. Describe the deviation and justifications on the transmittal form. Include in the transmittal letter, either directly or as a clearly marked attachment, the items listed in paragraph D below.
- D. Transmittal Contents:
  - 1. Product identification:
    - a. Manufacturer's name.
    - b. Telephone number and representative contact name.
    - c. Specification section or drawing reference of originally specified product, including discrete name or tag number assigned to original product in the Contract Documents.
  - 2. Manufacturer's literature clearly marked to show compliance of proposed product with Contract Documents.
  - 3. Itemized comparison of original and proposed product addressing product characteristics including but not necessarily limited to:
    - a. Size.
    - b. Composition or materials of construction.
    - c. Weight.
    - d. Electrical or mechanical requirements.
  - 4. Product experience:
    - a. Location of past projects utilizing product.
    - b. Name and telephone number of persons associated with referenced projects knowledgeable concerning proposed product.
    - c. Available field data and reports associated with proposed product.
  - 5. Data relating to changes in construction schedule.
  - 6. Data relating to changes in cost.
  - 7. Samples:
    - a. At request of Engineer.
    - b. Full size if requested by Engineer.
    - c. Held until substantial completion.
    - d. Engineer not responsible for loss or damage to samples.

## 1.05 APPROVAL OR REJECTION

- A. Written approval or rejection of substitution given by the Engineer.
- B. Engineer reserves the right to require proposed product to comply with color and pattern of specified product if necessary to secure design intent.
- C. In event substitution results in a change of Contract price or time, provisions in Special Provisions-General Conditions will be applied for adjustment.
- D. Substitutions will be rejected if:
  - 1. Submittal is not through the Contractor with Contractor's approval.
  - 2. Requests are not made in accordance with this Section.
  - 3. In the Engineer's opinion, acceptance will require substantial revision of the original design.
  - 4. In the Engineer's opinion, substitution is not equal to original product specified or will not perform adequately the function for which it was intended.

## PART 2 PRODUCTS

Not Used.

## PART 3 EXECUTION

Not Used.

END OF SECTION

## SECTION 01 70 00

### EXECUTION AND CLOSEOUT REQUIREMENTS

#### PART 1 GENERAL

##### 1.01 REQUIREMENTS INCLUDED

- A. Closeout Procedures.
- B. Project Record Documents.
- C. Operation and Maintenance Data.
- D. Guaranties, Warranties and Bonds.
- E. Spare Parts and Maintenance Materials.
- F. Certification of Recycled Content.
- G. Waste Management Report.

##### 1.02 CLOSEOUT PROCEDURES

- A. Comply with procedures in this Section, and the General Conditions Section C700 of the Contract for Construction, Articles 14 and 15, for inspection and acceptance of the Work, payment and retention procedures.
- B. When Contractor considers Work has reached substantial completion, submit written certification that Work is ready for inspection.

##### 1.03 INSPECTION PROCEDURES

When the Work is in the opinion of the Contractor, substantially complete, the Contractor shall call for a punch list inspection.

- A. Inspection Procedures: On receipt of a written request for inspection, the RTA Representative will schedule the inspection. If in the judgment of the RTA's Representatives the project is not substantially complete, the RTA Representative will so advise the Contractor and discontinue the inspection.
  - 1. The RTA's Representative will repeat inspection when requested and assured that the Work has been completed.
  - 2. Results of the completed inspection will form the basis of requirements for final acceptance of the Work.
- B. Final cleaning shall be completed prior to RTA's inspection and acceptance.

##### 1.04 PROJECT RECORD DOCUMENTS ("AS-BUILTS")

- A. Maintain, on current basis, record drawings showing "as-built" conditions of project; subject to monthly review by RTA Representative. Monthly pay estimates will not be

processed without review and approval of record drawings by the RTA. Written confirmation that the as-builts have been properly updated shall be submitted with each pay application request. Final Acceptance of Work will not take place until record drawings are turned over to the RTA's Representative.

- B. Store Project record documents separate from those used for construction. Protect from deterioration and loss in a secure, fire-resistive location; provide access to the RTA's Representatives during normal working hours. In the event of loss of recorded data, use means necessary to again secure the data to the RTA's acceptance; such means shall include, if necessary in the opinion of the RTA, removal and replacement of concealing materials and in such case, replacements shall be to the standards originally specified.
- C. Before commencing backfilling of utilities or any other underground pipes, ducts, conduits, or structures, take photographs showing relationship of below ground utilities to structure(s) or other physical reference point. Photos are to be in compliance with Section 01 35 00, Special Project Procedures, categorized by locations and indicating utilities and progress of Work, as specified. Provide photo(s) of all connections, crossings, stubs, or other critical points. If the Contractor neglects to take such photographs, Contractor shall uncover, at the Contractor's expense, the area(s) so neglected in order to provide the requisite photos.
- D. Record Drawings: Maintain a clean, undamaged bond set of Contract Drawings and Shop Drawings. Mark the set to show the actual installation where the installation varies from the Work as originally shown. Mark whichever drawing is most capable of showing conditions fully and accurately. At time of installation, installed locations of work relating to aboveground and underground utilities, structural, ventilation, plumbing, electrical, and other scopes of work as may be required, shall be recorded on sepia mylar prints by Contractor, and reviewed with RTA's Representative. Timing of entries shall be within 24 hours after receipt of information. Do not conceal work until required information is recorded.
  - 1. Information entered on prints shall be neat, legible, and emphasized by drawing "clouds" around changed items. Mark record sets with red erasable pencil; use other colors to distinguish between variations in separate categories of the work. Date entries.
  - 2. Mark new information that is important to the RTA, but was not shown on Contract Drawings or Shop Drawings.
  - 3. At a minimum, the following information shall be inserted and dimensioned on record documents where applicable:
    - a. The exact horizontal and vertical location of all installations in their finished condition, including all electrical, plumbing and mechanical installations;
    - b. All changes in construction, materials and installed equipment;
    - c. Adequate dimensional data, both horizontal and vertical, to allow location of covered installations;
    - d. The identification of changes authorized by Change Order and the number of that Change Order;
    - e. All Requests for information and the number of that Request for Information;
    - f. All Field Clarifications and the number of that Field Clarification;
    - g. All the Engineer's field change directives and the number of such directive where applicable.

4. Symbols and designations used in preparing record drawings shall match those used in Contract Drawings.
  5. Locate and dimension work, including stubs for future connections, with reference to permanent landmarks or buildings and indicate approximate depth below finish grade.
  6. Organize record drawing sheets into manageable sets, bind with durable paper cover sheets, and print suitable titles, dates and other identification on the cover of each set.
- E. Record Specifications: Maintain one complete copy of the Project Specifications, including addenda, and one copy of other written construction documents such as Change Orders and modifications issued in printed form during construction. Mark these documents to show variations in actual work performed in comparison with the text of the Specifications and modifications. Give particular attention to substitutions, selection of options and similar information on elements that are concealed or cannot otherwise be readily discerned later by direct observation. Note related record drawing information and Product Data.
1. Upon completion of the Work, submit record Specifications to the RTA's Representative for the RTA's records.
- F. Prior to final Acceptance of Work, submit Project record documents with transmittal letter containing date, Project title, Contractor's name and address, list of documents and signature of Contractor.

#### 1.05 OPERATION AND MAINTENANCE DATA

- A. Provide data for Sections as required by the Contract Documents.
- B. Preparation of data shall be by personnel:
1. Trained and experienced in maintenance and operation of described products.
  2. Familiar with requirements of this Section.
  3. Skilled as technical writer to the extent required to communicate essential data.
  4. Skilled as draftsman competent to prepare required drawings.
- C. Submit 4 hard copies and 1 electronic copy of operating/maintenance manuals prior to Final Acceptance of Work, bound in 8-1/2" x 11", three ring side binders with durable plastic covers; with identification on, or readable through, front cover stating general nature of manual. Final Acceptance of the Work will not take place until operation/maintenance manuals are approved by Engineer and RTA.
- D. Operation and Maintenance (O&M) Manual shall contain:
1. Part 1: Directory, listing names, addresses and telephone numbers of Engineer, RTA Inspector and Contractor; and index furnishing complete information as to location in manual of emergency data regarding installation.
  2. Part 2: Operation and maintenance instructions, arranged by system. For each system, give names, addresses and telephone numbers of subcontractors and suppliers; and include the following:
    - a. Appropriate design criteria.
    - b. List of equipment.
    - c. Parts list; including complete nomenclature, current costs, and names and address of nearest vendor of parts.
    - d. Detailed operating instructions in a logical sequence for each procedure. Include proper procedures in event of failure.

- e. Maintenance instructions, equipment, including routine maintenance cards with time frequency of routine maintenance noted.
  - f. Maintenance instructions, finishes. Provide manufacturer's recommendation for types of cleaning agents and methods, cautions against agents and methods that are detrimental to the product and a recommended schedule for cleaning and maintenance.
  - g. Copy of each Material Safety Data Sheet (MSDS) received with products or materials delivered to the site for incorporation into the Project, for RTA future reference.
  - h. Shop drawings and product data, including changes made during construction. Illustrate relations of component parts of equipment and systems and control and flow diagrams.
  - i. Copies of Guaranties/Warranties. Note instances that might affect validity of warranties or bonds.
- E. Extraneous Data: Where contents of manuals include manufacturers' catalog pages, clearly indicate precise items included in this installation and delete, or otherwise clearly indicate, manufacturer's data with which this installation is not concerned. Include catalog number, size and composition, color and texture designations and information required for re-ordering special manufactured products.
- F. Review contents of manual with RTA representative in full detail to explain all aspects of operations and maintenance in addition to requirements per Section 01 75 00 Starting and Adjusting.

#### 1.06 GUARANTIES, WARRANTIES AND BONDS

- A. Standard Guaranty: Guarantee Work executed under this Contract to be free of defects of workmanship and materials for a period of one year after completion and acceptance by the RTA. Refer to Article 7, General Conditions Section C700 of the Contract Documents. Submittal not required for standard one year guaranty for Work of this project.
- B. Additional Guaranties/Warranties: Provide additional guarantees/warranties (in excess of one year) where specifically required by pertinent Specification Sections.
- 1. Provide duplicate copies. Execute Contractor's submittals and assemble documents executed by subcontractors, suppliers and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.
- C. Submit guaranties/warranties prior to final payment.
- 1. For equipment put into use with RTA's permission during construction, submit guaranties/warranties within 10 days after first operation.
  - 2. For items of work delayed beyond date of substantial completion, provide updated guaranty/warranty submittal within 10 days after acceptance, listing date of acceptance as start of guaranty/warranty period.

#### 1.07 SPARE PARTS AND MAINTENANCE MATERIALS

- A. Provide products, spare parts, and maintenance materials in quantities specified in each Section, in addition to that used for construction of work. Coordinate with RTA's Representative and deliver to Project site. Provide with a detailed transmittal and obtain receipt prior to Final Acceptance of Work.

## 1.08 DISPOSAL REPORT

- A. Upon completion of Work, and prior to final payment, submit a Disposal Report. If using certified hauler and facility, submit copies of all receipts. If using other than certified facility, summarize the waste generated, sent to landfill, reused, and recycled which is attributed to Work of this Project, including copies of all receipts.
- B. Final payment will not be made until the Disposal Report is received and approved by the RTA.

## 1.09 FINAL ACCEPTANCE

- A. Preliminary Procedures: Before requesting certification of final Acceptance of the Work, complete the following:
  - 1. Submit a certified copy of the RTA Representative's list of items to be completed or corrected, stating that each item has been completed or otherwise resolved for acceptance for final inspection.
- B. Final Inspection: The RTA's Representative will re-inspect the work upon receipt of notice that the work, including inspection list items from earlier inspections, "(punch-list)", has been completed, except items whose completion has been delayed because of circumstances acceptable to the RTA.
  - 1. Upon completion of final inspection, the RTA's Representative will prepare and submit to the RTA, a certificate of final acceptance, or advise the Contractor of work that is incomplete or of obligations that have not been fulfilled but are required for final acceptance.
  - 2. If after the inspection, the RTA determines that the Work is complete, the RTA will accept the Work per Section C700 Article 15, General Conditions of the Contract Documents.

PART 2 PRODUCTS – (NOT USED)

PART 3 EXECUTION – (NOT USED)

END OF SECTION



## SECTION 01 75 00

### STARTING AND ADJUSTING

#### PART 1 GENERAL

##### 1.01 SUMMARY

###### A. Section Includes:

1. Procedures and actions required of the Contractor, which are necessary to achieve and demonstrate Substantial Completion.
2. Requirements for Substantial Completion Submittals.

###### B. DEFINITIONS

1. **Demonstration Period:** The period of time, of unspecified duration after initial construction and installation activities during which the Contractor performs in the following sequence;
  - 1) Reviews and approves installation of the Work to ensure the Project has reached a state of Substantial Completion.
  - 2) Equipment and controls startup to demonstrate functional integrity.
  - 3) Personnel training.
2. **Substantial Completion:** The time at which the Work has progressed to the point where it is sufficiently complete and operational for the purposes intended, in accordance with the Contract Documents as evidenced by the Notice of Completion. At this stage, RTA will approve of the operational aspects of the Project, and Owner will deem the Project as substantially complete.
3. **Responsibilities:** From an equipment commissioning and start up standpoint the ITS items (LED signs, and Ticket Vending Machine) are provided by RTA for installation. The respective vendors Connexionz and GFI, respectively will be responsible for on-site hook ups/validation and commissioning. Contractor to assist vendors by providing required power. This equipment is excluded from the Contractor's system demonstration and validation testing scope of work.
- 4.

###### C. SUBMITTALS

1. Submit in the chronological order listed below:
  - a. **Operational Demonstration and System Validation Tests** as follows:
    - 1) At least 21 calendar days before operational demonstration and system validation testing is to be performed, submit a detailed and comprehensive procedure plan for performance of the operational demonstration and system validation tests required. Identical equipment items may be covered under one plan. Include an estimated date and duration for the procedure, the and personnel required. Plan to include coordination with ITS equipment.
    - 2) **System Validation Test.** The procedure plan shall describe and itemize the system including associated electrical equipment and shall include evidence of an organized step-by-step procedure properly coordinating the efforts of the various trades and manufacturers' representatives involved and of the operations of the facilities. Procedures shall include an estimated duration and

- date for the procedures and the personnel required. The sequence and duration of testing shall be delineated, and the tests shall demonstrate all aspects of equipment functionality
- 3) Records Materials. Submit samples of the forms, charts, and other materials to be used in recording demonstration and validation test results.
  - 4) Results. Within 7 calendar days after completion of each procedure plan submit 1 PDF of all recordings and results of all operational demonstrations and system validation tests.
2. Submit operation and maintenance training schedule, for approval by RTA
    - a. Submit 14 calendar days (minimum) prior to first training session for RTA
    - b. Schedule to include:
      - 1) Target date and time for witnessing of the system initial startup, for the various components
      - 2) Target date for initiation of Demonstration Period.
    - c. Include holidays observed by RTA
    - d. Schedule to be resubmitted until approved.
  3. Substantial Completion Submittal:
    - a. File Contractor's Notice of Substantial Completion and Request for Inspection.
    - b. Written request for RTA to witness startup. Request to be received by RTA minimum 1 week before scheduled training of RTA's personnel on that system.
    - c. Equipment installation and startup certifications.
    - d. Letter or email verifying completion of all startup activities including receipt of all specified items from manufacturers or suppliers as final item prior to initiation of Substantial Completion.
- D. COST OF STARTUP
1. Contractor to pay all costs associated with Facility startup except for ITS equipment

## PART 2 PRODUCTS – (NOT USED)

## PART 3 EXECUTION

### 3.01 GENERAL

- A. Facility Startup:
  1. Demonstration Period including:
    - a. Completion of construction work to bring Project to a state of Substantial Completion.
    - b. Startup of Equipment, demonstration of functional integrity of facilities.
    - c. Training of Personnel.
    - d. Completion of the filing of all required submittals.
    - e. Filing of Contractor's Notice of Substantial Completion and Request for Inspection.
- B. DEMONSTRATION PERIOD
  1. Completion of Construction Work:

- a. Complete the Work to bring the Project to a state of substantial completion.
2. Equipment Startup:
  - a. Requirements for individual items of equipment are included in Contractor's O&M Manual, and equipment suppliers' O&M instructions/manuals.
3. Filing of Contractor's Notice of Substantial Completion and Request for Inspection of Project:
  - a. File the notice when the following have been completed:
  - b. Construction work (brought to state of Substantial Completion).
  - c. Equipment Startup.
  - d. Submittal of required documents.
4. Engineer, RTA will review required submittals for completeness within 5 calendar days of Contractor's notice. If complete, Engineer will complete inspection of the work within 10 calendar days of Contractor's notice.
5. Engineer will inform Contractor in writing of the status of the Work reviewed, within 14 calendar days of Contractor's notice.
  - a. Work determined not meeting state of Substantial Completion:
    - 1) Contractor: Correct deficiencies noted or submit plan of action for correction within 5 days of Engineer's determination.
    - 2) Engineer: Reinspect work within 5 days of Contractor's notice of correction of deficiencies.
  - b. Work determined to be in state of tentative Substantial Completion: Engineer to prepare tentative "Engineer's Certificate of Substantial Completion."
  - c. Engineer's Certificate of Substantial Completion:
    - 1) Certificate tentatively issued subject to successful Demonstration of functional integrity.
    - 2) Issued for Project as a whole.
    - 3) Issued subject to completion or correction of items cited in the certificate (punch list).
    - 4) Issued with responsibilities of owner and Contractor cited.
    - 5) Executed by Engineer.
    - 6) Accepted by RTA.
    - 7) Accepted by Contractor.
  - d. Upon successful completion of Demonstration Period, Engineer will endorse certificate attesting to the successful demonstration, and citing the hour and date of the successful Demonstration Period of functional integrity as the effective date of Substantial Completion.

END OF SECTION

## SECTION 02 21 00

### SURVEYS

#### PART 1 - GENERAL

##### 1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 1 Specification Sections, apply to this Section.

##### 1.2 SUMMARY

- A. The work under this section includes all construction surveying, setting grades and layout of facilities, and locating, resetting and recording monuments.
- B. Related Sections:
  - 1. Section 01 33 00 - Submittal Procedures
  - Section 01 35 00 – Special Project Procedures

##### 1.3 SUBMITTALS

- A. Copy of recorded Corner Record or Record of Survey for any disturbed property corner markers or centerline monuments.

#### PART 2 - PRODUCTS (NOT USED)

#### PART 3 - EXECUTION

- A. Construction Staking:
  - 1. Establish horizontal and vertical control of all facilities to be constructed by this contract.
  - 2. Set stakes for improvements, and other facilities shown on the plans.
- B. Survey facilities exposed for identified required potholes.
- C. Property corner restoration:
  - 1. Re-establish any property corner markers disturbed by the Contractors activities. This work shall be performed by a person licensed to perform surveying in the State of California. Prepare and file for recordation the appropriate corner record or record of survey.
  - 2. Property corner markers shall be assumed to exist at all intersections of property lines shown on the drawings.

**END OF SECTION**

## SECTION 02 42 00

### REMOVAL AND SALVAGE OF CONSTRUCTION MATERIALS

#### PART 1 - GENERAL

##### 1.1 SUMMARY

- A. Section Includes:
  - 1. Surface demolition
  - 2. Underground structure removal
  - 3. Underground structure abandonment
  - 4. Removing demolished materials
  - 5. Salvaging Materials to RTA

##### 1.2 SUBMITTALS

- A. Include in the project schedule – work plan for maintaining utility services.
- B. Include with the Work Plan Submittal, Section 01 11 00, Summary of Work, a preliminary list of items to be removed, salvaged and demolished, for review by Engineer and RTA.
- C. Project Record Documents: Accurately record actual locations of:
  - 1. Structures removed, and to be removed
  - 2. Structures to be abandoned in place

##### 1.3 QUALITY ASSURANCE

- A. Conform to applicable codes for procedures when hazardous or contaminated materials are discovered.
- B. Maintain one copy each document on site.

##### 1.4 SCHEDULING

- A. Describe demolition, removal and salvage procedures and include in the project schedule.
- B. Comply with the requirements for traffic control and maintaining utility service.

#### PART 2 - PRODUCTS

Not Used.

#### PART 3 - EXECUTION

### 3.1 EXAMINATION

- A. Examine the site before demolition. Notify the RTA's Representative immediately of any item in question.

### 3.2 PREPARATION

- A. Call Local Underground Service Alert (USA) not less than seven working days before performing Work.
  - 1. Request underground utilities to be located and marked within and surrounding construction areas.
- B. Notify affected utility companies before starting work and comply with utility's requirements.
- C. Erect, and maintain temporary barriers including warning signs and lights, and similar measures, for protection of the public.

### 3.3 DEMOLITION REQUIREMENTS

- A. Use of explosives is not permitted.
- B. Conduct demolition to minimize dust and other airborne debris.
- C. Apply water to minimize dust. Provide hoses and water connections required for this purpose.
- D. Do not burn or bury materials on site. Leave sites in clean condition.

### 3.4 SURFACE DEMOLITION

- A. Within the limits shown on the drawings, remove and dispose:
  - 1. All asphalt paving and base
  - 2. All concrete curbs, gutters, and walks
  - 3. All other surface features indicated to be removed such as landscape, fencing, and other surface improvements.
  - 4. Clear and Grub to the project limits
- B. Coordinate the demolition with the construction schedule to maintain access and utility service.
- C. Continuously clean-up and remove demolished materials from site to an authorized dump site. Do not allow materials to accumulate on site.
- D. Asphalt paving, concrete and base material may be processed for recycling

### 3.5 BURIED PIPE AND STRUCTURE REMOVAL

- A. Within the limits shown on the drawings, remove and dispose of:
  - 1. All buried structures, footings, etc., shown to be removed;

- B. Coordinate the demolition with the construction schedule to maintain access and utility service.
- C. Backfill excavations
- D. Maintain utility service as described in Section 01 50 00, Temporary Facilities and Controls.
- E. Continuously clean-up and remove demolished materials from site to an authorized dump site. Do not allow materials to accumulate on site.
- F. Handling, Removal Abandonment of Asbestos Cement Pipe (If Discovered):
  - 1. Remove and dispose of asbestos cement pipe (ACP) in accordance with State of California requirements and the contract documents. Removal of ACP shall be performed by a contractor licensed and certified by Cal/OSHA for such removal.
    - a. Follow the AWWA guidelines for handling, removing and disposing of ACP as stated in the applicable sections of AWWA Standards C400, C401, C402, and C403 covering asbestos cement transmission and distribution pipe.
    - b. Accomplish the removal of ACP by removing intact pipe sections, where possible. Pothole and expose the ACP at least two days prior to removal to verify extent of pipe to be removed and appropriateness of proposed "asbestos cement pipe removal and disposal plan".
    - c. Perform all cutting and handling of asbestos cement pipe in accordance with the State of California requirements. Provide sufficient supervision and perform monitoring to assure conformance with State requirements. Under no circumstances shall the Contractor utilize methods of removal that result in the release of asbestos fibers into the air.
  - 2. Equipment:
    - a. Snap cutting tools shall be used for the removal of asbestos cement pipe whenever the removal of intact pipe sections is not possible.
    - b. Power "cut off" saws, hand-saws, and other devices and methods that result in the release of asbestos fibers into the air shall not be used for the removal of ACP.
    - c. The pipe shall be wetted prior to the snapping operation being performed.
    - d. Use of a hammer and chisel to gradually split an ACP coupling lengthwise may only be performed if the "asbestos cement pipe removal and disposal plan" developed by the Contractor incorporates measures to prevent the release of asbestos fibers into the air, and is approved by the RTA.
    - e. Encapsulate: If during the removal of ACP broken edges occur, the broken edges shall be encapsulated with Certane 1000 Post Removal Encapsulate or approved equal.

3. Continuously wet the ACP around the snap cutting tool during the removal operation. All personnel handling the ACP shall wear remaining raw sewage, solids/debris, and free liquids in septic tank, and properly fitted respirators during the removal and bagging operations and shall be trained in the use of the respirator equipment. All pedestrian traffic shall be rerouted to maintain 30 feet clear of the removal point. Dispose of liquid and solid waste;
  - a. All removed sections or pieces of ACP shall be bagged and prepared for disposal immediately after removal as described below.
  - b. Transport and dispose of all sections and pieces of ACP in accordance with State requirements at a legally operating landfill that accepts construction debris. All sections or pieces of ACP shall be wetted and double wrapped or bagged with 6 mil plastic wrap immediately after removal. The outer wrap shall be securely held in place with tape in a manner to prevent the release of airborne asbestos fibers.
  - c. Perform all related excavation, backfill, and surfacing.

### 3.6 SALVAGE

- A. Unless directed otherwise by the Engineer, no existing items need to be salvaged.

### 3.7 DISPOSAL

- A. Dispose of all items removed and not salvaged. Comply with all laws and regulations regarding transport and disposal of waste. Pay all disposal and transport fees.

### 3.8 RESURFACING

- A. Provide temporary or permanent resurfacing, following backfilling, as follows:
  1. Cold-mix asphalt paving may be used for the temporary resurfacing of excavations within paved areas that will have public traffic, and where the paved surface will be removed or replaced under this contract. Cold-mix shall be a minimum of 3 inches thick and shall be maintained in a smooth condition.
  2. Temporary steel trench plates may be used
  3. Permanent resurfacing within paved areas shall be a minimum of 4.5 inches of asphalt paving, or the thickness of the adjoining pavement, whichever is greater.

**END OF SECTION**



SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY

BID PROPOSAL AND FORMS

FOR

**San Luis Obispo Transit Center**

San Luis Obispo, CA

**CONTRACT NO.**

**BID PROPOSAL**

TO: THE RTA BOARD OF DIRECTORS:

Pursuant to and in compliance with your Notice to Bidders, the undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; that he/she is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this contract; that he/she has carefully examined the location of the proposed work, the annexed proposed form of contract, and he/she proposes, and agrees if this proposal is accepted, that he/she will contract with the RTA Board of Directors in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other equipment needed, and to do all of the work and furnish all the materials specified in the contract, in the manner and the time therein prescribed, and according to the requirements of the RTA as therein set forth, and that he/she will take in full payment therefor the following unit prices, to-wit:

SEE NEXT PAGE FOR BID PROPOSAL FORM

**BID SCHEDULE/BID FORM FOR**  
**SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY**  
San Luis Obispo County, California

**TRANSIT CENTER**

Item	Description	Unit	Quantity	Unit Cost (Figures)	Total Cost (Figures)
1	TRAFFIC CONTROL	LS	1		
2	WATER POLLUTION CONTROL	LS	1		
3	MOBILIZATION, CLEAN UP AND DEMOB	LS	1		
	<b>SITE CLEARING, DEMOLITION AND EARTHWORK</b>				
4	EXCAVATION (EXPORT)	CY	70		
5	CONCRETE REMOVAL (SIDEWALK)	SF	145		
	<b>SITE WORK/FACILITIES</b>				
6	CONCRETE SIDEWALK (4" THICK)	SF	1,620		
7	SHELTER FOOTINGS	EA	14		
8	INSTALL 22 FT SHELTER	EA	2		
9	INSTALL 17 FT SHELTER	EA	2		
10	INSTALL BENCH	EA	4		
11	INSTALL 2-SIDED KIOSK	EA	2		
12	INSTALL TICKET VENDING MACHINE	LS	1		
13	INSTALL LED "NEXT-BUS" SIGN	EA	2		
14	INSTALL BIKE RACK	EA	2		
15	INSTALL BIKE REPAIR STATION	LS	1		
16	INSTALL TRASH RECEPTACLE	EA	4		
17	6 FT FENCE WITH GATE	LF	20		
18	MISSION TILE	LF	81		
19	6" CURB	LF	120		
	<b>ELECTRICAL/COMMUNICATIONS</b>				
20	SITE ELECTRICAL/COMM	LS	1		
	<b>LANDSCAPE PLANTING</b>				
21	TREE	EA	1		
22	RETROFIT IRRIGATION	SF	2,800		
23	SHRUB PLANTING	EA	45		
24	BARK MULCH	SF	165		
25	TURF (SOD)	SF	950		
26	BEND-A-BOARD	LF	45		
27	TREE GUARD	EA	1		
	<b>MISCELLANEOUS</b>				
28	CONSTRUCTION STAKING	LS	1		
<b>TOTAL BASE BID</b>					

Bidder represents that he/she has hereinabove set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Total" column is the extension of the unit price bid on the basis of the approximate quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, provided, however, if the amount set forth as a unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price.

Proposals in which the prices are mathematically or materially unbalanced may be rejected. A bid is mathematically unbalanced if the bid is structured on the basis of nominal prices for some work and inflated prices for other work; that is, each element of the bid must carry its proportionate share of the total cost of the work plus profits. A bid is materially unbalanced if there is reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the RTA.

Bidder shall execute and submit with their proposal, each of the following:

- BIDDERS INFORMATION LIST
- DESIGNATION OF SUBCONTRACTORS
- BIDDER'S NON-COLLUSION DECLARATION (STATE FORM)
- BIDDER'S BOND

Bidder declares that he/she has read, and agrees to, the Special Provisions, including, without limitation, the provisions of Sections 1, 2, 3, 4, and 5 thereof.

Bidder shall list the name and address of each subcontractor to whom the bidder proposes to directly subcontract portions of the work as required by the provisions of the contract documents. The list of subcontractors shall also set forth the portion of work that will be done by each subcontractor listed. The "DESIGNATION OF SUBCONTRACTORS" form for listing the subcontractors is included in the section titled "Bid Proposal and Forms" of the Contract Documents.

Accompanying this bid proposal is a bidder's bond, cash, cashier's check, or a certified check,

payable to the San Luis Obispo Regional Transit Authority, for the sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$\_\_\_\_\_), said amount being at least ten percent (10%) of the total of the bid. The proceeds thereof shall become the property of the RTA if the proposal is withdrawn after the time fixed in the Notice to Bidders for the opening of

bids, or if, in case this bid is accepted by said RTA Board of Directors and such bidder has received notice that the contract has been awarded to him/her, the undersigned shall fail within ten (10) calendar days, not including Saturdays, Sundays, and legal holidays, thereafter to execute a contract with the RTA and furnish the certificates of insurance and Payment and Performance bonds required by the Contract Documents.

Otherwise, said guarantee, except a bidder's bond, will be returned to the undersigned. This bid proposal may be withdrawn, in writing, prior to the time fixed in the Notice to Bidders for the opening of bids. It is understood and agreed that this bid proposal will not be withdrawn after the time fixed in the Notice to Bidders for the opening of bids. Bidders further agree that the failure of the RTA to open bids for this project exactly at the time fixed in said Notice shall not extend the time within which bids may be withdrawn.

The undersigned bidder will sign and deliver to the RTA the written contract, together with the certificates of insurance and bonds described in the Notice to Bidders, within ten (10) calendar days, not including Saturday, Sundays, and legal holidays, after the undersigned has received notice that the contract has been awarded to him/her.

The undersigned, as bidder, declares that he/she is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the work of this contract.

The bidder's execution of the signature portion of this bid proposal shall also constitute an endorsement and execution of those certifications, questionnaires, and assurances which are a part of this proposal.

**ADDENDA:** The undersigned acknowledges and confirms the receipt of the following Addenda:

<u>Addenda Number</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

and agrees that said addenda are covered in the bid proposal and shall form a part of the Contract Documents.

If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a partnership, state true name of firm, also names of all individual co-partners composing firm; if bidder or other interested person is an individual, state first and last names in full.

Bidder warrants and represents that he/she is licensed in accordance with an Act providing for the registration of Contractors, License No. \_\_\_\_\_, Class \_\_\_\_\_, License Expiration Date \_\_\_\_\_. (Note: The successful bidder must possess the license classification specified in the Notice to Bidders upon award of this contract.)

Name of Bidder \_\_\_\_\_  
Signature of Bidder \_\_\_\_\_  
Printed Name and Title \_\_\_\_\_  
Business Address \_\_\_\_\_  
Email Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Date \_\_\_\_\_  
DIR Registration No.\* \_\_\_\_\_

NOTICE: If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of the officer or officers authorized to sign contract in behalf of the corporation; if bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts in behalf of the partnership; and if the bidder is an individual, his or her signature shall be placed above. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a Power of Attorney must be on file with the RTA prior to opening of bids or submitted with the bid; otherwise, the bid will be disregarded as irregular and unauthorized.

\* Pursuant to Labor Code Section 1771.1, no contractor or subcontractor may be listed on the bid proposal for this construction project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

**RETURN THIS FORM WITH YOUR BID PROPOSAL**

## BIDDERS INFORMATION SHEET

All bidders/proposers are required to provide the following information for all DBE and non-DBE contractors, who provided a proposal, bid, quote, or were contacted by the proposed prime contractor. This information is required from the proposed prime contractor and shall be submitted with their bid proposal. The RTA will use this information to maintain and update a "Bidder's List" to assist in the overall annual Disadvantaged Business Enterprise (DBE) availability goal setting process required for Federal-aid projects. This information is also being made available to other local agencies for the same purpose. *To the extent permitted by law, all information submitted will be held in strict confidence and will not be shared without your consent except as noted above.*

Contractor:       Prime Contractor  Subcontractor  Supplier  Other:

Firm Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Business Address: \_\_\_\_\_ Fax: \_\_\_\_\_

License No. \_\_\_\_\_  
and Classification: \_\_\_\_\_ Years in Business: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Is the firm currently certified as a DBE by Caltrans?  No  Yes Cert. Number: \_\_\_\_\_

Gross Annual Receipts for last year:

- less than \$1 million       less than \$5 million       less than \$10 million  
 less than \$15 million       more than \$15 million

Type of work/ services/ materials provided for this job:

- Contractor       Supplier       Manufacturer       Trucking       Broker  
 Other (describe): \_\_\_\_\_

Contractor Specialty for this job:

- Roadway Construction (including signing, paving, and concrete) (237310)  
 Roadway Painting/Striping (237310)  
 Highway Lighting & Signal Installation (238210)  
 Bridge Construction (237310)  
 Tunnel Construction (237990)  
 Water, Sewer, & Pipeline Construction (237110)  
 Power & Communication Transmission Line (including conduit construction) (237130)  
 Landscaping (561730)  
 Irrigation (237110)  
 Other Heavy Construction (including parks, reservoir, water & sewer treatment facilities) (237990)  
 Masonry (including retaining walls and foundations) (238140)  
 Concrete Retaining Walls (238110)  
 Building Construction (236210/236220)  
 Other (describe): \_\_\_\_\_

- Copy sheet as needed
- None of the information requested on this form is material to the RTA's determination of which Bidder's Bid is the lowest responsive bid.

**RETURN THIS FORM WITH YOUR BID PROPOSAL**

**DESIGNATION OF SUBCONTRACTORS FORM**

In compliance with the provisions of Sections 4100-4113 of the Public Contract Code of the State of California, and any amendments thereto, the undersigned bidder sets forth the following:

- a. The name and location of the place of business of each subcontractor who will perform work or labor, or render service to the undersigned Prime Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the undersigned Prime Contractor's total bid or in the case of bids for the construction of streets and highways, including bridges, in excess of one-half of one percent or ten thousand dollars (\$10,000), whichever is greater.\*
- b. The portion of the work that will be done by each such subcontractor. Only one subcontractor shall be listed for each such portion. If the subcontractor is not performing all of the work under the bid item number(s) listed for that subcontractor, the bidder shall set forth the portion of the work relating to said bid item number(s) that will be done by the subcontractor.

Bid Schedule Item No.	Description of Portion of Work (if applicable)	Subcontractor	License No.	DIR Reg. No.**	Address	Percent of Total Bid Price

By: \_\_\_\_\_  
 (Bidder's Signature/Printed Name and Title/Company Name)

NOTES: \* When there is a failure to list a subcontractor, as required, the law provides that the Contractor agrees to do the work with his or her own forces. In such case, bidder must be authorized to perform said work. Any bid not complying with the provisions hereof may be rejected.

\*\* Pursuant to Labor Code Section 1771.1, no contractor or subcontractor may be listed on the bid proposal for this construction project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

**RETURN THIS FORM WITH YOUR BID PROPOSAL**

**BIDDER'S NON-COLLUSION DECLARATION**

Bidder hereby states, under penalty of perjury, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**RETURN THIS FORM WITH YOUR BID PROPOSAL**



**BIDDER'S BOND**

KNOW ALL BY THESE PRESENTS:

That we, \_\_\_\_\_

\_\_\_\_\_

as Principal, and \_\_\_\_\_

\_\_\_\_\_

as Surety, are held and firmly bound unto the San Luis Obispo Regional Transit Authority (hereinafter called "RTA") in the penal sum of Ten Percent (10%) of the total aggregate amount of the bid of the Principal above named, submitted by said Principal to the RTA for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the Surety

hereunder exceed the sum of \_\_\_\_\_

\_\_\_\_\_ dollars (\$\_\_\_\_\_).

THE CONDITION OF THIS OBLIGATION IS SUCH,

That whereas a bid to the RTA for certain construction specifically described as follows, for which bids are to be opened on \_\_\_\_\_, 2017, has been submitted by Principal to RTA for:

**San Luis Obispo Transit Center  
San Luis Obispo, CA  
CONTRACT NO.**

NOW, THEREFORE, if the aforesaid Principal shall not withdraw said bid after the time fixed in the Notice to Bidders for the opening of the same, and shall within ten (10) calendar days, not including Saturdays, Sundays, and legal holidays, after receipt of written notice that the contract has been awarded to him/her, enter into a written contract with the RTA, in the prescribed form, in accordance with the bid as accepted, and file with the RTA the certificates of insurance as stipulated in Article 7 of the Agreement and the two bonds, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise, it shall remain in full force and effect, and the penal sum guaranteed by this bond shall be forfeited to the RTA .

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said contract or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

In the event suit is brought upon said bond by the RTA and judgment is recovered, the Surety shall pay all costs incurred by the RTA in such suit, including a reasonable attorney's fee to be fixed by the court. Death of the Principal shall not relieve Surety of its obligations hereunder.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

Principal

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

Surety

\_\_\_\_\_

Address

NOTE:

Signatures of those executing for Surety must be properly acknowledged.

**SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY**

**CONTRACT AGREEMENT FOR**

**FOR**

**San Luis Obispo Transit Center  
SAN LUIS OBISPO, CA  
CONTRACT NO.**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, between the San Luis Obispo Regional Transit Authority, a political subdivision of the State of California, party of the first part, hereinafter called "RTA" and \_\_\_\_\_ the party of the second part, hereinafter called "Contractor".

WITNESSETH, that for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

**ARTICLE 1 – WORK**

That the Contractor will, at its own proper cost and expense, do all the work and furnish all the equipment and materials necessary to construct and complete in good and workmanlike manner to the satisfaction of the RTA Board of Directors, for

**San Luis Obispo Transit Center  
SAN LUIS OBISPO, CA  
CONTRACT NO.**

all in strict accordance with the Contract Documents, including without limitation, the Project Plans, Specifications and the Special Provisions therefor, on file in the RTA offices located at 179 Cross Street, San Luis Obispo, California, 93401.

**ARTICLE 2 – CONTRACT**

This Agreement, together with the Notice and Instructions to Bidders, Bid Proposal and Forms, Specifications, Plans, the Special Provisions, including without limitation the Project Plans incorporated therein, and all addenda thereto, form the contract, and said

documents by this reference become as fully a part of this Agreement as if set forth in full and are herein sometimes referred to as “Contract” or as “Contract Documents”. The terms set forth below, when utilized in said documents, shall mean as follows:

EXECUTIVE DIRECTOR: Means the RTA Executive Director, acting either directly or through properly authorized agent(s), acting within the scope of the particular duties delegated to them, including registered engineers under contract to the RTA.

BOARD SECRETARY: Means the Secretary of RTA Board of Directors.

### ARTICLE 3 – CONTRACT TIMES

The Contractor shall begin work within ten (10) calendar days or as otherwise stated in the contract documents, not including Saturdays, Sundays, or legal holidays, from the date of receipt of the RTA’s Notice to Contractor to Proceed, and the work to be accomplished under this contract shall be completed within the time limit provided in the Special Provisions.

### ARTICLE 4 – CONTRACT PRICE

The total Contract price is the amount of the Contractor’s bid as set forth in the award of the Contract approved by the RTA Board of Directors. The Contractor will receive and accept and the RTA will pay the prices specified in the attached Bid Proposal, which is incorporated herein by reference, as full compensation for furnishing all labor, materials, and equipment for doing all the work contemplated and embraced in this Agreement. To the extent permitted by law, the Contractor assumes during the progress of the work and before its acceptance, any and all loss or damage arising out of the nature of the work aforesaid or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the RTA; and assumes any and all expenses incurred by or in consequence of the suspension or discontinuance of work, for well and faithfully completing the work, and the whole thereof, in the manner and to the requirements of the Plans, Special Provisions, Standard Specifications, Standard Plans, and the Executive Director.

### ARTICLE 5 – SUBCONTRACTING

The Contractor’s attention is directed to the provisions of the “Subletting and Subcontracting Fair Practices Act” set forth in Sections 4100-4114 of the Public Contract Code.

## ARTICLE 6 – INTERPRETATION OF MEANING

The Contractor agrees that the Executive Director shall decide as to the meaning of the Standard Specifications, Standard Plans, and Special Provisions for the work, including without limitation the Project Plans incorporated therein, where the same may be found to be obscure or in dispute and the decision shall be final. The Executive Director shall have the right to correct any errors or omissions therein when such corrections are necessary to the proper fulfillment of the intention of the Special Provisions, Specifications and Plans; the action of such corrections is to take effect from the time said Executive Director gives notice thereof to the Contractor.

## ARTICLE 7 – INSURANCE REQUIREMENTS

Contractor, at its sole cost, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. All of the insurance companies providing insurance for Contractor shall have, and provide evidence of, an A.M. Best & Co. rating of A:VII or above, unless exception is granted by Risk Manager. Further, all policies shall be maintained for the full term of this Agreement and related warranty period if applicable.

### 7.01 SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES

#### A. COMMERCIAL GENERAL LIABILITY

Policy shall include coverage at least as broad as set forth in Insurance Services Office Commercial General Liability Coverage (CG 00 01) with policy limits of not less than \$1 Million (\$1,000,000) per occurrence and \$2 Million (\$2,000,000) aggregate. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

- i. The RTA, its officers, officials, employees, and volunteers are named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance as least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 (if a later edition is used).
- ii. The insurance provided herein shall be considered primary coverage to the RTA with respect to any insurance or self-insured retention maintained by the RTA. Further, the RTA's insurance shall be considered excess insurance only and shall not be called upon to contribute to this insurance.
- iii. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the Executive Director.

B. BUSINESS AUTOMOBILE POLICY

Policy shall include coverage at least as broad as set forth in the liability section of Insurance Services Office Business Auto Coverage (CA 00 01) with policy limits of no less than \$1 million dollars combined single limit for each occurrence. Said insurance shall include coverage for owned, non-owned, and hired vehicles. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

- i. The RTA, its officers, officials, employees, and volunteers are named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.
- ii. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the Executive Director.

C. WORKERS' COMPENSATION / EMPLOYERS' LIABILITY INSURANCE

- i. Workers' Compensation: policy shall provide statutory limits as required by State of California. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:
  - a. Contractor and its insurer shall waive all rights of subrogation against the RTA, its officers and employees for workers' compensation losses arising out of this Agreement.
  - b. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the Executive Director.
- ii. Employer's Liability: policy shall provide \$1 million dollars per accident for bodily injury or disease.

If the Contractor maintains higher limits than the minimum shown above, the RTA requires and shall be entitled to coverage for the higher limits maintained by the Contractor.

7.02 DEDUCTIBLES AND SELF-INSURANCE RETENTIONS

All deductibles and/or self-insured retentions that apply to the insurance policies required herein will be declared in writing and approved by the RTA prior to commencement of this Agreement.

### 7.03 DOCUMENTATION

Prior to commencement of work and annually thereafter for the term of this Agreement, Contractor will provide to RTA properly executed certificates of insurance clearly evidencing the coverage, limits, and endorsements specified in this Agreement. Further, at the RTA request, the Contractor shall provide certified copies of the insurance policies within thirty days of request.

Failure of the RTA to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of the RTA to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

### 7.04 ABSENCE OF INSURANCE COVERAGE

RTA may direct Contractor to immediately cease all activities with respect to this Agreement if it determines that Contractor fails to carry, in full force and effect, all insurance policies with coverage levels at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Contractor's delay and expense.

### 7.05 SPECIAL RISKS OR CIRCUMSTANCES

The RTA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## ARTICLE 8 – INDEMNIFICATION

### 8.01 A.1 GENERAL

To the fullest extent permitted by law, the Contractor assumes liability for and agrees, at the Contractor's sole cost and expense, to promptly and fully indemnify, protect, hold harmless and defend (even if the allegations are false, fraudulent, or groundless), the RTA, its Board and each member thereof, and their respective officials, officers, directors, employees, commission members, representatives, and agents ("Indemnitees"), from and against any and all claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceeds, causes of action, demands, costs, judgments, liens, stop payment notices, penalties, liabilities, damages, losses, anticipated losses of revenues, and expenses (including, but not limited to, any fees of accountants, attorneys, experts, or other professionals, or investigation expenses), or losses of any kind or nature whatsoever, whether actual, threatened, or alleged, arising out of, resulting from, or in any way (either directly or indirectly), related to the Work, the Project or any breach of the

Contract by Contractor or any of its officers, agents, employees, Subcontractors, Sub-subcontractors, or any person performing any of the Work, pursuant to a direct or indirect contract with the Contractor (“Indemnity Claims”). Such Indemnity Claims include, but are not limited to, claims for:

1. Any activity on or use of the RTA’s premises or facilities;
2. Any liability incurred due to Contractor acting outside the scope of its authority pursuant to the Contract, whether or not caused in part by an Indemnified Party;
3. The failure of Contractor or the Work to comply with any applicable law, permit, or orders;
4. Any misrepresentation, misstatement or omission with respect to any statement made in the Contract Documents or any document furnished by the Contractor in connection therewith;
5. Any breach of any duty, obligation or requirement under the Contract Documents, including, but not limited to any breach of Contractor’s warranties, representations, or agreements set forth in the Contract Documents;
6. Any failure to coordinate the Work with the RTA’s separate contractors;
7. Any failure to provide notice to any party as required under the Contract Documents;
8. Any failure to act in such a manner as to protect the Project from loss, cost, expense, or liability;
9. Bodily or personal injury, emotional injury, sickness or disease, or death at any time to any persons including without limitation employees of Contractor;
10. Damage or injury to real property or personal property, equipment and materials (including, but without limitation, property under the care and custody of the Contractor or the RTA) sustained by any person or persons (including, but not limited to, companies, corporations, utility company or property owner, Contractor and its employees or agents, and members of the general public);
11. Any liability imposed by applicable law including, but not limited to criminal or civil fines or penalties;



12. Any dangerous, hazardous, unsafe or defective condition of, in or on the site, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the site by Contractor, its officers, agents, employees, or Subcontractors;
13. Any operation conducted upon or any use or occupation of the site by Contractor, its officers, agents, employees, or Subcontractors under or pursuant to the provisions of the Contract or otherwise;
14. Any acts, errors, omission or negligence of Contractor, its officers, agents, employees, or Subcontractors.
15. Infringement of any patent rights, licenses, copyrights or intellectual property which may be brought against the Contractor or the RTA arising out of Contractor's Work, for which the Contractor is responsible; and
16. Any and all claims against the RTA seeking compensation for labor performed or materials used or furnished to be used in the Work or alleged to have been furnished on the Project, including all incidental or consequential damages resulting to the RTA from such claims.

#### A.2 EFFECT OF INDEMNITEES' ACTIVE NEGLIGENCE

Contractor's obligations to indemnify and hold the Indemnitees harmless **exclude** only such portion of any Indemnity Claim that is attributable to the active negligence or willful misconduct of the Indemnitee, provided such active negligence or willful misconduct is determined by agreement of the parties or by findings of a court of competent jurisdiction. In instances where an Indemnitee's active negligence accounts for only a percentage of the liability for the Indemnity Claim involved, the obligation of Contractor will be for that entire percentage of liability for the Indemnity Claim not attributable to the active negligence or willful misconduct of the Indemnitee(s). Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article 8 A. Subject to the limits set forth herein, the Contractor, at its own expense, shall satisfy any resulting judgment that may be rendered against any Indemnitee resulting from an Indemnity Claim. The Indemnitees shall be consulted with regard to any proposed settlement.

#### A.3 INDEPENDENT DEFENSE OBLIGATION

The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which

duty arises immediately upon receipt by Contractor of the tender of any Indemnity Claim from an Indemnitee. The Contractor's obligation to defend the Indemnitee(s) shall be at Contractor's sole expense, and not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. This duty to defend shall apply whether or not an Indemnity Claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that the Indemnitees are responsible, in whole or in part, for any Indemnity Claim. The Contractor shall respond within thirty (30) calendar days to the tender of any Indemnity Claim for defense and/or indemnity by an Indemnitee, unless the Indemnitee agrees in writing to an extension of this time. The defense provided to the Indemnitees by Contractor shall be by well-qualified, adequately insured and experienced legal counsel acceptable to the RTA.

A.4 INTENT OF PARTIES REGARDING SCOPE OF INDEMNITY

It is the intent of the parties that the Contractor and its Subcontractors of all tiers shall provide the Indemnitees with the broadest defense and indemnity permitted by Applicable Law. In the event that any of the defense, indemnity or hold harmless provisions in the Contract Documents are found to be ambiguous, or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation in favor of providing defense and/or indemnity to the Indemnitees be given effect.

A.5 WAIVER OF INDEMNITY RIGHT AGAINST INDEMNITEES

With respect to third party claims against the Contractor, to the fullest extent permitted by law, the Contractor waives any and all rights to any type of express or implied indemnity against the Indemnitees.

A.6 SUBCONTRACTOR REQUIREMENTS

In addition to the requirements set forth hereinabove, Contractor shall ensure, by written subcontract agreement, that each of Contractor's Subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to Indemnity Claims arising out of, in connection with, or in any way related to each such Subcontractors' Work on the Project in the same manner in which Contractor is required to protect, defend, indemnify and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from others as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Article 8A.

A.7 NO LIMITATION OR WAIVER OF RIGHTS

Contractor's obligations under this Article 8A are in addition to any other rights or remedies that the Indemnitees may have under the law or under the Contract Documents. Contractor's indemnification and defense obligations set forth in Article 8A are separate and independent from the insurance provisions set forth in the Contract Documents, and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance provisions. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. In any and all claims against the Indemnitees by any employee of the Contractor, any Subcontractor, any supplier of the Contractor or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Article 8 A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Failure of the RTA to monitor compliance with these requirements imposes no additional obligations on the RTA and will in no way act as a waiver of any rights hereunder.

A.8 WITHHOLDING TO SECURE OBLIGATION

In the event an Indemnity Claim arises prior to final payment to Contractor, the RTA may, in its sole discretion, reserve, retain or apply any monies due Contractor for the purpose of resolving such Indemnity Claims; provided, however, the RTA may release such funds if the Contractor provides the RTA with reasonable assurances of protection of the Indemnitees' interests. The RTA shall, in its sole discretion, determine whether such assurances are reasonable.

A.9 SURVIVAL OF INDEMNITY OBLIGATIONS

Contractor's obligations under this Article 8 A are binding on Contractor's and its Subcontractors' successors, heirs and assigns and shall survive the completion of the Work or termination of the Contractor's performance of the Work.

B.1 RESPONSIBILITY TO OTHER ENTITIES

You are responsible for any liability imposed by law and for injuries to or death of any person, including workers and the public, or damage to property. Indemnify and save harmless any county, city or district and its officers and employees connected with the work, within the limits of which county, city, or district the work is being performed, all in the same manner and to the same extent specified for the protection of the State.

## ARTICLE 9 – FINAL PAYMENT

It is mutually agreed between the parties hereto, that no certificate given or payments made under this contract, shall be evidence of the performance of this contract, either wholly or in part. Final payment for the work performed under this contract shall not be made until the lapse of thirty-five (35) calendar days after the notice of completion of said work has been filed for record and no payment shall be construed to be an acceptance of any defective work or improper materials. The Contractor further agrees that acceptance by the Contractor of the final payment due under this contract, and the adjustment and payment of his/her bill rendered for any work done in accordance with any amendments of this Contract, shall be and shall operate as a release to the RTA from any and all claims or liabilities on account of work performed under this Contract except claims or liabilities for which written notice of claim or protest has been filed with the Executive Director. Besides guarantees required elsewhere, the Contractor shall and does hereby guarantee all workmanship and material for a period of one year from and after both the date of acceptance of the work and the recordation of the notice of completion by the RTA and shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the RTA is or becomes defective during the period of said guarantee without expense whatsoever to the RTA.

## ARTICLE 10 – CONTRACTOR’S REPRESENTATIONS

The Contractor hereby declares that he/she has read the Contract Documents pertaining to the work to be accomplished hereunder, has carefully examined the plans and detail drawings of the work to be performed and fully understands the intent and meaning of the same.

It is further stipulated and agreed that the Contractor shall keep himself/herself fully informed of all laws, ordinances, and regulations that do or may affect the conduct of the work, the materials used therein or persons engaged or employed thereupon and all such orders of bodies and tribunals having any jurisdiction over the same. If it be found that the Special Provisions or Standard Specifications for the work conflict with any such law, ordinance or regulation the Contractor shall immediately report same to the Executive Director in writing. The Contractor shall at all times observe and comply with and shall cause all his/her agents, employees, and independent contractors hired by the Contractor to observe and comply with all such existing and future laws, ordinances, regulations, or decrees.

## ARTICLE 11 – APPRENTICES

Attention is directed to the provisions in Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor.

The Contractor and any subcontractor shall comply with the requirements of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code in the employment of apprentices.

To insure compliance and complete understanding of the law relating to apprentices, and specifically the required ratio thereunder, each contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of work on this contract. Responsibility for compliance with said Labor Code Sections lies with the prime contractor.

#### ARTICLE 12 – PAYROLL RECORDS

Attention is directed to the provisions in Section 1776 of the Labor Code concerning Contractor and subcontractor payroll records.

The Contractor and any subcontractor shall comply with the requirements of Section 1776 of the Labor Code.

#### ARTICLE 13 – EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, Contractor agrees to comply with all of the Equal Employment Opportunity provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), including the following:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the RTA setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the RTA, advising the said labor union or worker's representative of the Contractor's commitments under this Article

14 and shall post copies of the Notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the RTA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of this Article in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Executive Director or the Secretary of Labor may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### ARTICLE 14 – SAFETY

All work conducted by the Contractor and/or subcontractors in the execution of this contract shall be in accordance with current CAL OSHA requirements. Full compensation for compliance with the provisions of this Article shall be considered as included in the other items of work and no additional compensation will be allowed therefor.

## ARTICLE 15 – BONDS

Contractor agrees that the Payment Bond and Performance Bond attached to this Agreement are for reference purposes only, and shall not be considered a part of this Agreement or any other Contract Document. Contractor further agrees that said bonds are separate obligations of the Contractor and its surety, and that any attorney's fee provision contained in any payment bond or performance bond shall not apply to any legal action between Contractor and RTA to enforce any provision of the Contract Documents.

## ARTICLE 16 – ATTORNEYS FEES

No provisions of the Contract Documents provide either the Contractor or the RTA the right to be awarded any attorney's fees and/or costs under Civil Code section 1717 in any legal action brought by either party to enforce any provision of the Contract Documents against the other party. The parties agree that any references to attorney's fees in language describing indemnification obligations do not constitute a contractual provision that would provide either the Contractor or the RTA the right to be awarded any attorney's fees and/or costs under Civil Code section 1717 in any legal action brought by either party to enforce any provision of the Contract Documents against the other party. Any other language in the Contract Documents providing for a recovery of attorney's fees shall be strictly construed as not including the recovery of any attorney's fees incurred by either Contractor or RTA in any legal action brought by either party to enforce any provision of the Contract Documents against the other party.

The parties agree that the Contract Documents contain no provisions that would allow either the Contractor or the RTA to be awarded attorney's fees and/or costs under Civil Code section 1717. Nothing in this Article affects any right by Contractor or RTA to recover attorney's fees or costs by operation of any law other than Civil Code section 1717.

In the event of any conflict between language in this Article and any other language in the Contract Documents, the language in this Article shall prevail.

## ARTICLE 17 – FEDERALLY REQUIRED CONTRACT CLAUSES

This project will be partially funded using Federal Transit Administration funds. As such, the clauses identified in the Special Provision are incorporated into this Agreement between the RTA and the Contractor.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written, being authorized thereto.

**SAN LUIS OBISPO REGIONAL TRANSIT  
AUTHORITY**

**CONTRACTOR**

By: \_\_\_\_\_  
RTA Board President

\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
RTA Board Secretary

\_\_\_\_\_

Printed Name and Title  
(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign)

APPROVAL RECOMMENDED  
GEOFF STRAW

By: \_\_\_\_\_

Printed Name and Title

By: \_\_\_\_\_  
RTA Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address for giving notices

APPROVED AS TO FORM AND LEGAL EFFECT:

\_\_\_\_\_

TIMOTHY MCNULTY  
RTA Counsel

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_



**BUY AMERICA REQUIREMENTS**

The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients’ bid or request for proposal for FTA funded contracts. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, 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. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The BIDDER must submit to RTA the appropriate Buy America certification below with its bid. Bids that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

*Certificate of Compliance with Buy America Requirements*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Certificate of Non-Compliance with Buy America Requirements*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DBE UTILIZATION FORM**

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offer is committed to a minimum of 5.1% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

**DBE PARTICIPATION SCHEDULE**

The Bidder/Offeror shall complete the following information for all DBEs participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

Name and Address	Contact Name and Telephone Number	Participation % (of Total Contract Value)	Description of Work to be Performed	Race and Gender of Firm

**Performance Guarantee Certification**

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided:

\_\_\_\_\_

Performance Bond

\_\_\_\_\_

Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME:

\_\_\_\_\_

AUTHORIZED SIGNATURE:

\_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Performance Bond**

KNOW ALL MEN BY THESE PRESENTS: that

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*(Insert full name and address and legal title of Contractor)* as Principal, hereinafter called Contractor, and

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*(Insert full name and address or legal title of Surety)* as Surety, hereinafter called Surety, are held and firmly bound unto the RTA as Obligee, hereinafter called Authority, in the amount of \_\_\_\_\_ Dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with the RECIPIENT for Contract No. \_\_\_\_\_, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the RTA.

Whenever Contractor shall be, and is declared by the RTA to be in default under the Contract, the RTA having performed RTA's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

Complete the Contract in accordance with its terms and conditions, or

Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the RTA elects, upon determination by the RTA and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the RTA to Contractor under the Contract and any amendments thereto, less the amount properly paid by the RTA to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the RTA or the heirs, executors, administrators or successors of the RTA.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS

PRINCIPAL

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (Title)

WITNESS

SURETY

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (Title)

**Attach hereto proof of authority of officers or agents to sign bond.**



**Bank Draft**

**FOR VALUE RECEIVED**

Pay on presentment to \_\_\_\_\_ the sum of \_\_\_\_\_ Dollars (\$)  
(Name of Beneficiary)

Charge the Account of \_\_\_\_\_ Irrevocably Standby Letter of  
(Name of Issuing Bank)

Credit No. \_\_\_\_\_ Dated: \_\_\_\_\_.

To \_\_\_\_\_  
(Name of Issuing Bank)

**NAME OF BENEFICIARY**

By \_\_\_\_\_

Its \_\_\_\_\_

**PAYMENT BOND**

KNOW ALL BY THESE PRESENTS: That

WHEREAS, the RTA Board of Directors has awarded to \_\_\_\_\_

\_\_\_\_\_ (hereinafter designated as "Principal") have entered into an agreement for construction of the **San Luis Obispo Transit Center**, which said Agreement, and all of the Contract Documents attached to or forming a part of said Agreement, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law, the Principal is required before entering upon the performance of the Work, to file a good and sufficient bond with the body by whom the contract is awarded, to secure claims to which reference is made in Sections 3247 through 3252, inclusive, of the Civil Code of California, and Sections 3181, 3110, 3111 and 3112 of the Civil Code of California,

NOW, THEREFORE, we, the Principal and the undersigned \_\_\_\_\_

\_\_\_\_\_ as corporate surety, are held and firmly bound unto the San Luis Obispo Regional Transit Authority, (hereinafter called "RTA"), and unto all laborers, materialmen, and other persons referred to in said statutes in the sum of \_\_\_\_\_

\_\_\_\_\_ (\$\_\_\_\_\_), lawful money of the United States for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally by these presents.

The condition of this obligation is such that if the said Principal, his/her or its heirs, executors, administrators, successors or assigns, or subcontractors, shall fail to pay any of the persons named in Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and his/her subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, that the surety herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said surety will pay a reasonable attorney's fee to be fixed by the court.



This bond shall inure to the benefit of any of the persons named in Civil Code Section 3181 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force, virtue, and effect.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or additions to the terms of the contract or to the work or to the specifications.

Death of the Principal shall not relieve Surety of its obligations hereunder.

IN WITNESS WHEREOF one identical counterpart of this instrument, which shall for all purposes be deemed an original thereof, has been duly executed by the Principal and Surety

above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

Principal

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

Surety

\_\_\_\_\_

\_\_\_\_\_

Address

NOTE:

Signatures of those executing for Surety must be properly acknowledged.