



1600 Franklin Street
Oakland, CA 94612

Invitation for Bid (IFB) 2020-1486

Richmond Parkway Transit Center

22 December 2020

Alameda-Contra Costa Transit District

**SECTION 00 01 10
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**SECTION 00 11 16
NOTICE INVITING BIDS**

NOTICE IS HEREBY GIVEN THAT sealed Bids will be received by the Alameda-Contra Costa Transit District (hereinafter “AC Transit” or the “District”) at 1600 Franklin Street, 6th Floor, Oakland, California 94612, until **February 27, 2020 at 1:00pm** Pacific Standard Time (PST) at which time Bids will be publicly opened and read for the following project:

AC Transit
IFB NO. 2020-1486
Richmond Parkway Transit Center
1600 Franklin Street
Oakland, CA 94612

The work consists, in general, of providing and furnishing all materials, labor, tools, supplies, equipment, transportation, and superintendence as required to upgrade the transit center located at Richmond Parkway and Blume Drive in Richmond, California. Improvements shall include those items described in the plans and technical specifications included as a part of this contract.

Project plans will be submitted to the City of Richmond by the AC Transit Project Manager or assigned Architectural and Engineering (A&E) consultant (Chow Engineering), firm in charge, as directed by the Project Manager. The contractor shall be responsible for all work to obtain, and all work, equipment and materials to comply with all conditions and requirements of all permits. The Contractor shall obtain all special permits including recycling permit and licenses and give all notices required for performance and completion of the demolition and removal work, hauling, and disposal of debris.

Bids shall be submitted on the District’s Bid Forms included in Section 00 41 00 of the Bid Documents, plainly endorsed with Bidder's name together with a signed acknowledgment of any and all addenda.

Bid Forms shall be securely sealed in a suitable envelope marked with the name and address of the Bidder, and marked on the front and back of the envelope with the Name and Address of Bidder, the IFB Number and Project Name as follows:

IFB NO. 2020-1486
Richmond Parkway Transit Center
(Name and Address of Bidder)

Whether mailed or personally delivered, all Bids shall be addressed to AC Transit, Purchasing Office, Attn: Michael Silk, 1600 Franklin St., Oakland, CA 94612.

Each Bid must be accompanied by a Bid Guaranty in the form of a Certificate of Deposit, Certified or Cashier’s Check, or Bidder’s Bond, in an amount equal to at least five percent (5%) of the Bidder’s Grand Total Bid Price. The Bid Guaranty will be retained by the District and applied to any and all damages sustained by the District in the event that the successful Bidder fails or refuses to enter into the Contract awarded to it and to furnish all required bonds and Certificates of Insurance.

The District intends to award the Contract to the lowest responsive, responsible Bidder based on the Grand Total Bid Price. The District reserves the right to reject any and all Bids and/or to waive any irregularities or informalities in any Bid or in the Bidding procedure. The District specifically reserves the right to not award the Contract after the opening of Bids.

Bids will be examined and reported to the District’s Board of Directors within ninety (90) days of the Bid opening. Except as permitted by applicable law, no Bidder may withdraw its Bid for a period of ninety (90) days after the date of Bid opening unless by written approval from the District. Each Bidder will be notified of any award of the Contract by the District.

In connection with the performance of the resulting Contract, full compliance with all applicable safety and health standards and with all applicable laws and regulations concerning Equal Employment Opportunity and Disadvantaged Business Enterprises will be required.

This project has a six percent **(6%) Small Business Enterprise (SBE) utilization goal** to which the District encourages the practicable use of Disadvantaged Business Enterprises (DBEs) towards achieving the goal.

In accordance with District *Policy 466: Small and Small Local Business Enterprise*, the District highly encourages the use of certified Small Business Enterprise (SBEs) firms, as well as Small Local Business Enterprise (SLBE) firms. If an SBE/SLBE goal is set for this specific contracting opportunity, DBEs utilization shall be counted towards the attainment thereof. Evidence of goal attainment must be provided via the District's Prime and Subcontractor/Supplier Report form as provided herein.

The absence of evidence of goal attainment requires the submittal of Good Faith Effort (GFE) documentation showing all practicable steps taken to satisfy the SBE goal, including, but not limited to, direct solicitations to SBE/DBE firms and/or SBE/DBE focused media and/or outreach campaigns specific to this project, two-way communications between prime Bidder and potential SBE/DBE firms, and clear documentation of genuine negotiations between Bidder and potential subcontractor(s) that did not result in a contractual agreement. The District's GFE & SBE Policy can be found here, under *Policy 466*: <http://www.actransit.org/about-us/board-of-directors/board-policies/>. Lack of evidence of the SBE goal attainment, coupled with a lack of District-determined GFE to satisfy the SBE goal, may be grounds for a Bid to be deemed non-responsive.

After contract award, all DBE or SBE/SLBE utilization, including, but not limited to prompt-payment adherence, shall be captured and submitted by the prime contractor and its subcontractors electronically via B2GNow or other system specified by the District from time-to-time. Contractors unfamiliar with the program shall be afforded requisite training at no cost to the Contractor.

In order to Bid and perform public works on this project, all tiers of subcontractors, including trucking/hauling firms that are subcontracted to perform services, must be registered with the California Department of Industrial Relations (DIR) pursuant to *Senate Bill 854*, at the time Bids are due and throughout the duration of the project. Evidence of DIR registration, including that of its subcontractors, must be submitted by the Prime Bidder with its Bid. No contractor or subcontractor may be listed on a Bid proposal for a public works project (submitted on or after 01 March 2015) unless registered with the Department of Industrial Relations pursuant to *Labor Code Section 1725.5 [with limited exceptions from this requirement for Bid purposes only under Labor Code Section 1771.1(a)]*.

Bidders and their proposed subcontractors shall hold such licenses as may be required by the laws of the State of California for the performance of the work specified in the Contract Documents. Bidders Bidding as the prime Contractor shall possess a valid California State License Board Contractor's **Class A License** at the time of Contract Award and throughout the Contract Term. The Contractor will also be required to ensure that all subcontractors working on this project are holding valid licenses suitable for their trade.

Pursuant to *Section 1773 of the Labor Code*, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. The prevailing wage rates may be reviewed at the District's offices.

Pursuant to *Public Contract Code Section 22300*, the successful Bidder may submit certain securities in lieu of the District withholding retention of payments during the Project.

The Richmond Parkway Transit Center rehabilitation project will consist of a single contract. Prime Contractor will be responsible to perform a minimum of twenty-five percent (25%) of the Work.

The Contractor is responsible for coordinating work with other construction contracts and therefore shall plan accordingly. See *Section 01 10 00, Work Under Other Contracts*.

Attention is directed to the Bid documents for complete details and Bid requirements. Said documents, including Bid forms, bonds, and this IFB, shall be considered as a part of any Contract made pursuant to this solicitation.

Bid documents will be made available on the District's website at <http://www.actransit.org/acpronet/2020-1486/> and can be downloaded at no cost.

All questions prior to award of the Contract shall be directed to the attention of Michael Silk via e-mail at msilk@actransit.org. The deadline for submissions of questions and clarifications concerning the Contract Documents is **7 February 2020 at 4:00p PST**. Only signed Addenda issued by the District's Procurement Department is binding.

SECTION 00 21 13 INSTRUCTIONS TO BIDDERS

PART 1 – GENERAL

1.01 GENERAL

Information contained in this section is supplemental to or in explanation of information in the *Notice Inviting Bids* contained in Section 00 11 16 of the Contract Documents.

1.02 ARCHITECT/ENGINEER'S ESTIMATE

If an Estimate of Quantities is given in the Contract Documents, the quantities are approximate only, being given as a basis for the comparison of Bids. The District does not, expressly or by implication, agree that the actual amount of work will correspond to the estimate. The District reserves the right to increase or decrease the amount of any class or portion of the work or to omit portions of the work.

1.03 EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK

- A. The Bidder shall examine carefully the Contract Documents and the site of work and shall inform itself of the conditions relating to the execution of the work. Failure to do so will not relieve the successful Bidder of its obligation to enter into a Contract and complete the work in strict accordance with the Contract Documents. Conditions relating to the execution of work include the requirements of federal, state and local laws, statutes and ordinances relative to the execution of work, including, but not limited to, applicable regulations concerning prevailing wage rates, non-discrimination in the employment of labor, protection of the public and employee health and safety, and environmental protection.
- B. The submission of a Bid shall be conclusive evidence that the Bidder has investigated and is satisfied as to the conditions to be encountered, the character, quality and scope of work to be performed, the quantities of materials to be furnished and the requirements of the Contract Documents.

1.04 EXISTING INFORMATION

See Section 00 31 19 Existing Condition Information. The availability or use of information described in this Section is not intended to be and shall not be construed to relieve the Bidder or Contractor from properly examining the site and making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract Documents.

1.05 EXPLANATIONS/CLARIFICATIONS

- A. Any explanation/clarification of the Contract Documents desired by a prospective Bidder shall be requested in writing from the Contracts Specialist so identified in Section 00 11 16, *Notice Inviting Bids*, and delivered to the Contracts Specialist no later than 4:00p PST on 7 February 2020. Any change to the Contract Documents will be made by written Addendum that will be mailed or delivered to each firm receiving a set of the Contract Documents. Upon mailing or delivery, such Addendum will become a part of Contract Documents and binding on all Bidders. The receipt of the addendum by the Bidder shall be acknowledged and so noted in the space provided on the Bid Form. Only written explanations/clarifications, instructions or changes so given by the District will be effective. Oral explanations or instructions will not be binding on the District.
- B. The District's reply to requests for explanations/clarifications received pursuant to the above instructions will be issued no later than 4:00p PST on **13 February 2020**.

1.06 REQUEST FOR ALTERNATIVES/APPROVED EQUALS REQUESTS

- A. It is understood that specifying a brand name or specific types of components and/or equipment in these solicitation documents shall not relieve the Bidder from its responsibility to furnish the end product in accordance with the warranty and contractual requirements. The Bidder is responsible for notifying the District of any inappropriate brand names, or types of components and/or equipment that may be called for in these solicitation documents, and to propose a

suitable substitute for consideration. If the phrase “or approved equal” is inadvertently omitted, it is implied after any brand name.

- B. Unless otherwise specifically provided in the solicitation documents, reference to any equipment, material, article or patented process by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition; and a Bidder may, at its option, use any equipment, material, article, or process which, in the judgment of the District, is equal to that designated. To do so a Bidder shall furnish, at its own expense, all test results, technical data, and background information required by the District in making the determination as to whether the proposed equipment, material or article or process, in the judgment of the District, is equal to that designated.
- C. The District shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles, material or process, and its decision shall be final.
- D. Prospective Bidders may discuss these Contract Documents with the District's Contracts Specialist as noted in Section 00 11 16, *Notice Inviting Bids*. This, however, will not relieve Bidders from the procedure of submitting written documented requests required as follows:
- E. Requests for Approved Equals must be received by the District, in writing, via email at msilk@actransit.org or by mail to the attention of the Contracts Specialist noted in Section 00 11 16, *Notice Inviting Bids*, no later than 4:00p PST on **7 February 2020**. No such requests will be considered by the District if received after this date. Any request for an Approved Equal must be fully supported with technical data, test results or other pertinent information as evidence that the substitute offered is equal to or better than the requirements of the solicitation documents. In addition, any test requirements in the Contract Documents that pertain to an item under consideration for Approved Equal must be submitted with the request for Approved Equal. The District may choose to respond directly to the request rather than updating the solicitation to include the approved name brand.

PART 2 – BID REQUIREMENTS

2.01 BID FORMS

- A. Bids shall be tendered as described herein and on the forms provided in Section 00 41 00, *Bid Forms*, and Section 00 41 13 *Bid Form: Single Stipulated Sum* of the Contract Documents.
- B. All blank spaces in the *Bid Forms* must be completed, as required, in ink, preferably black. All price information shall be shown, clearly legible, in figures, where required. No changes shall be made in the *Bid Forms*.
- C. The Bidder shall sign its Bid in the blank space provided therefor. If Bidder is the Owner, the Bid shall be signed by the Owner. If Bidder is a corporation, the legal name of the corporation and its State of incorporation shall be set forth and the Bid shall be signed by at least two officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, the true name of the firm shall be set forth, the names and addresses of all partners shall be given and the Bid shall be signed by a partner in the firm authorized to sign contracts on behalf of the partnership. If the Bidder is a joint venture, the Bid shall be signed on behalf of each participating company by officers or other individuals who have the full and proper authorization to do so. If the Bid is signed by an agent of the Bidder other than an officer of a corporation or a member of a partnership, a notarized power-of-attorney must be on file with the District prior to opening of Bids or must be submitted with the Bid. If requested by the District, the Bidder shall promptly submit evidence satisfactory to the District of the authority of the person signing the Bid.
- D. Note that the successful Bidder may be required to prepare a Schedule of Values based on the Schedule of Bid Prices that will provide additional detail which will be used in conjunction with payment.

2.02 SUBMISSION OF BIDS

- A. Bids must be submitted at the prescribed time and location specified in Section 00 11 16, *Notice Inviting Bids*. Any submission received after the prescribed time shall be rejected.
- B. Any unauthorized conditions or qualifications entered on, or changes made to, the Bid Documents may render it informal and may cause its rejection.
- C. Alterations by erasure or interlineation must be expressly explained or noted in the Bid Forms over the signature of the Bidder.
- D. No telegraphic, telephonic, or facsimile (fax) or other electronically transmitted Bids will be considered.

2.03 BID GUARANTY

- A. Each Bidder shall furnish and submit with its Bid, one of the following forms of Bidder's security, in an amount equal to five percent (5%) of the Grand Total Bid Price:
 - 1. Unconditional certified or cashier's check on a solvent bank payable to the order of the District
 - 2. A Bidder's bond using the form entitled "Bidder's Bond," provided with the Bid documents, which is properly executed by the Bidder and the surety and is accompanied by corporate surety's power of attorney. The surety's signature shall be notarized and the surety shall be authorized to transact such business in the State of California and be acceptable to the District. Any condition or limitation placed upon said check or any alteration of the form of said bond, or imperfection in the execution thereof, will render it informal and may, at the option of the District, result in the rejection of the Bid.
- B. The Bidder's security shall be given as a guaranty that the Bidder will not withdraw its Bid for ninety (90) calendar days after Bid opening, and if awarded the Contract, will execute the required Contract and bonds within ten (10) days after such Contract has been awarded to it or such additional time as may be allowed by District. If the Bidder fails or refuses to execute the required Contract and bonds, and provide the required insurance certificates within that time, the money and proceeds from the Bidder's security shall be applied towards payment of the damage to District on account of the delay in the execution of the Contract and bonds and the performance of the work thereunder and the necessity of accepting a higher less desirable Bid resulting from such failure or refusal to execute the Contract and bonds, and provide the required insurance certificates as required. The Bidder's security shall remain in full force and effect until a written contract is executed and all the required bonds are executed. The amount of the Bidder's security shall not constitute a limitation upon the right of the District to recover for the full amount of such damage.
- C. Within fifteen (15) calendar days after the recommendation for the award of the Contract, the District will return the Bid guaranties to Bidders except up to three (3) lowest Bidders who are being considered in awarding the Contract. Retained Bid guaranties until the Contract has been finally executed, after which all Bid guaranties, other than Bidder's security amounts that have been forfeited, will be returned.

2.04 DESIGNATION OF SUBCONTRACTORS

- A. In accordance with the provisions of the Public Contract Code of the State of California, the Bidder shall designate on the form provided in Section 00 41 00, *Bid Forms*, each subcontractor who will perform work, supply materials, or render services for the Bidder under this Contract in excess of one-half of one percent (0.5%) of the total Bid submitted. The Bidder shall list the portion of the work that will be done by each subcontractor. If the Bidder fails to specify a subcontractor for any portion of the work, the Bidder agrees to perform that portion of the work itself, and represents that it is qualified to perform that portion of the work itself. Complete all fields or indicated "N/A" as appropriate. Do not leave blanks.

- B. Notwithstanding the above paragraph, the winning Bidder shall be required to provide names of all firms at all tiers to the extent practicable to the District's Contracts Compliance Office in order to ensure accurate reporting of public expenditures.

2.05 NON-COLLUSION DECLARATION

- A. By submitting a Bid, the Bidder represents and warrants that such Bid is genuine and not a sham or collusive or made in the interest or on the behalf of any person therein named, and that the Bidder has not, directly or indirectly, induced or solicited any other Bidder to put in a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the bidder has not in any manner sought collusion to secure the bidder an advantage over any other bidder.
- B. All Bids shall be accompanied by an executed Non-Collusion Declaration in the form required by Public Contract Code Section 7106 provided with the bid documents in Section 00 41 00.

2.06 DISQUALIFICATION QUESTIONNAIRE

- A. Bidders shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether such prospective bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, has ever been disqualified, removed or otherwise prevented from bidding on, or completing a federal, state or local government project because of a violation of law or a safety regulation and if so, to explain the circumstances.
- B. A Bid may be rejected on the basis of a bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, having been disqualified, removed or otherwise prevented from bidding on, or completing a federal, state or local project because of a violation of law or a safety regulation.
- C. All Bids shall be accompanied by an executed Disqualification Questionnaire as required by Public Contract Code Section 10162, on the form provided in the Bid Forms.

2.07 RESPONSIBILITY OF BIDDERS

As a prerequisite to an award of Contract, the District will determine whether the low bidder meets the definition of a "responsible bidder" as set forth in Public Contract Code Section 1103: "*a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.*" In making this determination, the District may consider any information about the bidder, including information submitted with the Bidder's Statement of Qualifications (included with the Bid Forms).

2.08 RESPONSIVENESS OF BIDDERS

Responsiveness is determined by responding to all of the bidding requirements.

2.09 WITHDRAWAL OF BID

A Bidder may withdraw a Bid without prejudice, provided a written request is in the hands of the District not later than the time set for opening bids. The Bid will be set aside prior to the opening of bids and returned to the Bidder unopened. Withdrawal of a Bid does not prejudice the right of a bidder to submit a new Bid as long as it is received on or before the due date and time specified in Section 00 11 16, *Notice Inviting Bids*. No Bidder may withdraw its bid for a period of ninety (90) days after the date of opening of the bids unless approved by the District in writing.

2.10 PUBLIC OPENING OF BIDS

Bids will be opened and read aloud publicly at the date, time and place designated in Section 00 11 16, *Notice Inviting Bids*. All bidders and their authorized representatives are invited to be present. Bids will not be made available for public inspection at bid opening in order for the District to thoroughly review all submittals. Bid abstract will be made available shortly after the opening. Bid documents will not be made available.

PART 3 – REVIEW OF BIDS

3.01 BID REVIEW PROCESS

- A. Bids received shall be reviewed to determine the apparent low bidder. The apparent low bidder will be determined on the basis of the Grand Total Bid Price.
- B. In case of discrepancy between lump sum or unit prices and the Grand Total Bid Price, unit prices shall prevail.

3.02 REJECTION OF BIDS

The District reserves the right to reject any and all bids. Bids may be rejected if they show such items as: any alteration of form; additions not called for; conditional bids; incomplete bids; erasures; irregularities which make the bids incomplete, indefinite or ambiguous; no acceptable bid security; or if the bid is not properly executed.

3.03 DISQUALIFICATION OF BIDDERS

- 3.03.1 A Bid may be disqualified on the basis of a bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, having been disqualified, removed, or otherwise prevented from bidding on, or completing, a California or local project because of a violation of law or a safety regulation.
- 3.03.2 A Bid will be deemed nonresponsive and therefore disqualified if the bidder (both prime and subcontractor(s)) do not have the required licenses and certifications outlined in Section 00 11 16 Notice Inviting Bids at the time of bid opening.
- 3.03.3 More than one (1) Bid from an individual, firm, partnership, corporation or combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested in more than one Bidder for the work contemplated may cause the disqualification of all Bids in which such individual, firm, partnership, corporation or combination thereof is interested.

3.04 RELIEF OF BIDDERS

Attention is directed to Public Contract Code sections 5100 to 5107, inclusive, concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in the bid presented, the bidder shall give the District written notice within five (5) working days after the opening of the bid of alleged mistake, specifying in the notice detail how the mistake occurred.

PART 4-AWARD AND EXECUTION OF THE CONTRACT

4.01 TIME OF AWARD

- A. The District shall make its best efforts to maintain the *Time of Award* schedule stated herein. However, failure to do so will not affect the District's rights under this *Section*.
- B. Within sixty (60) days after the opening of Bids, the District will use best efforts to reject all Bids or award the Contract to the lowest responsible, responsive bidder. If the lowest responsible, responsive bidder refuses or fails to execute the Contract and provide an acceptable Performance Bond, Payment Bond, and insurance certificate(s), the District may award the Contract to the second lowest responsible, responsive bidder. District will use best efforts to make such award, if made, within ninety (90) days after the opening of Bids. If the second lowest responsible, responsive bidder refuses or fails to execute the Contract and provide an acceptable Performance Bond, Payment Bond, and insurance certificate(s), the District may award the Contract to the third lowest responsible, responsive bidder. The District reserves the right to adjust the periods of time specified above within which an award of Contract may be made and if the ninety (90) day period for award is insufficient, said period shall be subject to extension for such further period as may be agreed upon in writing by the District and the bidder or bidders concerned.

4.02 EXECUTION OF CONTRACT

- A. The successful bidder shall, within ten (10) calendar days after having received notice that the Contract has been awarded, sign and deliver to the District a Contract in the form hereto attached together with the Contract Bonds and insurance certificates as required in the Contract Documents. After receiving the signed Contract with acceptable bonds and insurance certificates from the successful bidder, the District will sign the Contract.
- B. If the Contractor is an individual, the Contract shall be executed personally by the Contractor. If the Contractor is a co-partnership, it is desirable that the Contract be executed by all of the partners, but it may be executed by one of them. If the Contractor is a corporation, it must be executed by two officers of the corporation consisting of (a) the chairman of the board, president or vice president; and (b) the secretary, assistant secretary, chief finance officer, treasurer or assistant treasurer, or by a person authorized by the corporation to execute written contracts on its behalf, and the corporate seal affixed thereto. In the alternative, a person other than an officer may sign the Agreement, provided evidence satisfactory to the District is provided indicating the individual's authority to bind the corporation. If the corporate seal is not affixed to the Contract, or if it is executed by a person other than an officer, or only by one (1) officer, there must be attached to the Contract a certified copy of a resolution of the corporation authorizing such officer or person to execute written contracts for and on behalf of the corporation. If the Contractor is a joint venture, the Contract must be executed on behalf of each participating firm by officers or other individuals who have the full and proper authorization to do so.

4.03 FAILURE TO EXECUTE CONTRACT

Failure of a bidder to whom the Contract is awarded to promptly and properly execute the Contract or furnish acceptable Contract bonds, or certificates of insurance, shall be just cause for the annulment of the award and the forfeiture of such bidder's Bid Guaranty.

4.04 NOTICE TO PROCEED

After execution of the Contract and submission of Contractor's performance and payment bonds and certificate of insurance, District will issue the Notice to Proceed indicating that the Work may commence on the date indicated. The Notice to Proceed will also identify the District's Designated Representative (DDR) for the project. Notice to Proceed will be issued within one hundred twenty (120) days of Notice to Award, or any longer period agreed upon between the District and Contractor.

4.05 RELEASE OF INFORMATION

Awardee must receive prior permission from the District before releasing any reports, information or promotional materials prepared in connection with this IFB and subsequent contract award. The Awardee shall not use the District's logo or any other proprietary material without the prior written permission of the District. The awardee shall provide a copy or copies of any such material to the DDR for first review.

PART 5- BID PROTEST PROCEDURES**5.01 BID PROTEST PROCEDURES**

The District's protest procedures can be found here under policy 468: <http://www.actransit.org/about-us/board-of-directors/board-policies/>

SECTION 00 25 13 PRE-BID CONFERENCE

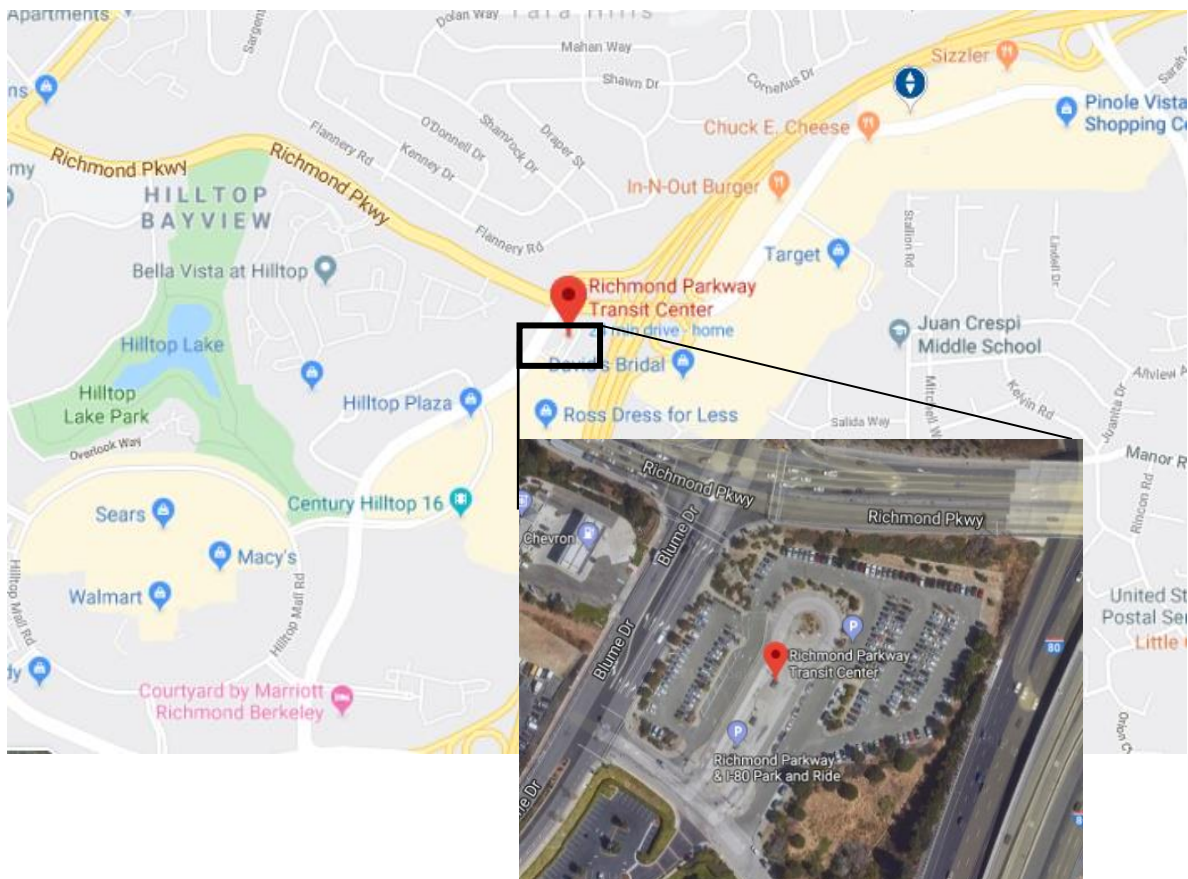
PART 1 – GENERAL

1.01 BACKGROUND

The purpose of the Pre-bid conference is to address questions pertaining to the Contract Documents, to familiarize all Bidders with District's property and the work site, and to discuss the District's safety and other requirements. Attendance at Pre-bid conference is optional but highly recommended.

1.02 LOCATION AND TIME OF PRE-BID CONFERENCE

A pre-bid conference will be held prior to the date of bid opening. The conference will take place on **31 January 2020, 2:30 pm PST** at the Richmond Parkway Transit Center between Richmond Parkway and Blume Drive.



The Pre-Bid meeting will be immediately followed by a project site walk.

1.03 PLANNED AGENDA

The planned agenda for the Pre-bid conference is as follows: registration; introduction of staff and consultants; overview of project; District's SBE requirements, labor compliance, safety and quality requirements; District requirements of Contractor equipment and personnel; questions and answers.

SECTION 00 31 19
EXISTING CONDITIONS INFORMATION

PART 1 – GENERAL

1.01 EXISTING CONDITION INFORMATION

- A. This Document with its referenced attachments is part of the Procurement and Contracting Requirements for Project. They provide District's information for Bidders' convenience and are intended to supplement rather than serve in lieu of the Bidders' own investigations. They are made available for Bidders' convenience and information, but are not a warranty of existing conditions. This Document and its attachments are not part of the Contract Documents.
- B. Existing drawings that include information on existing conditions including previous construction at Project site are available online with the advertisement for bid.
- C. Related Requirements: Section 00 21 13 "Instructions to Bidders" for the Bidder's responsibilities for examination of Project site and existing conditions.

**SECTION 00 41 00
BID FORMS****PART 1 – GENERAL****1.01 INSTRUCTIONS TO BIDDERS**

Bid Forms shall be completed in accordance with the directions herein and the directions indicated in Section 00 11 16, "Notice Inviting Bids"; Section 00 21 13, "Instructions to Bidders"; Section 00 41 00 and Section 00 41 13, "Bid Form," of the Contract Documents.

1.02 BID FORMS

Due on or before the date of Bid Opening: Each of the following Bid Forms must be completed as part of each Bidder's bid and shall be submitted before the specified time and date of the Bid Opening as identified in Section 00 11 16, "Notice Inviting Bids", of the Contract Documents.

1. Bid Letter (*including acknowledgement of receipt of Addenda*)
2. Bidder's Statement of Qualifications and Business References
3. Prime and Subcontractor Report
4. Bidder's Guaranty: *Bidder's Bond or Irrevocable Standby Letter of Credit*
5. Lobbying Certification for Contracts Grants, Loans and Cooperative Agreements
6. Disclosure of Lobbying Activities (*SF-LLL*)
7. Bid Form – Stipulated Sum
8. Exceptions to Sample Contract/IFB Division 00&01

If a Bidder takes exception to the contract or any part of this IFB Division 00 & 01, the Bidder shall provide the following information as a section with the submittal and identify as "Exceptions to the Contract/IFB".

- a) Bidder shall clearly identify each proposed change to the contract or IFB Division 00&01 including all relevant attachments and exhibits.
- b) Bidder shall furnish the reasons therefore as well as specific recommendations for alternative language.

IFB LETTER

Name of Bidder: _____

Type of Business: ☐ Sole Proprietor ☐ Partnership ☐ Joint Venture ☐ Corporation (*Incorporated under the State of ____*)

Primary Business Address: _____

Contact Name: _____ Title: _____

Email: _____ Phone #: _____

Contractor's License #: _____ License Expiration Date: _____

License Classification(s): _____ DIR Registration #: _____

Registered at www.sam.gov? : ☐ YES ☐ NO If YES, please provide DUNS # _____ or CAGE# _____Are you a Small Business Enterprise (SBE)? ☐ YES ☐ NO; If YES, provide a copy of all Certificates.

Pursuant to the Notice Inviting Bids, the undersigned bidder herewith submits a bid on the Bid Forms attached hereto and made a part hereof, and binds itself on award by the under this bid to execute a Contract in accordance with its bid and the Contract Documents.

The Notice Inviting Bids, Instructions to Bidders, General Requirements, Technical Specifications, Appendices, Contract Drawings, and Addenda, if any, are made part of this bid and all provisions thereof are hereby accepted, and all representations and warranties required thereby are hereby affirmed. The undersigned bidder understands that any clarification made to the above or any new and different conditions or information submitted on or with its Bid Forms, other than that requested, may render the bid non-responsive.

The undersigned, as the bidder, declares that the only persons or parties interested in this bid as principals are those named herein; that this bid is made without collusion with any other person, firm or corporation and in submitting this bid, that it has carefully examined the location of the proposed work, the attached proposed form of contract, and the plans, specifications and the other Contract Documents (collectively the Contract Documents); and agrees if this bid is accepted, that it will contract with the District, on the form of contract included with these specifications, to provide all necessary labor, materials, equipment, machinery, apparatus and other means of construction, and to do all the work specified in the Contract Documents, in the manner and time therein prescribed, and according to the requirements of the District's Designated Representative as therein set forth, and that it will accept all full payment therefore based on the item prices set forth in its Schedule of Bid Prices.

The prices included within the Schedule of Bid Prices include all costs for labor, materials, tools, equipment, services, subcontractors, suppliers, taxes, insurance, shipment, delivery, overhead, profit and all other costs necessary to perform the work in accordance with the Contract Documents.

☐ **Receipt of ____ (list #) Addenda.** The Bidder warrants and represents that it has received all Addenda issued by the District in connection with this solicitation.

☐ **Bid Validity.** Bid shall remain valid and irrevocable for a period of not less than 90 days from the date of bid opening.

☐ **Insurance.** The Bidder agrees to comply with the insurance requirements provided in Section 00 73 16: Insurance Requirements.

☐ **Non-Collusion.** The Bidder has made this bid independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to Invitations for Bid with any other firm or with any other competitor.

☐ **Non-Conflict:** The Bidder covenants that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this agreement. The

Bidder further covenants that in the performance of this agreement, no person having any such interest shall be employed by the Bidder, and that the Bidder receives no commissions or other payments from parties other than the District as a result of work performed.

- ☐ **Equal Employment Opportunity:** The Bidder agrees to comply with the Civil Rights Act, and agrees to have a complaint procedure where violations of the Act can be reported and appropriately adjudicated. The Bidder agrees to comply with applicable Federal laws, implementing regulations, and other implementing requirements the FTA may issue. In addition the Bidder agrees to provide workforce data reports as may be periodically requested by the District.
- ☐ **Debarment, Suspension and Other Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions:** The Bidder certifies, by submission of this Bid and certification, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State of California or U.S. Federal department or District.

The undersigned agrees to comply with the above referenced provisions and certifies that all information included in your bid is, to the best of your knowledge, true, accurate and complete. Furthermore, upon execution of a Contract, to furnish the District with services and/or goods, in accordance with the terms outlined in this solicitation (including all addenda) and in the manner and at the prices bid.

Typed name: _____

Title: _____

Signature: _____

Date: _____

Typed name: _____

Title: _____

Signature: _____

Date: _____

BIDDER'S STATEMENT OF QUALIFICATIONS & BUSINESS REFERENCES

- A. Bidder's Name: _____
- B. How many years has your organization been in business as a Contractor under your present business name?

1. As a general contractor? _____
 2. As a subcontractor? _____

C. 3-Year Annual Gross Receipts

Year:	Year:	Year:
\$	\$	\$

D. Give information below about all your current and ongoing projects. *(Attach additional sheets if necessary.)*

Client	Location (city/state)	Type of Work	Value of Work	Percent Completed of Overall Project	Scheduled Completion Date

(Continued on following page)

E. List all key projects your organization has completed similar in nature to the scope of services outlined in this solicitation during at least the last three (3) years in the following tabulation.

Client	Location (city/state)	Type of Work	Value of Work	Year Started	Year Completed

(Attach additional sheets if necessary.)

- F.** Give information below about the relevant experience of the principal individuals of your present organization including those individuals to be in responsible charge of this project. Attach additional sheets if necessary.

Individual's Name	Title	Years of Professional Experience	Type of Work

(Continued on following page)

- G. References:** List Professional references for who your organization has performed work similar in nature to the scope of services outlined in this solicitation. *Do not list AC Transit as a reference.*

Business Name	Contact Person	Phone	Email

(Attach additional sheets if necessary)

- H.** Have you or your organization, or any officer or partner thereof, failed to complete a contract? ☐ **No** ☐ **Yes**

If yes, please explain below. Attach additional sheets if necessary.

- I.** Is any pending litigation or adverse findings against your organization?

☐ **No** ☐ **Yes**

If yes, please explain below. Attach additional sheets if necessary.

PRIME PROPOSER & SUB-PROPOSER/SUPPLIER REPORT

Complete All Sections of Form and Return with Bids/Proposals

The Bidder/Proposer is **required** to complete the following information in accordance with the provisions of Public Contract Code Sections 4100 to 4113, inclusive. This form shall include prime contractor, all suppliers, and all subcontractors that will perform work, provide labor, or render services in connection with the project in an amount in excess of **one-half of one percent (0.5%)** of the total amount of Proposer's Grand Total Proposal/Bid Price. AC Transit reserves the right to request additional documentation to validate any and all information provided on this form. **COMPLETE ALL FIELDS OR INDICATE N/A. DO NOT LEAVE BLANKS.**

Prime/SubProposer/Supplier Name/Address/Contact Information	Type of Work or Materials	Value of Work & Materials <small>(complete both below items)</small>	DBE/SBE UTILIZATION <small>AC Transit reserves the right to request further documentation to validate provided information on meeting the DBE/SBE requirements for this procurement.</small>	Annual Gross Receipts <small>List annual gross receipts for last three years (i.e. 2018, 2017, 2016)</small>
Prime Contractor: Address: Contact Person: Phone: Email: How Many Years In Business: DIR Registration #: License No (if applicable):		Percentage (%)	Is Prime Contractor: DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable <input type="checkbox"/> If DBE or SBE, include the following: Certifying Agency: _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	
Dollar Value (\$)				
Subcontractor/Supplier: Address: Contact Person: Phone: Email: How Many Years In Business: DIR Registration #: License No (if applicable):		Percentage (%)	Is Subcontractor or Supplier: DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable <input type="checkbox"/> If DBE or SBE, include the following: Certifying Agency: _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	
Dollar Value (\$)				
Subcontractor/Supplier: Address: Contact Person: Phone: Email: How Many Years In Business: DIR Registration #: License No (if applicable):		Percentage (%)	Is Subcontractor or Supplier: DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable <input type="checkbox"/> If DBE or SBE, include the following: Certifying Agency: _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	
Dollar Value (\$)				

(DO NOT LIST ALTERNATIVE SUBPROPOSERS FOR THE SAME WORK. ATTACH ADDITIONAL SHEETS AS NECESSARY.)

BIDDER'S BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That _____, as Principal, and _____, as Surety, are held and firmly bound unto the Alameda-Contra Costa Transit District, hereinafter called District, in the sum of (\$ _____), being at least five percent (5%) of the total amount of the bid, for the payment of which sum in lawful money of the United States of America to District we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that, whereas the Principal has submitted said bid to District; NOW, THEREFORE, if the Principal is awarded a Contract by District and, within the time and in the manner required by the Specifications, enters into a written Contract with District and furnishes the requisite bond or bonds and insurance certificates, then this obligation shall become null and void, otherwise to remain in full force and effect.

In the event suit is brought upon this bond by District and judgment is recovered, the Surety shall pay all costs incurred by District in such suit, including a reasonable attorney's fee to be fixed by the Court.

Dated _____, 20__.

To be considered complete, both the Principle and the Surety must sign the Bidder's Bond. In addition, the Surety's signature must be notarized and a copy of the Surety's Power of Attorney must be attached.

Principle Typed Name: _____

Principle Signature: _____ **Date:** _____

Surety Typed Name: _____

Surety Signature: _____ **Date:** _____

Address of Surety: _____

IRREVOCABLE LETTER OF CREDIT

(if applicable)

Date: _____

To: AC Transit, Procurement & Materials Dept.
1600 Franklin Street, 6th Floor
Oakland, California 94612

Re: Irrevocable Standby Letter of Credit No. _____

Procurement and Materials Director:

We hereby issue in your favor of the Alameda-Contra Costa Transit District (*the "District"*) this Irrevocable Standby Letter of Credit for the account of _____ a _____ (*indicate nature of organization, whether sole proprietorship, partnership, corporation*), in the amount of \$ _____, which is available upon your demand when accompanied by a signed statement from an officer of the District, stating that:

The amount drafted is due to the District because of the failure of _____ to enter into a written Contract awarded to it by District, or to furnish the requisite bond(s) and insurance certificates within the time and in the manner required by the Contract Documents and Specifications.

We hereby agree with the drawers and/or bona fide holders that drafts drawn and negotiated in conformity with the terms of this Letter of Credit will be duly honored upon presentation when presented on or before _____, 20_____. Partial drawings are permitted.

Except so far as otherwise expressly stated, this credit is subject to the Uniform Customs and Practice for *Documentary Credits (1993 Revision) of the International Chamber of Commerce Publication No. 500*.

Sincerely,

Financial Institution Name: _____

Typed Name: _____ **Title:** _____

Signature: _____ **Date:** _____

CERTIFICATION REGARDING LOBBYING

Bidders shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Bidders shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the District. Bidders shall ensure that all of its Subcontractors included in their bid shall certify the same.

Please choose one:

- ☐ **No, Bidder has not participated in lobbying activities as outlined above**
- ☐ **Yes, Bidder has participated in lobbying activities as outlined above**

If yes –and complete the Disclosure of Lobbying Activities form on the following page

Name of Bidder: _____

Person Completing Form: _____

Title: _____

Signature: _____ Date: _____

Note: Contact the Contracts Specialist assigned to this procurement if you need further instructions on completing the Certification Regarding Lobbying on the following page.

CERTIFICATION REGARDING LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES <i>(Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352)</i>		
1. Type of Federal Action: <input type="checkbox"/> Contract <input type="checkbox"/> Loan Guarantee <input type="checkbox"/> Grant <input type="checkbox"/> Loan Insurance <input type="checkbox"/> Loan <input type="checkbox"/> Cooperative Agreement	2. Status of Federal Action: <input type="checkbox"/> Bid/offer/application <input type="checkbox"/> Initial Award <input type="checkbox"/> Post-Award	3. Report Type: <input type="checkbox"/> Initial Filing <input type="checkbox"/> Material Change: Year____ Quarter____ Date of last report: _____.
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Sub-awardee Tier, if known: _____ Congressional District, if known: _____.		5. If Reporting Entity in No. 4 is Sub-awardee, enter Name and Address of Prime: _____ _____ _____ Congressional District, if known: _____.
6. Federal Department/Agency:		7. Federal Program Name/Description: CFDA Number, if applicable:
8. Federal Action Number, if known:		9. Award Amount, if known: \$ _____
10a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i>		10b. Individuals Performing Services <i>(including address if different from No. 10a):</i>
<i>(Attach Continuation Sheet(s), if necessary)</i>		
11. Amount of Payment <i>(check all that apply):</i> \$_____ <input type="checkbox"/> actual <input type="checkbox"/> planned		13. Type of Payment <i>(check all that apply):</i> <input type="checkbox"/> retainer <input type="checkbox"/> contingent fee <input type="checkbox"/> one-time fee <input type="checkbox"/> deferred <input type="checkbox"/> commission <input type="checkbox"/> other <i>(specify):</i> _____
12. Form of Payment <i>(check all that apply):</i> <input type="checkbox"/> cash nature: _____ <input type="checkbox"/> in-kind – specify type & value: _____.		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: 		
15. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reference was placed by the user above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000.00) and not more than ten thousand dollars (\$10,000.00) for each failure.		Signature: _____ Print Name: _____ Title: _____ Telephone #: _____ Date: _____

SECTION 00 41 13
BID FORM – STIPULATED SUM
(Single Prime Contractor)

Prices shall reflect all costs for the construction project, including bonds, taxes, permits, insurance, freight, contractor's overhead and profit, disposal and recycle fees, etc.

BIDDER NAME: _____

NAME/TITLE OF PERSON COMPLETING FORM: _____

DATE: _____

DESCRIPTION	TOTAL PRICE
Work for the Richmond Parkway Transit Center	
Base Bid:	\$
ALLOWANCE #1: Unforeseen Conditions <i>(To include but not be limited to: Hazardous Materials, Code Conflicts, Testing and Special Inspections, etc.)</i>	\$25,000.00
ALLOWANCE #2: Permits Fees	\$25,000.00
ALLOWANCE #3: Utilities Fees	\$50,000.00
ALLOWANCE #4: Complete Pre-Fabricated Restroom Package, Delivered to Site, Placed and Connected to all utilities	\$175,000.00
Grand Total <i>(Base Bid Total Costs plus Allowances)</i>	\$

SAMPLE CONTRACT

THIS CONTRACT ("Contract") is made abnd entered into this _____ day of *February 2020*, by and between **ALAMEDA-CONTRA COSTA TRANSIT DISTRICT** (hereinafter "District"), a special transit district established pursuant to *California Public Utilities Code, Section 24501 et seq.*, having its principal place of business at 1600 Franklin Street, Oakland, California 94612 (hereinafter "AC Transit" or the "District") and _____, a California corporation, having its principal place of business at _____ (hereinafter the "Contractor").

THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES.

The work consists, in general, of providing and furnishing all materials, labor, tools, supplies, equipment, transportation, and superintendence as required to upgrade the transit center located at Richmond Parkway and Baum Ave, Richmond, California, 94806. Improvements shall include those items described in the plans and technical specifications included as a part of this contract.

The undersigned hereby agrees to furnish the material, service, or construction in compliance with all terms, conditions, specifications, and addenda in the above referenced solicitation.

2. TERM OF CONTRACT.

The term of this Contract shall start on ____ *March 2020* and end on ____ *October 2020*, unless otherwise extended in writing by the District.

The Period of Performance for this contract shall be one hundred and fifty (150) calendar days after the Effective Date of the Full Notice to Proceed. The Period of Performance may be extended by an approved Contract Change Order or Contract Amendment. The Contractor shall diligently prosecute all of the work under this Contract in all parts and requirements as defined in the Contract Documents.

3. SCHEDULED START OF CONSTRUCTION.

- A. The Contractor shall begin to work as of the effective date of Full Notice to Proceed.
- B. The District will issue Full Notice to Proceed after the following contingencies have been met.
 - 1. All appropriate building permits have been issued.
 - 2. The Contract has been signed by the District and Contractor.
 - 3. Contractor meets all insurances and bonding requirements.
 - 4. Valid certificates of insurance, a current and valid copy of your firm's contractor's license with the California Contractors State License Board, a payment bond and performance bond are received and accepted by the District
 - 5. A purchase order is issued for the material, service, or construction described herein.
 - 6. The AC Transit Project Manager has approved the date for the start of construction and project time.
- C. The District reserves the right to issue Limited Notice to Proceed (LNTP) to start pre-construction activities prior to issuing the Full Notice to Proceed.
- D. Any work initiated prior to a Full Notice to Proceed and the submission of the documents referenced above shall be performed solely at Contractor's risk.

4. SCHEDULED COMPLETION OF CONSTRUCTION.

Contractor shall complete all work under the Contract Documents within one hundred and fifty (150) calendar days after the effective date of the Full Notice to Proceed unless the period of performance has been extended by contract change order or contract amendment.

5. CONTRACT DOCUMENTS.

This Contract shall include the following documents:

- a. Permits (*when available*)
- b. Change Orders (*as applicable*)
- c. The Contract (*including all Amendments*)
- d. IFB #2020-1486 Richmond Parkway Transit Center and all Addenda
- e. Contract Drawings and Specifications
- f. Contractor's Bid

6. COMPENSATION.

Contractor shall faithfully perform all of the Work hereunder as detailed in Section 1 of the Contract (Scope of Work) for the fees set forth in Contractor's Bid hereto, not to exceed \$_____ (including Base Bid and Allowances), in accordance with Contractor's Proposal, and Best and Final Offer if any, as accepted the District. The total not to exceed cost/fee shall include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs, and all other costs and expenses incurred by the Contractor.

Contractor shall submit invoices, with a payment term of net thirty (30) calendar days, at the end of each month services have been provided. Invoices shall clearly describe in detail the services rendered by Contractor during the previous month and shall state the number of hours and the applicable hourly rate of each person. Hourly rates shall be in accordance with the Contractor's Proposal, and Best and Final Offer if any, as accepted the District. The District will endeavor to pay properly submitted, undisputed invoices within thirty (30) calendar days of initial receipt.

Disputed Charges. If the District in good faith believes there is a dispute concerning the accuracy or applicability of any charge or other invoiced amount, it will notify Contractor of the nature of such dispute not later than ten (10) calendar days after receipt of invoice and will provide reasonable support for such dispute together with such notice of disputed charges. In such event, the District may withhold such disputed charges or other invoiced amounts from payment of that or subsequent invoices. Failure by the District to identify a disputed charge or other invoiced amount prior to payment of such charge or amount will not limit or waive any of its rights or remedies with respect thereto, including its right to withhold such disputed charges or amounts from payments on subsequent invoices. Contractor shall use diligent efforts to provide any supporting documentation required by the District to resolve any such disputes.

7. GOVERNING LAW AND VENUE

This Agreement, its interpretation and all work performed thereunder, shall be governed by the laws of the State of California. In the event of a dispute or breach of contract, venue shall be in Alameda County, California.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

**ALAMEDA-CONTRA COSTA
TRANSIT DISTRICT:**

CONTRACTOR NAME:

Michael Hursh
General Manager

Date

Signature

Date

Printed Name / Title

Approved as to Form and Content:

Jill Sprague
General Counsel

Date

**SECTION 00 61 13
CONTRACT BONDS**

A. THE BIDDER TO WHOM THE CONTRACT IS AWARDED SHALL FURNISH THE FOLLOWING CONTRACT BONDS:

1. Performance Bond, in an amount not less than one hundred percent (100%) of the Grand Total Bid Price, to secure faithful performance of the Contract, including, but not limited to, the warranty obligations following acceptance of the work by District.
2. Payment Bond, in One hundred percent (100%) of the Grand Total Bid Price, to secure payment of all claims of laborers, mechanics, or materialmen, subcontractors or other persons named in *Civil Code Section 9100* for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the Contract.

Contract Bonds shall be on the forms bound herewith and shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to the District.

- B.** All alterations, extensions of time, extra and additional work and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties on the Contract Bonds.

PERFORMANCE BONDS

KNOW ALL PERSONS BY THESE PRESENTS, that WHEREAS THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT (hereinafter referred to as the "District") has entered into a Contract with _____ (hereinafter referred to as "Principal") for Richmond Parkway Transit Center, Contract 2020-1486, (the "Contract"); and

WHEREAS said Principal is required under the terms of said Contract to furnish a bond of faithful performance of said Contract,

NOW, THEREFORE, we, the undersigned Principal, and _____, as Surety, are held and firmly bound unto the District, in the sum of _____ Dollars (\$ _____) lawful money of the United States, to be paid to the District or its successors and assigns; for which payment, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bound Principal, or its heirs, executors, administrators, successors, or assigns approved by the District, shall promptly and faithfully perform the covenants, conditions and agreements in the Contract during the original term and any extensions thereof as may be granted by the District, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless the District as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

No extension of time, change, alteration, modification, or addition to the Contract, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

Whenever Principal shall be and declared by the District to be in default under the Contract, Surety shall promptly remedy the default, or shall promptly do one of the following at the District's election:

1. Undertake through its agents or independent Contractors, reasonably acceptable to the District, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages.
2. Reimburse the District for all costs the District incurs in completing the Contract, and in correcting, repairing or replacing any defects in materials or workmanship and/or materials and workmanship which do not conform to the specifications in the Contract.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the District's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the District Transit or its successors or assigns.

In the event suit is brought upon this bond by the District, Surety shall pay reasonable attorney's fees and costs incurred by the District in such suit.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this ____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly executed by its undersigned representative, pursuant to authority of its governing body.

Principle Typed Name: _____

Principle Signature: _____ Date: _____

Surety Typed Name: _____

Surety Signature: _____ Date: _____

Address of Surety: _____

PAYMENT BONDS

KNOW ALL PERSONS BY THESE PRESENTS, that _____ called the PRINCIPAL, and _____ a corporation duly organized under the laws of the State of _____, having its principal place of business at _____ in the State of _____, and authorized to do business in the State of California, hereinafter called the SURETY, are held and firmly bound unto the Alameda Contra Costa Transit District Authority (the District), hereinafter called the OBLIGEE, or order in the sum of _____ (\$ _____ .00) lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the PRINCIPAL has entered into a Contract with the OBLIGEE for the Richmond Parkway Transit Center, Contract 2020-1486, and said PRINCIPAL is required under the terms of said Contract to furnish a bond securing payment of claims to which reference is made in Section 3248 of the Civil Code.

NOW, THEREFORE, if said PRINCIPAL or any of its subcontractors fails to pay any of the persons named in Section 3181 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, the SURETY, will pay for the same, in an amount not exceeding the sum specified in this bond, and also will pay, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This bond will inure to the benefit of any of the persons named in Section 3181 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

This bond is given to comply with Sections 3247 and 3248 of the Civil Code. The liability of the PRINCIPAL and SURETY hereunder is governed by the provisions of said Code, all acts amendatory thereof, and all other statutes referred to therein, including Section 3225 of the Civil Code.

SURETY, for value received, hereby 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 to the Contract Documents accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the other portions of the Contract Documents.

IN WITNESS WHEREOF the above-bounded parties have executed this instrument this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

IT IS SO AGREED:

Principle Typed Name: _____

Principle Signature: _____ Date: _____

Surety Typed Name: _____

Surety Signature: _____ Date: _____

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

TO BE CONSIDERED COMPLETE, BOTH THE BIDDER AND AN ADMITTED SURETY INSURER AUTHORIZED BY THE CALIFORNIA INSURANCE COMMISSIONER TO TRANSACT SURETY BUSINESS IN THE STATE OF CALIFORNIA MUST SIGN THIS PERFORMANCE BOND. IN ADDITION, BOTH THE PRINCIPAL'S AND THE SURETY'S SIGNATURES MUST BE NOTARIZED AND A COPY OF THE SURETY'S POWER OF ATTORNEY MUST BE ATTACHED.

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PART 1 – GENERAL PROVISIONS

1.01 GLOSSARY OF ABBREVIATIONS, TERMS AND DEFINITIONS

A. Whenever the following abbreviations and terms, or pronouns in place of them, appear in the Contract Documents, the intent and meaning shall be interpreted as provided in this Section. Working titles having a masculine gender, such as "workman" and "flagman" and the pronoun "he," are used for the sake of brevity, and are intended to refer to persons of either sex.

B. Abbreviations

AASHTO	American Association of State Highway and Transportation Officials
AL	Allowance
Cal-OSHA	California Occupational Safety and Health Administration
CALTRANS	California Department of Transportation
CPM	Critical Path Method
CY	Cubic Yard
DOL	United States Department of Labor
EA	Each
EPA	United States Environmental Protection Agency
Est.	Estimated
HR	Hour
ITE	Institute of Transportation Engineers
AC TRANSIT	Alameda Contra Costa Transit District
LF	Lineal Foot
LS	Lump Sum
MUTCD	California Manual on Uniform Traffic Control Devices
Misc.	Miscellaneous
MO	Month
NEMA	National Electrical Manufacturers' Association
NTP	Notice to Proceed
DDR	District's Designated Representative
OSHA	United States Department of Labor, Occupational Safety and Health Administration and Occupational Safety and Health Act
PEI	Porcelain Enamel Institute
QJ	Queue Jump
RFC	Request for Change
RFI	Request for Information
RS	Reference Specifications, "Standard Specifications for Public Works Construction", commonly known as the "Green Book"
SY	Square Yard
TSP	Transit Signal Priority
UL	Underwriters' Laboratory

C. Definitions and Terms

Acceptance: Documentation attesting to the act of an authorized representative of the District by which all Work under the Contract, or a specified portion thereof, is identified as having been completed satisfactorily.

Addenda: Written interpretations or revisions to any of the Contract Documents issued by the District before the bid opening.

As Approved: The words “as approved”, unless otherwise qualified, shall be understood to be followed by the words “by the District’s Designated Representative for conformance with the Contract Documents”.

Architect/Engineer of Record: Professional architect or engineer designated for a particular project responsible for signing and sealing the permit drawings, interpretation of the drawings where ambiguities exist, review of requests for information, design change requests and shop drawings, resolution of errors and omission, and finalization of as-built drawings.

Assessment: A cost imposed on the Contractor for non-compliance with certain contractual requirements.

As Built Documents or Record Documents: Contract Documents modified to reflect changes resulting during the construction phase.

As Shown: and As Indicated: The words “as shown” and “as indicated” shall be understood to be followed by the words “by the Contract Documents” as appropriate.

Beneficial Occupancy: The taking possession of a portion of the Work by the District for its use and/or occupancy on other than a temporary or emergency basis.

Bidder: Any individual, firm, partnership, corporation or combination thereof, submitting a bid for the work contemplated, acting directly or through a duly authorized representative.

Bid Forms: The approved forms upon which the District requires that each Bidder submit its bid with regard to the Contract.

Bid Guaranty: The cashier’s or certified check, irrevocable standby letter of credit, deposit of securities, or Bidder’s Bond, accompanying the bid submitted by the Bidder, as a guaranty that the Bidder will enter into an agreement with the District for the performance of the Work, if the Contract is awarded to him, and the Bidder will submit the required Contract Bonds and Certificates of Insurance. Also referred to as the

Bidder’s Security.

Board, Board of Directors or Directors: The Board of Directors of the Alameda Contra Costa Transit District, the District.

California Manual on Uniform Traffic Control Devices: The California Manual on Uniform Traffic Control Devices for Streets and Highways (California MUTCD) is issued by the Department of Transportation and is the Federal Highway Administration's MUTCD 2014 Edition, as amended for use in California.

Caltrans: The Department of Transportation, State of California

Change Order: A written order to the Contractor directing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or Contract Time provided in the Contract Documents and issued after the effective date of the Contract. A Change Order will not become effective until approved in writing and signed by the District, hereinafter referred to as an "Approved Change Order." An approved Change Order signed by the Contractor is hereinafter referred to as an "Executed Change Order."

Common Carrier: Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry.

Completion Time: The time the Work shall be completed as specified in the Contract Documents.

Construction Schedule: A list or graphic display of construction activities required for completing the Work, in a format required by the Contract Documents. The duration, start and finish date, and sequence of the significant activities, critical path, float and milestones must be indicated in the Construction Schedule.

Construction Staging Area: Property available for use by the Contractor during the construction period for the purpose of storing products and construction equipment and coordinating activities associated with the Work.

Contract: The written agreement covering the performance of the Work and the furnishing of labor, materials, tools and equipment in the construction of the Work. The Contract is a part of

the Contract Documents and will include all approved change orders issued after the Contract is executed by the parties.

Contract Documents: Those documents that form the Contract, including, but not limited to,

1. Permits
2. Change Orders
3. The Contract (including amendment(s))
4. The Supplemental Conditions (Sections 00 73 00 through 00 73 16) ET SEQ
5. Division 01
6. The General Conditions
7. The remainder of Division 00 sections
8. The Technical Specifications
9. Contract Drawings
10. Appendices and Standard Drawings

Contract Drawings: The plans identified in the Contract, showing the character, dimensions, and details of the Work.

Contract Price: The total compensation to be paid to the Contractor in accordance with the terms of the Contract.

Contract Time: The number of calendar days, or portion thereof, allowed for completion of the Work, including all authorized time extensions. The effective date for commencement of the Work specified in the Notice to Proceed shall define the beginning of the Contract Time.

Contractor: The individual, firm, partnership, corporation, joint venture or other legal entity that has contracted with the District to perform the Work. The term "prime contractor" shall mean Contractor.

Days: Unless otherwise stated, "days" shall mean calendar days.

District: The Alameda Contra Costa Transit District acting through the District's Designated Representative.

District's Designated Representative(s): The individual(s) or firm(s) designated by the District to act as the final authority on all contract administration and management issues for the project on the District's behalf. The District's Designated Representative (DDR) will be identified in the Notice to Proceed for the project, and may be an architect, engineer, construction manager, or any other consultant or employee of the District's choosing. The DDR may delegate specific administrative, technical or management functions to other consultants or District employees at its discretion.

Emergency: Any sudden generally unforeseen occurrence (such as a fire, flood, storm, earthquake, epidemic, civil disorder or other natural and/or man-made disaster) that has the potential to adversely affect the safety of life, the Work, and/or adjacent property; to interrupt contracts essential to the provision of daily transit service; and/or to cause catastrophic failure of revenue-producing equipment and/or facilities.

Field Change Notice: A written directive issued by the District to the Contractor ordering a minor addition, deletion, modification, or revision to the Work.

Force Account: Payment by force account shall mean payment on the basis of the Contractor's time and materials.

General Manager: General Manager of the District, the Alameda Contra Costa Transit District.

General Requirements: The provisions of Division 1, as may be amended by the District.

Inspector: A representative of the permitting agency responsible for verification of the construction activities on site.

Installation, Install: Completely assembling, erecting, and/or connecting materials; parts, components, supplies, and related equipment specified or required for the completion of the Work.

Legal Holidays: Those days designated as State holidays by the Government Code, or otherwise specified in the Contract Documents.

Limit of Work: Boundary within which the onsite elements of the Work will be performed, except utility and drainage work in local streets and on private property.

Liquidated Damages: The amount prescribed in the Contract Documents to be paid to the District or to be deducted from any payment due or to become due the Contractor for each calendar days delay in completing the Work beyond the time allowed in the Contract Documents.

Local Agencies: Includes the following participating agencies: City of Richmond

Notice of Completion: A document recorded by the District with the County Recorder signifying completion of a work of improvement.

Notice to Proceed: A written notice given by the District to the Contractor fixing the date on which the Contract Time will commence to run, and also identifying the DDR for the project.

Notice of Termination: Written notice from the District to the Contractor and its Surety terminating the Contract, or a portion thereof, either for convenience of the District or for default due to the Contractor's failure to perform its contractual obligations.

Or Equal: The term "or equal" shall mean that the "equal" product is the same or better than the product named in function, performance, reliability, quality and general configuration as approved by the District. The District will make determination of equality in reference to the project design requirements. Such equivalent products shall not be purchased or installed by the Contractor without written acknowledgment of the District.

Permitting Agency: Any government agency having jurisdiction over the construction project and requiring permits of any kind.

Plans: Refer to Contract Drawings.

Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for a portion of the Work.

Professional Engineer: An engineer licensed by the Board of Registration for Professional Engineers, State of California.

Provide: The term "provide" shall be understood to mean "furnish and install, complete and in place."

Quality Assurance: The process by which the Contractor and each subcontractor independently monitors the quality control efforts made in the performance of its own work.

Quality Audit: The process by which the DDR to independently verify quality control measures are being taken in accordance with applicable requirements.

Quality Control: The process by which the Contractor and each subcontractor measures and evaluates the work it performs in order to meet the required contractual and statutory quality standards.

Quality Surveillance: The process by which the DDR observes the Contractor to ensure that quality control and quality assurance measures are taken by the Contractor and its subcontractors.

Request for Change: A document initiated by the Contractor requesting that a Change Order be issued.

Request for Information: A document issued by the Contractor requesting information concerning the Contract Documents.

Salvage: To save any removed item. The salvaged item shall be reused in the contract or delivered and stockpiled for the District or others as specified in the Contract Documents. The contractor is responsible for salvage unless otherwise specified in the specification.

Schedule of Values: The breakdown of the Contract Bid Price that will serve as the basis for Contractor's Applications of Payment. Any lump sum item included within the Contract Price will be apportioned among values relating to specific components of the Work covered by said lump sum item.

Shop Drawings: Drawings, plans, diagrams, schedules and other data specifically prepared and submitted to the District by the Contractor, showing in detail: a.) The proposed fabrication and assembly of a special component of the Work; and b.) The installation (form, fit and attachment details) of a special component of the Work. Shop Drawings shall be deemed to include Working Drawings, Product Data, literature, and applicable performance and test data.

Standard Drawings: Drawings for particular construction components which are generic and will remain the same from project to project.

State: State of California, and its agencies, including Department of Transportation (Caltrans)

Subcontractor: Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, engaged by the Contractor to furnish services, labor, equipment and materials for a portion of the Work.

Submittals: Those documents required to be submitted by the Contractor for review by the District in accordance to the Contract.

Substantial completion: The Work (or designated portion) is sufficiently complete, in accordance with the Contract Documents, so that the District can safely and conveniently occupy or utilize the Work (or such designated portion) for the use for which it is intended, and as needed for the District to conduct its operation.

Supplemental Conditions: Additional requirements that are applicable to the Contract as set forth in Division 0, Sections 00 73 00 through 00 73 16, as may be amended by District.

Supplier: Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, that supplies a tangible product as a portion of the Work, with services usually limited to delivery and/or required testing, and with manufacturing, fabrication, or production facilities located off the Work site.

Technical Specifications: Technical details, requirements, and descriptions of Work to be performed under the Contract. The Technical Specifications comprise Divisions 2 through 18 as applicable of the Contract Documents, as may be amended by District.

Temporary Construction Easement: A portion of land belonging to outside party (ies) on which agreed-upon activity can take place during the construction period.

Unit Price: The value established for a single item of work or group of items commonly regarded as a single entity, that is inclusive of all fundamental, direct and incidental costs and exclusive only of costs associated with any other unit price and any lump sum price.

Work: The sum total of productive and operative efforts used to generate the results specified, indicated in or reasonably inferable from the Contract Documents, including the furnishing of all labor, materials, and equipment.

Work Site: The property on which the Work will be performed, including all staging areas. The Work Site is defined in Division 1 of the Contract Documents.

Working Drawings: Original drawings prepared by the Contractor and/or its Subcontractors or Suppliers, of any tier, illustrating Work required for construction that will not become an integral part of the completed Work. This includes, but is not limited to, drawings for temporary structures such as decking, bulkheads, excavation supports, utility support, groundwater control, forming, falsework, access roads, staging areas, and staging plans. A Working Drawing is one type of Shop Drawing.

1.02 INTENT OF THE CONTRACT DOCUMENTS

- A. The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to describe a functionally complete project to be constructed. When the Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that the best general practice shall be followed and only materials and workmanship of the best standard quality shall be used. Any Work, materials or equipment that are customarily provided or that are reasonably inferable from the Contract Documents, as being required to produce the intended result shall be supplied, whether or not specifically called for. When words, which have a well-known

technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning.

- B. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect on the first published date of the Notice Inviting Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of District or Contractor, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the District, or the DDR, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the other provisions of the Contract Documents.
- C. The Contract Documents are divided into parts, divisions, sections and articles for convenient organization and reference. Generally, there has been no attempt to divide the specification sections into work performed by the various building trades, work by separate subcontractors, or work required for separate facilities in the project.

1.03 EXAMINATION AND VERIFICATION OF CONTRACT DOCUMENTS

The Contractor shall thoroughly examine and become familiar with all of the various parts of the Contract Documents and shall determine the nature and location of the Work, the general and local conditions (including applicable laws) and all other matters which can in any way affect the cost, progress or performance of the Work under this Contract. Failure to make an examination necessary for this determination shall not release the Contractor from the obligations of the Contract. No oral agreement or conversation with any officer, or employee of the District, or with the DDR either before or after the execution of the Contract, shall affect or modify any of the terms or obligations contained in the Contract Documents.

1.04 CONTRACT DRAWINGS

The Contract Drawings consist of general drawings and show such plans, elevations, sections, details and schedules as are necessary to give a graphic and pictorial description of the contemplated construction. All authorized alterations affecting the requirements and information given on the Contract Drawings shall be in writing.

1.05 COORDINATION AND INTERPRETATION OF CONTRACT DOCUMENTS

- A. In the event of inconsistencies between requirements contained in different components of the Contract Documents, the precedence of the Contract Documents shall be as follows to resolve the conflicts.
 - 1. Permits
 - 2. Change Orders
 - 3. The Contract (including amendment(s))
 - 4. The Supplemental Conditions (Sections 00 73 00 through 00 73 16) ET SEQ
 - 5. Division 01
 - 6. The General Conditions
 - 7. The remainder of Division 00 sections
 - 8. The Technical Specifications
 - 9. Contract Drawings
 - 10. Contractor's Bid
- B. In the event of any doubt or question arising concerning the true meaning of the Contract Documents or should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall submit a Request for Information ("RFI") to the District for such further written explanations as may

be reasonably necessary and shall conform to the written explanation given as if part of the Contract Documents. The decision of the District in such cases shall be final.

- C. Contractor shall anticipate that it will be necessary to prepare and submit RFIs regarding the Contract Documents. The District will respond to each RFI by no later than fourteen (14) days after receipt of the RFI, unless the RFI is of significant complexity. Furthermore, in the event that there are numerous RFIs pending, Contractor shall cooperate with District in establishing a priority for responding to the RFIs, and potentially some RFIs may be responded to beyond the fourteen (14) day period.
- D. Each RFI prepared by Contractor shall be full and complete. Contractor shall prepare RFIs so as to not cause any delay to the progress of the Work and to not cause any impact to Contractor's labor productivity in the field. Contractor shall not assert any claims for delay or interference against District if Contractor fails to timely submit any RFI to District, after consideration of the response period allowed for District.
- E. The response to an RFI shall not, by itself, constitute a writing that authorizes Contractor to perform any Work that causes an adjustment to either the Contract Time or Contract Price. If Contractor believes that any response to any RFI should constitute a compensable change, Contractor shall so notify District via a Request for Change, as described in Part 6, CHANGES IN THE WORK herein. Contractor's failure to provide the required written notice shall constitute a waiver of Contractor's right to seek a compensable change based on the RFI response.
- F. The Contractor shall examine all Contract Documents; shall verify all figures in the Contract Documents before laying out the Work; shall promptly notify the District of all errors, inconsistencies, and/or omissions that it discovers; and, in instances where such non-conformities are discovered, shall obtain specific instructions in writing from the District before proceeding with the Work. Contractor's performance of any Work affected by such non-conformities prior to the District's decision shall be at the Contractor's risk. Any Work that is customarily provided or that is reasonably inferable shall not relieve the Contractor from performing such work at no additional expense and/or delay, and such Work shall be performed as if fully set forth in the Contract Documents.

1.06 PRODUCT REFERENCES AND STANDARDS

- A. When descriptive catalog designations, including manufacturer's name, product brand name or model number are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications in effect as of the first published date of the Notice Inviting Bids, except as may be otherwise stated.
- B. Where references are made to standard specifications (such as RS - standard specifications for Public Works Construction [the Greenbook], or the State of California, Department of Transportation [CALTRANS]), the following definitions shall apply:
 - 1. All references to the "City", "County", "State", or "Department" in the context of Districtship shall mean the District.
 - 2. All references to the "Engineer" in the context of provider of compliance judgment shall mean the DDR. For those aspects of the construction subject to supervision or oversight by a Registered Professional Engineer, shall mean a Registered Professional Engineer retained by the District.
 - 3. All references to the "Agent" shall mean District.
 - 4. All references to the "plan(s)" shall mean the Contract Drawings.

PART 2 - DISTRICT

2.01 PERSONAL LIABILITY

Neither the District's Board Members, DDR, Officers, Agents, Representatives nor Employees shall be personally responsible for any liability arising under or by virtue of this Contract.

2.02 AUTHORITY OF THE DISTRICT AND THE DISTRICT'S DESIGNATED REPRESENTATIVE

- A. The District has the final authority in all matters affecting the Work covered by the Contract Documents.
- B. With respect to Contractor's performance of the Work, the DDR shall have the authority to enforce compliance with the Contract Documents. In accordance with the Contract Documents, the Contractor shall promptly comply with all instructions from DDR, and the DDR shall have the authority to enforce and make effective such decisions and orders in the event the Contractor fails to promptly carry out same. Further, the District shall have the right to remove Contractor personnel for violation of District Policies and Procedures.
- C. On all questions relating to Contractor's use of certain materials or equipment, the decision of the DDR is final and binding, and shall be a condition precedent to any payment under the Contract Documents.

2.03 DISTRICT'S RIGHT TO STOP WORK

- A. If the Contractor fails to promptly correct Work that is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, or, if the District determines, in the exercise of its sole discretion that the Work needs to stop, the District may, in writing, order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Contractor shall immediately comply with District's written order to stop the Work. Contractor shall resume Work as and when ordered to do so by the District. Any stoppage of the Work under this section shall be at Contractor's expense, and Contractor shall have no claim against the District based on Contractor's failure to perform the Work in accordance with the Contract Documents.
- B. In addition to District's right to stop Work, District may order Contractor to submit to District, at no additional cost to District, additional information concerning Contractor's planned Work if Contractor fails to promptly correct Work that is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents. The additional information ordered by District may include, but is not limited to, preparation of submittals or Working Drawings not otherwise required to be submitted under the Contract Documents.
- C. In the event the District discovers that the Contractor has created an unsafe condition, District may arrange for other work forces to secure the required safe work environment. (Such remedial Work will be at the sole discretion of the District.) If this action is required, the District may unilaterally terminate Work under the Contract, and will pay only for the quantities of Work actually performed, less the cost of District's remedial Work. In the event that Work is not halted, the Contractor must take immediate steps to correct the situation. There will be no extra payment for Work required to correct unsafe conditions.
- D. The right of the District to stop the Work shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction or derogation of District's other rights under the Contract Documents. The District's right to stop the Work shall not relieve the Contractor of any of his responsibilities under or pursuant to the Contract Documents.

PART 3 - CONTRACTOR

3.01 INDEPENDENT CONTRACTOR STATUS

- A. The Contractor shall independently perform all Work required by the Contract Documents and shall not be considered as an agent or employee of the District, nor shall the Contractor's Subcontractors or employees be considered as subagents of the District.
- B. The Contractor and the Contractor's Subcontractors shall be licensed in accordance with the laws of the State of California.

3.02 CONSTRUCTION PROCEDURES AND SUPERVISION

- A. Health and Safety Plan. Contractor shall designate a safety officer and have in place a health and safety plan in accordance to the laws of State of California and conduct safety meetings and document them in accordance to the law. Contractor shall have the safety record available for inspection during working hours and shall submit job site safety meeting reports with Payment application.
- B. Supervision. Contractor shall assign both a Project Manager and Site Superintendent to the project. The Site Superintendent shall be assigned full time. Both individuals must be approved by the District and not changed without written approval by the District. District reserves the right to require the Contractor to release these individuals at its sole discretion and hire suitable replacements.
- C. Special Inspections. Contractor shall hire an independent testing and inspection agency acceptable to the permitting agencies and the District to perform all special inspections called for by the permitting agency. Required inspection reports must accompany the Application for Payment for the work.
- D. Beginning of Work. After the execution of the Agreement by both parties, the District will issue the Notice to Proceed upon its determination that it is appropriate for the Contract Time to commence.

Within thirty (30) days after the effective date contained in the Notice to Proceed, and subject to the requirements stated elsewhere in the Contract Documents regarding, among other things, the submittal of Baseline Schedule, the Contractor shall commence Work at the site and shall diligently and continuously prosecute the Work to final completion within the time limit provided in the Contract Documents. Contractor shall also achieve any and all Contract milestones as described elsewhere in the Contract Documents.

The Contractor shall notify the District, in writing, of their intent to begin Work at the site.

The Contractor is not authorized to perform any Work until he/she has received a Notice to Proceed from the District. Should the Contractor begin Work in advance of receiving the Notice to Proceed, such Work shall be considered as having been done by him/her at their own risk and as a volunteer.

- E. Order of Work. When required by the Contract Documents, or by the needs of the District in its sole discretion, the Contractor shall follow the sequence of operations as set forth therein.

Full compensation for conforming to such requirements will be considered as included in the prices paid for the various Contract items of work, and no additional compensation will be allowed therefore.
- F. Disposal of Material Outside the Work Site. Unless otherwise stated elsewhere in the Contract Documents, the Contractor shall, at its own cost and expense, make its own arrangements for disposing of materials outside the work site.

When any material is to be disposed of outside the work site, the Contractor shall first obtain written permission from the District to dispose of the material at the intended location. District's approval will be contingent upon Contractor obtaining a written permit from the property Owner on whose property the disposal is to be made. Prior to the disposal of any

material at the intended location, Contractor shall submit said permit or a certified copy thereof to District, together with a written release from the property Owner absolving the District from any and all responsibility related to the disposal of material on said property.

- G. Access to the Work. The Contractor shall satisfy itself that the jurisdictions through which its operations and haul routes pass will permit such operations with respect to the type of vehicle, laden weights, frequency and dimensions of loads, hours of operation and required traffic control. All necessary permits, licenses or bonds shall be obtained and paid for by the Contractor.
- H. Temporary Utilities. The Contractor shall make its own arrangements with utility companies for any temporary services he may require in performance of the Work and shall pay all costs of these services directly to these utility organizations.
- I. Non-District Owned Facilities. The Contractor shall protect from damage those non-District owned facilities (e.g., utilities) that are to remain in place, be installed, relocated or otherwise arranged.

Contractor's attention is directed to the possible existence of facilities not shown, and of facilities in a location different from that, which is indicated. The Contractor shall take steps to ascertain the exact location of all facilities prior to doing any Work, which may damage such facilities or interfere with their service. Where the location of a facility is indicated or inferred from the presence of visible facilities such as buildings, meters and junction boxes, the Contractor shall make such excavations and explorations as are necessary to ascertain the correct location. Unless provided for elsewhere in the Contract Documents, the cost of such excavations and explorations will be considered as a part of the cost of other items of Work and no additional payment will be made. Such excavations and exploratory Work shall not entitle the Contractor to an extension of time.

If the Contractor discovers underground facilities not indicated or inferred, from the Contract Documents, the Contractor shall immediately give the DDR written notification of the existence of those facilities. The Contractor shall determine the exact location of the underground facilities and the cost of the work will be paid for in accordance with the Contract documents. The underground facilities shall be protected from damage as directed by the DDR and the cost of that work will be paid for as extra work. The Contractor shall, if directed by the DDR, repair any damage, which may occur to the underground facilities. The cost of that repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as extra work. Damage due to the Contractor's failure to exercise reasonable care shall be repaired at the Contractor's cost and expense.

Where it is determined by the District that the rearrangement of an underground facility, the existence of which is not shown on the Contract Drawings, is essential in order to accommodate the Work, the District will provide for the rearrangement of such facility by other forces or, when so ordered by change order, such rearrangement shall be performed by the Contractor and will be paid for as provided under a change order.

The Contractor shall be responsible for the maintenance of all utility facilities placed by him in temporary locations, and all utilities within the construction area not required to be relocated but which are required to be shored or supported during the construction period. The cost of such maintenance shall be borne by the Contractor, and no other compensation shall be due the Contractor for this Work.

The cost of providing and maintaining all necessary or required temporary structures, of making any necessary repairs, replacements, or similar operations, or furnishing indemnity or other bonds, if required, and all costs required by this Section shall be paid by the Contractor and shall be included in the prices bid in the schedule for other items of work.

- J. Lines and Grades. Contractor shall perform all construction staking using a land surveyor licensed in the State of California. Contractor shall provide a staking plan prior to commencement of work for District's review and maintain monuments, stakes, and marks, and

shall update the plan as necessary. The DDR may verify the field condition. Errors or inconsistencies in the Contract Documents discovered by the Contractor shall be reported to the DDR within twenty-four (24) hours and prior to constructing forms or related improvements. Any work installed with this requirement shall be subject to removal and replacement at the Contractor's expense.

- K. Archaeological Discoveries. Upon discovery of prehistoric or historic artifacts, or other indicators or examples of cultural resources discovered during the course of site preparation, grading, excavation, construction or other development activities, all operations within fifty feet (50') of the find shall cease until such time as the District provides the services of a qualified archaeologist to evaluate the finds and recommend appropriate action.

Prehistoric materials can include flaked stone tools (e.g. projectile points, knives and choppers) or tool making debris of obsidian, chert, quartzite and other materials; culturally darkened soil (i.e. midden, which often contains heat affected rock, ash and charcoal, shellfish remains, and cultural materials); and stone milling equipment such as mortars, pestles and hand stones. Historic material may include wood, stone, concrete or adobe footings, walls and other structural remains; debris filled wells or privies; and deposits of wood, metal, glass ceramics and other refuse.

- L. Conformity with Contract Documents. Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, required by the Contract Documents. Although measurement, sampling and testing may be considered evidence as to such conformity, the District shall be the sole judge as to whether the Work or materials deviate from the Contract Documents. At its option, District may elect to accept deviations from the Contract Documents with appropriate back-charge assessments against the Contractor, and, if such an election is made, District will provide written notice to Contractor of such acceptance.

3.03 LABOR AND MATERIALS

- A. Labor Code Requirements. At its own cost and expense, Contractor shall comply with all laws, rules and regulations that pertain to Contractor's work force. Attention is directed to the following requirements of the California Labor Code:

1. Hours of Labor. Eight (8) hours labor constitutes a legal day's work. The Contractor or Subcontractor shall, as a penalty to the state or political subdivision on whose behalf the Contract is made or awarded, forfeit twenty-five dollars (\$25.00) for each worker employed in the performance of the Contract by the Contractor or any subcontractor under it for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of the *Labor Code Section 1813*.

Notwithstanding the provisions of *Sections 1810 to 1814*, inclusive, of the Labor Code and notwithstanding any stipulation inserted in any contract pursuant to the requirements of these sections, work performed by employees of the Contractor or subcontractor in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and in excess of forty (40) hours during any one (1) week at not less than one and one-half (1½) times the basic rate of pay, as provided for in *Section 1815*. In addition, contractor/subcontractor may be required to pay double the basic rate of pay for all hours worked in excess of twelve (12) hours in any one (1) workday and under other circumstances. (See *California Code of Regulations sections 16100(c)(6), 16200(a)(3)(F)* and applicable prevailing wage determinations.)

2. Labor Non-Discrimination. *Section 1735 of the Labor Code* states the Contractor shall not discriminate in the employment of persons in public works on any basis listed in subdivision (a) of *Section 12940 of the Government Code*, as those bases

are defined in *Sections 12926 and 12926.1 of the Government Code*, except as otherwise provided in *Section 12940 of the Government Code*. Every contractor for public works who violates this section is subject to all the penalties imposed for such violation.

3. Prevailing Wages. See *Section 00 73 43 Prevailing Wages*.
4. Payroll Records. Contractor's attention is directed to the following provisions of *Labor Code Section 1776*. Contractor shall be responsible for compliance with these provisions by its subcontractors.
 - a. The Contractor and each subcontractor shall keep accurate payroll records, 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.
 - b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - (2) A certified copy of a contractor's payroll record shall be sent electronically to the District's Contract Compliance Officer on a weekly basis over the course of the entire project, from the commencement of work through project completion. If needed, contractors shall be afforded the requisite training by the District on how to submit said records.
 - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (4) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
 - (5) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

- (6) Contractor and each subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requests such records within ten (10) days after receipt of a written request.
- (7) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District or the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be redacted in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor shall not be redacted.
- (8) The Contractor shall inform the District of the location of records enumerated under subdivision (a), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
- (9) The Contractor shall have fifteen (15) days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). Failure to comply after such fifteen (15) day period will subject Contractor to a penalty to the state or the political subdivision on whose behalf the contract is made or awarded, in the amount of \$100 for each calendar day, or portion thereof, for each worker, 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.
- (10) Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, the penalties specified in Subdivision (9) above for noncompliance with the provisions of said Section 1776 may be withheld from any monies due or which may become due to the Contractor.
- (11) The Contractor and each subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

5. Apprentices

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

6. Materials on Hand

The District may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, at or prior to the time of the Contractor's submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment if all of the following are complied with:

- a. The materials or equipment have been delivered to the Site and the Contractor can submit to the District the Contractor's proof of payment
- b. Adequate arrangements, reasonably satisfactory to the District, have been made by the Contractor to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if such coverage is not afforded under the policy of Builder's Risk insurance obtained by the District pursuant to the Contract Documents; and
- c. The establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. The Contractor acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the site of the Work pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for materials or equipment delivered or stored at the Site, but not yet incorporated into the Work shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (b) and (c) of this Article shall be borne solely and exclusively by the Contractor and no payment shall be made by the District on account of such costs and expenses. No payments shall be made by the District for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site.

3.04 GUARANTY OF WORK

- A. Notwithstanding inspections and acceptance by the District of Work furnished under the Contract Documents, the Contractor warrants to the District that all materials and equipment furnished will be of good quality and new, that the Work will be free from defects in material or workmanship, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.
- B. This warranty by the Contractor is in addition to any warranties or guarantees required elsewhere in the Contract Documents. This warranty shall be in effect notwithstanding any disclaimers, or limiting or conditional terms contained in such separate warranties furnished by manufacturers or suppliers.
- C. Contractor agrees to correct all defective Work discovered by District during a period of one (1) year after the acceptance of the Contract by District or Relief from Maintenance whichever occurs first, or for such periods of time as set forth elsewhere in the Contract Documents. In addition to making such corrections, repairs and/or replacements of any defective Work, Contractor shall correct, repair and/or replace any components of the Work that are damaged as a result of such defective materials, equipment and/or workmanship. Such corrective work

shall be at the sole expense of Contractor and shall be performed in a timely manner at the reasonable convenience of District.

- D. All work performed for warranty purposes, whether by the general contractor, a subcontractor or a third party, must always include an invoice listing hours, parts and their specific costs upon completion of work, and shall show separately all charges covered and not covered under the warranty. Invoices shall be in the *American Institute of Architects Form 702* format found here: <https://www.aiacontracts.org/contract-documents/19661-application-and-certificate-for-payment>.
- E. All warranties set forth in the Contract Documents shall be deemed cumulative and not alternative or exclusive. Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation, which Contractor has under the Contract Documents or under any separate warranty or guaranty required thereby. The establishment of a specific warranty period relates only to the specific obligation of Contractor to correct defective Work, and it has no relationship to the time within which its obligation to comply with the Contract Documents or applicable provision of law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work. Without limiting the foregoing, it is understood and agreed that Contractor shall remain responsible for latent defects with its work, regardless of the expiration of any warranty period set forth in the Contract Documents.

3.05 PAYMENT OF TAXES

- F. Contractor shall pay all taxes and duties applicable to and assessable against any Work, equipment, materials, services, processes, and operations incidental to or involved in the Contract, including but not limited to, retail sales and use, transportation, export, import, business, and special taxes. The Contractor is responsible for ascertaining and acquainting itself with such taxes and making all necessary arrangements to pay them. The Contractor will maintain records that are auditable records, and these records shall be subject to District's review to verify that Contractor's tax payments are current at all times.
- G. The Contract prices paid for the Work shall include full compensation for all taxes, which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the District, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract.
- H. The Contractor shall withhold and pay any and all sales and use taxes, withholding taxes, whether Federal, State or local, Social Security taxes, State Unemployment Insurance charges and all other taxes which are now or hereafter may be required to be paid or withheld under any laws.

3.06 PERMITS AND LICENSES

- A. The Contractor acknowledges and agrees that, prior to the submission of its bid for the Work, it fully familiarized itself with the requirements of all applicable federal, state, county, and municipal laws, codes, rules, and regulations, as well as the conditions of any required licenses and permits.
- B. The Contractor shall procure all permits and licenses, including any applicable building permits, (except those procured or to be procured by the District which are listed in the Specification division in the Contract Documents), pay all charges and fees, and give all required notices necessary and incidental to the prosecution of the Work.
- C. The Environmental Quality Act (*Public Resources Code, Sections 21000 to 21176*) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from State or local agencies in connection with performing the Work. The Contractor shall comply with the provisions of that Act in obtaining such permits, licenses and other authorizations, and

all permits, licenses and other authorizations shall be obtained in sufficient time to prevent delays to the Work.

- D. The Contractor shall procure all building permits required in order to perform the Work, and shall procure a Certificate of Occupancy as a condition of final completion (*if required by the local jurisdiction*).

3.07 SUPERINTENDENCE BY THE CONTRACTOR

- A. The Contractor shall supervise and direct the Work, which shall be performed in accordance with the requirements of the Contract Documents. The Contractor shall be solely responsible for implementation of all construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under the Contract. The Contractor shall be solely responsible for the safety of its employees, Subcontractors of any tier, Suppliers, visitors to the Contractor, and other third parties associated with the Contractor.
- B. Before issuance of the NTP, the Contractor shall designate, in writing, the Project Manager and Site Superintendent for Contractor on the project. The District must approve the designation of these positions before issuance of NTP. Reasons including but not limited to instances of misconduct, contract non-compliance, unsatisfactory performance, or incompetence shall be grounds for the District to direct Contractor to dismiss the Superintendent and/or Project Manager, as well as any other jobsite staff from the project; Contractor shall immediately comply with District's request, at no cost to the District, and shall designate a replacement according to the above designation procedure.
- C. Superintendent shall be assigned to the site full time and the Project Manager shall be present at the work site whenever actions of the elements necessitate his or her presence to take measures necessary to assure contract compliance and to protect the Work, persons or property. Any order or communication given to the Project Manager or Site Superintendent shall be deemed delivered to the Contractor.
- D. In the event the Contractor does not assign a full-time Project Manager to the work site as required in the Contract Documents, the District may deduct from any progress payment due the costs plus markups for the times the Project Manager is away from the work site, plus the cost of any additional monitoring and reporting performed by the District. The District may also suspend the Work for cause if the Project Manager or Site Superintendent is not present at the work site, with no cost, claim or damages accruing to the District for such action. Suspension of work shall mean an order by the District to cease all construction activities.
- E. When the Contractor has more than one (1) construction Contract with the District, each Contract shall be independent of all others as to Field Offices, Field Staff, and Superintendence.

3.08 CONSTRUCTION SCHEDULE AND COMMENCEMENT OF WORK

- A. Attention is directed to Section 01 32 00 for specific requirements concerning the Construction Schedule and Commencement of the Work.
- B. During Construction period, Contractor shall provide the District with a "look ahead schedule" no less than three (3) weeks in duration.

3.09 DOCUMENTS ON WORK SITE

The Contractor shall keep one (1) copy of all Contract Documents (including Change Orders), approved Shop Drawings, correspondence, meeting minutes, approved progress payments, and all other records relating to the Work at the work site. These records shall be maintained in good order, and they shall be available to the District and its authorized representatives for review, inspection and copying.

3.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES; SUBSTITUTIONS

- A. Provision regarding shop drawings, product data and samples are addressed in Division 01 of the Contract Documents.

Substitutions During Construction. Contractor shall have followed the Approved Equal Procedure set forth in the Instructions to Bidders to obtain District approval for any proposed substitution. However, upon the showing by Contractor of changed circumstances subsequent to the bid opening that, in the sole discretion of District, justifies consideration of substitutions during construction, the Contractor may use the substitution procedure as set forth below.

For convenience in designation in the Contract Documents, certain articles or materials to be incorporated in the Work may be designated under a trade name or the name of a manufacturer and his catalog information. Except in those instances where the product is designated to match others in use in a particular improvement, either completed or in the course of completion, the use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

1. The Contractor shall submit his request in writing for an alternative article or material. Such request shall be made in ample time to permit review and approval without delaying the Work. Contractor shall not be entitled to an adjustment of the Contract Time or an increase in the Contract Price based on any Contractor-proposed substitution.
2. No such request will be considered unless accompanied by complete information and descriptive data necessary to determine whether the offered materials, articles, or equipment is equal to the specification in the Contract Documents. Samples shall be provided when requested by the District. The Contractor shall satisfy the District as to the equal quality, suitability or performance of the offered materials, articles or equipment. In the event that the District rejects the use of such alternative materials, articles or equipment, then one of the particular products designated by brand name will be furnished.
3. The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor, and he shall furnish all information necessary as required by the District. The District shall be the sole judge as to the quality and suitability of alternative articles or materials and his decisions shall be final. Where use of an alternative material involves redesign of, or changes to, other parts of the Work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material. Cost of redesign by the District will be borne by the Contractor.
4. Whenever classification, rating or other certification by a body such as UL or NEMA is a part of the specification for any material, Contractor's request for use of alternative articles or materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with the Contract Documents. The cost of all testing required to prove equality of the material proposed shall be borne by the Contractor. Approval of an alternative shall be only for the characteristics or use named in such approval, and shall not be used to change or modify any requirement of the Contract Documents.
5. At its election, District reserves the right to consider any Contractor proposed substitution as a Cost Reduction Proposal under *Section 6.2 "Cost Reduction Proposals"* of these General Conditions in the event that there is a significant savings resulting from the substitution.

3.11 WORK SITE MAINTENANCE

- A. Air Pollution Control. The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to the Work, including any air pollution control rules, regulations, ordinances and statutes specified in *Section 11017 of the Government Code*.

Material to be disposed of shall not be burned inside or outside the worksite with the exception of incineration at a licensed hazardous waste facility.

- B. Water Pollution Control. The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays and coastal waters from pollution by fuels, oils, bitumen, calcium chloride and other harmful materials and shall conduct and schedule his operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control, and abatement of water pollution to streams, waterways and other bodies of water, and shall conform to the requirements, which may be shown elsewhere in the Contract Documents.

- C. Sound & Light Control Requirements. The Contractor shall comply with all applicable local, state and federal rules and regulations regarding sound control, noise level, and light control.

Each internal combustion engine, used for any purpose on the Project or related to the Project, shall be equipped with a muffler of a type recommended by the manufacturer. The muffler shall be in good working condition. No internal combustion engine shall be operated on the Project without said muffler.

- D. Use of Pesticides. The Contractor shall comply with all local, state and federal rules and regulations of the Department of Food and Agriculture, the Department of Health, the Department of Industrial Relations and all other agencies, which govern the use of pesticides required in the performance of the Work.

Pesticides include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliant, desiccants, soil sterilants, and repellents.

Any substance or mixture of substances intended for preventing, repelling, mitigating or destroying weeds, insects, diseases, rodents or nematodes and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant shall be considered as pesticide.

- E. Weight Limitations. Unless expressly permitted elsewhere in the Contract Documents, the Contractor shall not operate construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limits set forth in *Division 15 of the Vehicle Code* over completed or existing base, surfacing, pavement or structures.

3.12 ACCESS TO WORK

Observation of Construction. The District, and all of its authorized representatives, shall at all times have safe access to the Work, and shall be furnished with every reasonable facility for ascertaining that the workmanship and materials are in accordance with the requirements and intentions of the Contract Documents. All Work done and all materials furnished shall be subject to the DDR's on-site and off-site observation.

The observation and/or approvals of the workmanship or materials by the DDR shall not relieve the Contractor of any obligations to fulfill the requirements of the Contract Documents. Workmanship and materials not meeting such requirements shall be corrected, and unsuitable Work or material may be rejected, notwithstanding that such Work or materials have been previously observed and/or approved by the District, or that payment therefor has been included in a progress estimate.

The DDR may order re-examination of questioned Work at any time before final acceptance. If so ordered, the Contractor shall uncover the Work. If such work is found to be in accordance with the Contract Documents, the District will pay for the cost of uncovering, removing, recovering and replacing the parts removed; but if such Work so exposed or examined is not in accordance with the Contract Documents, the uncovering, removal, recovering and replacement shall be at the Contractor's expense. Work, which has been covered prior to observation by the District, does not qualify as re-examined work; the District may order such work uncovered for observation without payment of any costs.

3.13 INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold harmless the Alameda-Contra Costa Transit District and its respective directors, officers, employees, and agents, including the DDR, and the successors and assigns of any of them (collectively referred to as "Indemnities") from and against all claims, demands, liability, suits, actions, costs or expenses for any and all loss or damage, including, but not limited to, personal injury, property damage, or economic loss, arising out of or resulting from allegations of (i) Contractor's use of District's property or any activities or Work performed hereunder by Contractor; (ii) Contractor's performance of the Work under the Contract; or (iii) Contractor's breach of any provision of the Contract. The duty of Contractor to indemnify and save harmless includes the duties to defend as set forth in *Section 2778 of the Civil Code*. The only exception to these provisions is that Contractor's obligations under this section will not apply to the extent that the claims, demands, liability, suits, actions, costs or expenses are caused by Indemnities' gross negligence, willful misconduct or criminal acts. Contractor waives any and all rights to any type of express or implied indemnity against Indemnities. This indemnity shall survive termination or acceptance of the Contract.
- B. Any person, firm or corporation that Contractor authorizes to Work on District's property, including Subcontractors, shall be deemed to be an agent of the Contractor for purposes herein, shall be subject to all the applicable terms herein, and shall be within the scope of Contractor's indemnity obligation described herein.

PART 4 – SUBCONTRACTORS

- A. The Contractor shall give its personal attention to the fulfillment of the Contract Documents and shall keep all Work under its control.
 - 1. No subcontractor will be recognized as such and nothing in the Contract Documents shall create any contractual relationship between the District and any subcontractor. The Contractor is as fully responsible to the District for the acts and omissions of its Subcontractors of any tier as the Contractor is for the acts and omissions of persons or entities that it directly employs.
 - 2. When a portion of the Work, which has been subcontracted by the Contractor, is not being prosecuted in a manner satisfactory to the District, or if the subcontractor violates one of the District's rules, the subcontractor may be removed immediately upon the request of the District, and may not again be employed with respect to the Work.
 - 3. The on-site production of materials produced by other than the Contractor's own forces shall be considered as subcontracted. The erection, establishment or reopening of on-site plants for production of materials and the operation thereof in the production of materials for use on the Work shall conform to the requirements relating to labor set forth in the Contract Documents.
- B. The Contractor shall also be responsible for coordinating the Work performed by Subcontractors and Suppliers.
- C. Approval of Substitutions of Subcontractor:

The Contractor shall notify the District in writing of any request to substitute a Subcontractor (or change in SBE Status) in place of a Subcontractor listed in Contractor's Bid. Prior to such substitution, for Work that is greater than or equal to one-half of one percent (0.5%) of the Contract Price or if the Contractor proposes to substitute an SLBE firm, the Contractor shall secure the written approval from the District's Contracts Compliance Department. The Contractor shall submit the following information in a form similar to the Bid/Submittal Form entitled, "Prime And Subcontractor/Supplier Report," contained in the Contractor's Bid Forms. The District will review the information submitted relative to each Subcontractor in accordance with the requirements of the Subletting and Subcontracting Fair Practices Act and transmit written notification to the

Contractor concerning its decision regarding approval of the proposed substitution. Information submitted by the Contractor shall include at least the following:

- Name of the Subcontractor
- Location and Phone Number of Place of Business
- Contact Person
- Contractor's License(s) number and expiration date
- SBE status (if applicable)
- The portion of the Work that will be performed by each Subcontractor and its dollar value
- Reason(s) for the proposed substitution

D. Prompt Payment to Subcontractors

1. The Contractor shall pay any Subcontractor approved by the District for work that has been satisfactorily performed no later than seven (7) days from the date of the Contractor's receipt of progress payments by the District.

4.01.1.1 In the event the District holds retainage from the Contractor, it shall make prompt and regular incremental acceptances of portions of the contract work, as determined by the District, and pay retainage to the Contractor based on these acceptances. The Contractor or Subcontractor shall return all monies withheld from all Subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the District. Any delay or postponement of payment may take place only for good cause and with the District's prior written approval.

4.01.1.2 Any violation of these provisions shall subject the violating Contractor to the penalties, sanctions and other remedies specified in *Section 7108.5 of the California Business and Professions Code*. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment, or nonpayment by the Contractor, or deficient subcontractor's performance, or noncompliance by a Subcontractor.

4.01.1.3 Assembly Bill 626 ("AB 626" or the "Bill") which creates significant new requirements for administering the claims process for public works projects in the State of California is now effective. Please refer to *Part 7, Dispute Resolution* for more information regarding this Bill.

E. In the event the Contractor does not make progress payments or release retentions to the Subcontractors in accordance with the time periods in this section, the Contractor may be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment.

PART 5 – COORDINATION AND ACCESS

A. The Contractor acknowledges that the District may award, or has already awarded, other construction contracts for additional work or may perform additional work with its own forces and that such work may affect the Work under this Contract. Additionally the Contractor acknowledges the State and other Public and Private Agencies may be granted a right-of-entry by District for the purpose of constructing facilities within and adjacent to the work site. It is the obligation of the Contractor to coordinate its Work with the work of others working within or adjacent to the District's property.

B. During the performance of its Work, the Contractor shall not have exclusive access to or use of the work areas. The District may also require that certain facilities and areas be used concurrently by the Contractor and by other contractors working in the area. When two (2) or more contractors are employed on related or adjacent District work, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

Each contractor shall be responsible to the other for all damage to any work, to persons or property caused to the other by its operations, and for loss caused the other due to any unnecessary delays or failure to finish the work within the time specified for completion.

- C. If any part of the Contractor's Work depends on the work of any other contractor and/or the District for proper execution and/or results, the Contractor shall promptly notify the District of any discrepancies and/or defects in said other work that would render its work unsuitable for proper execution and/or results prior to proceeding with the Contractor's own Work. If it becomes necessary, the District will resolve coordination and access problems.
- D. Contractor and its representative in charge of the Work shall familiarize themselves with District's property and work site, and adjacent surroundings in the vicinity of said Work, and any private or public operations on adjoining properties.

PART 6 – CHANGES IN THE WORK

6.01 CHANGES

A. General:

- 1. The District may make at any time, and without notice to Contractor's surety and without invalidating the Contract, alterations, deviations, additions to or deletions of the Contract Documents, and may increase or decrease the quantity of any item or portion of the Work, or delete any item or portion of the Work, and may require extra work, as determined by the District to be necessary or advisable. All such changes shall be performed under the terms of the Contract Documents.
- 2. Any changes will be set forth in a written *Contract Change Order* issued by the District. The *Contract Change Order* will specify:
 - a. the Work to be done in connection with the change to be made;
 - b. the amount, if any, of the adjustment of the Contract Price, and the basis for compensation for the changed work ordered; and
 - c. The extent, if any, of the adjustment in the Contract Time.
 - d. A *Contract Change Order* shall not become effective until an authorized representative of the District has signed it. Upon receipt of an approved Contract Change Order, the Contractor shall promptly proceed with the ordered work, unless otherwise provided in the approved *Contract Change Order*.

B. Contractor Initiated Changes

- 1. Request for Change (RFC): A RFC is a request initiated by the Contractor and submitted to the District identifying Contractor's proposed revisions to the Contract Documents. The Contractor's RFC may request a revision to the Contract Time, Contract Price and/or Construction Schedule. The RFC shall be based on a material and significant change to the requirements of the Contract Documents; however, in no event may Contractor submit a RFC for a change that was caused by Contractor's failure to comply with the Contract Documents in the performance of the Work under the Contract.

The District will issue a written decision concerning the RFC. Contractor's RFC must be supported by sufficient documentation submitted by Contractor to support the costs and/or time requested by the RFC. Any RFC approved by the District will result in a Contract Change Order, and Contractor shall not proceed with the proposed RFC work until the District has issued a Contract Change Order.

If the Contractor's RFC is denied by the District and the Contractor disagrees with the assessment and still believes that a revision to the Contract Time, Contract

Price, and/or Construction Schedule is warranted, the Contractor may submit a claim pursuant to Part 7, "Dispute Resolution" of these General Conditions.

Unless otherwise allowed by the District, the costs associated with implementing an approved RFC shall be the responsibility of the Contractor. Such costs shall include coordination with all Subcontractors, and delays and disruption arising from the incorporation of the change or alternative into the Work. To the total of the direct costs computed, there will be added a negotiated markup, with a maximum of fifteen percent (15%) to the cost of actual labor, ten percent (10%) to the cost of materials, five percent (5%) to rented equipment, and ten percent (10%) to subcontractors.

C. District Initiated Changes

1. Contract Change Order: The District may issue a Contract Change Order at any time during the course of the project, informing the Contractor of a change to the Work required under the Contract. The District may: (1) notify the Contractor of the impending issuance of an approved *Contract Change Order* issued unilaterally by the District without input from the Contractor and with or without an adjustment of the Contract price or time; (2) notify the Contractor of the impending issuance of an approved *Contract Change Order* issued unilaterally by the District and authorizing additional payment on a force account basis; or (3) seek the Contractor's input regarding an adjustment to the Contract price based on the change to the Work through a Request for Quotation.
2. Request for Quotations: The District may issue a Request for Quotation ("RFQ"), which requests the Contractor to provide a quotation concerning a proposed change. RFQ's will be numbered sequentially, specifying the time required for the Contractor to respond with a proposal. A RFQ shall not be considered as authorization to proceed with any change, nor shall such request justify any delay in executing existing Work. Contractor shall, upon receipt of a RFQ, promptly, within the time frame specified in the RFQ, provide quotations for increases or decreases in the Contract Price and the Contract Time resulting from the proposed change. Quotations shall be in the form specified by the District and shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs to perform the change, including labor, materials, rentals, services, overhead and profit as set forth in this contract. The cost of preparing such quotations is included in the Contract Price, and Contractor shall not be entitled to any additional compensation for preparing them. To the total of the direct costs computed, there will be added a negotiated markup, with a maximum of fifteen percent (15%) to the cost of actual labor, ten percent (10%) to the cost of materials, five percent (5%) to rented equipment, and ten percent (10%) to subcontractors.
3. Approved Contract Change Order: A *Contract Change Order* shall not be effective unless signed by an appropriately authorized representative of the District, at which time it is considered an "approved Contract Change Order." Upon receipt of an approved Contract Change Order, the Contractor shall promptly proceed with the ordered Work.
4. In the event Contractor disagrees with the terms of an approved *Contract Change Order*, it may submit a written protest within ten (10) days of receipt of the approved *Contract Change Order* pursuant to the "Change Order Protest Procedures" delineated later in this Part of the General Conditions.
5. Executed Contract Change Order: A Contract Change Order signed by both parties is an "executed Contract Change Order." By signing the Contract Change Order, the Contractor agrees that the specified compensation constitutes full compensation for the changed Work, including payment for interruption,

disruption, acceleration, extended overhead, delay or any other "impact" claim or "ripple effect" claim. Contractor specifically understands and agrees that its execution of the Contract Change Order shall constitute a waiver of any right for Contractor to claim any additional compensation with respect to the subject matter of the Contract Change Order.

6. Field Change Notice: A *Field Change Notice* ("FCN") is a written directive issued by the DDR ordering a minor addition, deletion, modification, or revision to the Work which cannot be handled through a Change Notice or Request for Change process due to the urgent nature of the work. Upon receipt of the *Field Change Notice*, the Contractor shall promptly proceed with the Work set forth in the notice. The FCN may include the method of payment for the affected Work. To the extent a FCN requires a change to the Contract Documents, the District will issue a Contract Change Order to incorporate the change.
7. A FCN may include a not-to-exceed cost. The Contractor and DDR shall, on a daily basis, diligently monitor the costs associated with the FCN and inform the DDR when such costs are within twenty-five percent (25%) of the not-to-exceed amount stipulated in the FCN. When such costs are within twenty-five percent (25%) of the not-to-exceed amount, the DDR and Contractor's representative shall review the balance of the work to be completed and all anticipated costs. If the DDR and Contractor are in agreement, a revised FCN will be issued with a revised not-to-exceed amount. A change order will be processed in case there is a cost or schedule impact or the work will be handled through force account at District's discretion.

D. Continuance of Construction. Any disagreement by the Contractor with the District's determination of the need for, or amount of, an adjustment in Contract Price or Contract Time associated with an approved Contract Change Order (or disagreement by the Contractor with the District's determination that a change has not occurred and no Contract Change Order is needed) shall not, under any circumstances, relieve the Contractor from its obligation to promptly begin and diligently prosecute the Work, including the change that is described in the approved Contract Change Order. Should such disagreement occur, the Contractor's attention is directed to the provisions relating to "Change Order Protest Procedure" set forth elsewhere in these General Conditions

E. Differing Site Conditions. Within twenty-four (24) hours of discovery of any purported differing site conditions and before such conditions are disturbed, the Contractor shall notify the District in writing of (1) material that the Contractor believes may be hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law, (2) subsurface or latent physical conditions at the site differing materially from information made available to the Contractor before the submission of its bid, or (3) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

In the event conditions as described in (1), (2) or (3) above are discovered, the Contractor shall continue to diligently prosecute the work in the other portions of the site not affected by such conditions. The Contractor shall also use its best efforts to prevent and/or minimize delays or disruptions to the affected portions of the work.

The District will promptly investigate the purported differing site conditions. If the District finds that such conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made and the Contract will be modified in accordance with the change order procedures set forth herein. In the event of any dispute between the District and the Contractor over the significance or existence of the changed conditions, the Contractor shall not be excused from the scheduled completion date set forth herein, but shall retain such rights as provided elsewhere in these Contract Documents.

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required by this Section. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

- F. Contract Price Adjustment. If a *Contract Change Order* provides for an adjustment to the Contract Price, the increased amount owed to Contractor, or the credit due the District, shall be determined by one of the following methods, or a combination thereof, as determined by the District and at its sole discretion:

1. Unit Prices: The unit prices (if applicable) set forth in the Contractor's Schedule of Bid Prices will be utilized where they are applicable. If the actual quantities of an item of work are greater or lesser than the DDR's Estimate of quantity for such item of Work by more than twenty-five percent (25%) within a project segment, such that the application of unit prices in the Bid Form will cause substantial inequity to the District or Contractor, the unit prices will be adjusted by mutual agreement or, based on verifiable documentation made available by either party or, in the absence of agreement, documentation as determined by the District in the same manner as if the work that is greater or less than twenty-five percent (25%) of the estimated quantities were to be paid for on a force account basis. District's determination shall be subject to protest by the Contractor pursuant to the provisions relating to "Protest Procedure" set forth elsewhere in the Contract Documents.

Unit prices for new items included in the *Contract Change Order* shall be as mutually agreed upon or, in the absence of agreement, as determined by the District in the same manner if the work were to be paid for on a force account basis. District's determination shall be subject to protest by the Contractor pursuant to the provisions relating to "Protest Procedure" set forth elsewhere in the Contract Documents.

2. Eliminated Items. The District reserves the right to delete any bid item of Work in its entirety. The District makes no representation that any work under a bid item of Work will be performed, and all work may be subject to a *Contract Change Order* that deletes such work. Bid items are distinct and severable from the other bid items, and Contractor shall not be entitled to any anticipated profit, unabsorbed overhead, or other indirect expense attributable to the deleted item, except as provided immediately below with regard to force account mark-ups on the direct and verifiable costs incurred prior to the District's order the deletes the work.

Should any bid item of Work be eliminated in its entirety and not accounted for in Sub-paragraph 1 above and, in the absence of an executed *Contract Change Order* covering such elimination, payment will be made to the Contractor for actual direct and verifiable costs incurred in connection with such eliminated bid item if incurred prior to the date of notification in writing by the District of such elimination. If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the District, and if orders for such material cannot be canceled, it will be paid for at the actual direct and verifiable cost to the Contractor. Actual direct costs shall include documented vendor shipping fees, supplier restocking fees, if applicable, and Contractor handling costs directly related to the eliminated item(s). In such case, the material paid for shall become the property of the District and the actual cost of any further handling will be paid for. If the material is returnable to the vendor and if the District so directs, the material shall be returned and the Contractor will be paid for the actual direct cost of charges made by the vendor for returning the material. The actual direct cost of handling returned material will also be paid for. The actual direct and verifiable costs to be paid by the District as provided herein will

be computed in the same manner as if the work were to be paid for on a force account basis, including the application of force account mark-ups to said costs.

3. Changes in Character of Work. If an order by the DDR materially changes the character of the work from that indicated in the original Contract Documents, and if the change materially increases or decreases the actual unit cost of performing changed item as compared to the estimated unit cost of performing the work in accordance with the plans and specifications originally applicable thereto, an adjustment in compensation therefor will be made in accordance with the following:
 - a. The basis of such adjustment in compensation will be the difference between (i) an estimate of the reasonable unit cost to perform the work under the bid item or portion thereof involved in the change as originally planned and (ii) the actual unit cost of performing the work of said item or portion thereof involved in the change, as changed. Actual unit costs will be determined by the DDR in the same manner as if the work were to be paid for on a force account basis or such adjustment will be as agreed to by the Contractor and the DDR. Any such adjustment will apply only to the portion of the work of said item actually changed in character. At the option of the DDR, the work of said item or portion of item, which is changed in character, will be paid for by force account.
 - b. If the compensation for an item of work is adjusted under this Section "Changes in Character of Work", the costs recognized in determining such adjustment shall be excluded from consideration in making and adjustment for such item of work under Section "Unit Prices".
 - c. Failure of the DDR to recognize a change in character of the work at the time the approved contract change order is issued shall in no way be construed as relieving the Contractor of his duty and responsibility of filing a written protest pursuant to Section 00 72 13 "Change Order Protest Procedure".
 - d. Under no circumstances will work, that is considered to be a change in character, commence until the DDR and the Contractor agree on a lump sum, unit price amount, or other price adjustment. No work shall commence until a Change Order is executed, or a Field Change Notice (FCN) is issued directing the Contractor to perform the work. However, the Contractor shall diligently prosecute all portions of the work that are not affected by the pending Change Order and shall use its best efforts to prevent and/or minimize delays or disruptions (if any) to the entire work caused by the pending Change Order.
 - e. Under no circumstance shall Contractor be entitled to claim a Change in the Character of Work to compensate for errors or deficiencies in Contractor's original estimate for the work or to seek additional compensation for extra costs attributable to its own mismanagement or supervision of the work.
4. Extra Work. New and unforeseen work will be classed as extra work when determined by the District that such work is not covered by any of the various items for which there is a bid price or by combinations of such items. In the event portions of such work are determined by the District to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such work will be classed as extra work.

The Contractor shall perform such extra work and furnish labor, material, and equipment therefor upon receipt of an approved Contract Change Order, and in the absence of such approved Contract Change Order, Contractor shall not be

entitled to payment for such extra work. Payment for extra work required to be performed pursuant to the provisions in this section, in the absence of an executed Contract Change Order, will be made by force account. To the total of the direct costs computed, there will be added a negotiated markup, with a maximum of fifteen percent (15%) to the cost of actual labor, ten percent (10%) to the cost of materials, five percent (5%) to rented equipment, and ten percent (10%) to subcontractors.

G. Change Order Protest Procedure

1. If the Contractor disagrees with any terms or conditions set forth in an approved Contract Change Order, it shall submit a written protest to the DDR within ten (10) days after receipt of such approved *Contract Change Order*, but in no event after commencement of the Work covered by such approved *Contract Change Order*. The protest shall state Contractor's points of disagreement with respect to the change order, including any and all specific references to portions of the Contract Document at issue. The Contractor's protest shall also propose a modification of the items with which Contractor does not agree. If a written protest is not submitted within the time period set forth herein, payment will be made as described in the approved *Contract Change Order*. Contractor's failure to timely submit a written protest shall constitute a waiver of Contractor's right to claim any additional compensation beyond the amount stated in the approved *Contract Change Order* for the changed work. Approved *Contract Change Orders* which are not protested within such time period will be considered as executed *Contract Change Orders*, and payment made thereunder will constitute full compensation for all work resulting from the change.
2. When the protest of an approved *Contract Change Order* relates to compensation, the Contractor shall keep full and complete records of the work that is the subject of the protest. Contractor shall make all cost data pertaining to changed work available to the Engineer upon request. The Contractor shall submit substantiating cost data with the protest Contractor's failure to submit cost data shall constitute a waiver of Contractor's right to claim any additional compensation for the disputed work.
3. The Contractor shall cooperate with the DDR to reach agreement at the earliest practical date with respect to the disputed work. If an agreement has been reached, a revised Contract Change Order will be approved by the District and issued to the Contractor for signature. Unless and until the District and Contractor agree upon the terms of compensation incorporated in a revised executed *Contract Change Order*, the compensation shall be as specified under the protested approved *Contract Change Order*.
4. When the protest of an approved *Contract Change Order* relates to an adjustment of Contract Time for the completion of the Work, those disputes will be determined in accordance with the provisions of "Delays and Extensions of Time" elsewhere in these Contract Documents.
5. If the Contractor's protest is denied by the District and the Contractor disagrees with the assessment and wishes to pursue the dispute further, the Contractor may submit a claim pursuant to Part 7, "Dispute Resolution" of these General Conditions.

H. Force Account Payment. When Work performed pursuant to a Change Order is to be paid for on a force account basis, the Contractor's labor, materials and equipment used in the performance of such Work shall be subject to the approval of the District, and the compensation will be determined as set forth below in this section.

1. Work Performed by Contractor.

The Contractor will be paid the direct costs for labor, materials and equipment used in performing the Work determined as hereafter provided.

To the total of the direct costs computed as provided below, there will be added a negotiated markup, with a maximum of fifteen percent (15%) to the cost of actual labor, ten percent (10%) to the cost of materials, five percent (5%) to rented equipment and ten percent (10%) to subcontractors.

The above markups shall constitute full compensation, covering the costs of all supervision, overhead, profit and any other general expense not specifically designated as a direct cost below. The total payment made as provided above (i.e., direct cost plus applicable markups) shall be deemed to be the actual cost of such work and shall constitute full compensation therefor. Contractor specifically understands and agrees that such payment shall include any Contractor costs for interruption, disruption, and acceleration, extended overhead, change order management, delay or other "impact" claim or "ripple effect" claim.

When work paid for on a force account basis is performed by forces other than the Contractor's own forces, the Contractor's maximum mark-up for its own account shall be fifteen percent (15%) of the actual labor costs. The maximum allowable cumulative mark-ups for the subcontractors' costs shall be fifteen percent (15%) to the cost of actual labor, ten percent (10%) to the cost of materials, and five percent (5%) to rented equipment. However, in the event that any force account work is also performed by sub-tier subcontractors, the Contractor shall reach agreement with such Subcontractors or other sub-tier subcontractors as to an equitable distribution of the total mark-up payments to be made by the District for such force account work. The District shall not be obligated to make any additional payment for force account mark-ups by reason of the performance of the force account work by sub-tier subcontractors.

a. Labor. The Contractor will be paid the cost of labor for the workmen (including foremen when authorized by the DDR), used in the actual and direct performance of the Work. All labor costs associated with overhead, whether field or home office, are specifically excluded herein, as those labor costs are covered by the above mark-ups. The cost of labor, whether the employer is the Contractor, Subcontractor or other forces, will be the sum of the following:

- (1) Actual Wages. The actual wages paid shall include any employer payments to or on behalf of the workmen for health and welfare, pension, vacation and similar purposes.
- (2) Labor Surcharge. To the actual wages, as defined in Section (a), will be added a labor surcharge set forth in the California Department of Transportation ("Caltrans") publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the work is accomplished. Said labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workmen, other than actual wages and subsistence and travel allowance as specified. Labor rates submitted for work under time and materials shall include the labor surcharge:
- (3) Subsistence and Travel Allowance. The actual subsistence and travel allowance paid to such workmen. No markup will be allowed on subsistence and travel expense.

b. Materials. The District reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no claims for costs and markup on such materials. Only materials furnished by the Contractor and necessarily used in the performance of the Work will be paid for. The cost of such materials will be the cost to the purchaser, whether Contractor, Subcontractor or other forces, from the Supplier thereof, except, as the following are applicable:

- (1) If a cash or trade discount by the actual Supplier is offered or available to the purchaser, it shall be credited to the District notwithstanding the fact that such discount may not have been taken.
- (2) If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual Supplier to such purchaser, the cost of such materials shall be deemed to be the price paid to the actual supplier as determined by the District plus the actual costs, if any, incurred in the handling of such materials.
- (3) If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such materials shall not exceed the price paid by the purchaser for similar materials furnished from said source on Bid items or the current wholesale price for such materials delivered to the job site, less any discounts as provided in Section (1), whichever is lower.
- (4) If the cost of such materials is, in the opinion of the District, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials were available in the quantities concerned delivered to the job site, less any discounts as provided in *Section (1)*.
- (5) If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within sixty (60) days after the date of delivery of the materials or within fifteen (15) days after acceptance of the Contract, whichever occurs first, the District reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials were available in the quantities concerned delivered to the location of the work, less any discounts as provided in Section (1).

- c. Equipment. Within fifteen (15) days after Notice to Proceed is issued to the Contractor, the Contractor shall submit a list of equipment intended to be used on the contract for review and approval by the District. The equipment list will identify all pieces of the equipment to be used on the project and will include the make, model number, serial number and all attachments for each piece of equipment. The equipment submittal will include hourly rates (excluding operators) for (i) equipment operated for forty (40) hours and less per week; (ii) equipment operated for more than forty (40) hours per week; and (iii) equipment not operated and on standby. In determining a suitable rental rate for equipment, the DDR shall take into consideration the applicable Schedule of Equipment Rates issued by Caltrans, as well as Contractor's proposed rate(s) and supporting documentation. Standby rates will apply for equipment operating over eight (8) hours in any given twelve (12) hour shift.

Equipment located at a work site and utilized on non-force account work shall not be eligible for standby payment, and shall be charged on a force account basis only when solely performing pre-approved force account work tasks.

If it is deemed necessary by the District to use equipment not listed in the approved Equipment Submittal, outside rentals may be utilized. Contractor shall provide copies of invoicing from the rental agency as part of the force account documentation. If the equipment is used on contract work during the same rental period, only that portion, based on the actual hours of operation, will be applied to the force account work.

The rental rates paid as above provided shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals.

Operators of rented equipment will be paid for as provided in Section (1), "Labor."

All equipment shall, in the opinion of the DDR, be in good working condition and suitable for the purpose for which the equipment is to be used. Prior to beginning force account work, the District and Contractor shall agree on all equipment to be used for the work described in the daily time and material form.

Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$1000 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

No payment will be made on a force account basis for equipment that is inoperative due to breakdown, servicing or repair or is not functioning according to the manufacturer's performance standards or is not being operated by a qualified operator.

For the use of equipment not listed on the approved Equipment Submittal that is moved in on the work and used exclusively for extra work to be paid for on a force account basis, the Contractor will be paid at the actual rental rates verified by the Contractor or rates charged for similar equipment listed in the Equipment Submittal. The cost of transporting the equipment to the location of the work and its return to its original location, will be paid in accordance with the following provisions. The original location of the equipment to be hauled to the location of the work will be agreed to by the District in advance. The District will pay the costs of loading and unloading such equipment. The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers. The cost of transporting equipment shall not exceed the applicable minimum established rates of the Public Utilities Commission.

Equipment charges shall begin at the time the equipment is unloaded at the site of the extra work, shall include each day of the work week (defined elsewhere in the Contract Documents) that the equipment is at the site of the extra work, excluding legal holidays, unless the equipment is used to perform the extra work on such days, and shall terminate at the end of the day on which the District directs the Contractor to discontinue the use of such equipment.

Equipment operated less than thirty (30) minutes shall be considered to be one-half (1/2) hour of operation charged accordingly.

Should the Contractor desire the return of the equipment to a location other than its original location, the District will pay the cost of transportation in accordance with the above provisions; provided such payment shall not exceed the cost of moving the equipment to the Work site.

Payment for transporting, and loading and unloading equipment, as above provided, will not be made if the equipment is used on the Work in any other way than upon extra work paid for on a force account basis.

When extra work, other than Work specifically designated as extra work in the Contract Documents, is to be paid for on a force account basis and the District determines that such extra work requires the Contractor to move on to the work site equipment which could not reasonably have been expected to be needed in the performance of the Contract, the District may authorize payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment subject to the following conditions:

- (1) The District shall specifically approve the necessity for the use of particular equipment on such Work,
 - (2) The Contractor shall establish to the satisfaction of the District that such equipment cannot be obtained from his normal equipment source or sources and those of his Subcontractors,
 - (3) The Contractor shall establish to the satisfaction of the District that the proposed equipment rental rate for such equipment from his proposed source is reasonable and appropriate for the expected period of use.
 - (4) The District shall approve the equipment source and the equipment rental rate to be paid by the District before the Contractor begins Work involving the use of said equipment.
2. Work Performed by Special Forces or Other Special Services. When the DDR and the Contractor, by agreement, determine that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of his Subcontractors, such service or extra work item may be performed by a specialist. Invoices for such service or item of extra work on the basis of the current market price thereof may be accepted without complete itemization of labor, materials and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such complete itemization.
- In those instances wherein a Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the job site, the charges for that portion of the extra work performed in such facility may, by agreement, be accepted as a specialist billing.
- To the specialist invoice price, less a credit to the District for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added five percent (5%) in lieu of the percentages provided in, "*Force Account Payment, Work Performed by Contractor*" elsewhere in these General Conditions.
3. Records. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of extra work paid for on a force account basis and the costs of other operations.

From the above records, the Contractor shall furnish the District completed daily extra work reports, on forms furnished by the District, for each day's extra work to be paid for on a force account basis. The daily extra work reports shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor, or other forces, except for charges described in *Section 2, "Work Performed by Special Forces or Other Special Services."* The daily extra work reports shall provide names or identifications and classifications of workmen, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated. Daily extra work and force account reports (actual or claimed) shall be signed by both the District's and Contractor's representatives within twenty-four (24) hours of the performance of the work.

Valid copies of vendor's invoices shall substantiate material charges. Such invoices shall be submitted with the daily extra work reports, or if not available, they shall be submitted with subsequent daily extra work reports. Should said vendor's invoices not be submitted within sixty (60) days after the date of delivery of the material or within fifteen (15) days after the acceptance of the Contract, whichever occurs first, the District reserves the right to establish the cost of such

materials at the lowest current wholesale prices at which said materials were available in the quantities concerned delivered to the location of work less any discounts as provided in *Section 6.01.E.1 (2)*.

The Contractor or his authorized representative shall sign said daily extra work reports.

The District will compare his records with the completed daily extra work reports furnished by the Contractor and make any necessary adjustments. When these daily extra work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit by the District.

The Contractor's cost records pertaining to Work paid for on a force account basis shall be open to inspection or audit by representatives of the District, during the life of the Contract and for a period of not less than three (3) years after the date of contract completion and recording. The Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to insure that the cost records of such other forces will be open to inspection and audit by representatives of the District on the same terms and conditions as the cost records of the Contractor. If an audit is to be commenced more than sixty (60) days after the date of acceptance of the Contract, the Contractor will be given fifteen (15) days' notice of the time when such audit is to begin.

6.02 COST REDUCTION PROPOSALS

- A. The District encourages the Contractor to submit Cost Reduction Proposals whenever the Contractor identifies areas and/or instances in which there can be savings to the Work. Contractor may submit to the District, in writing, proposals for modifying the plans, specifications or other requirements of the Contract for the sole purpose of reducing the total cost of construction, including the time for completion of the Work. The Cost Reduction Proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.
- B. Cost Reduction Proposals shall contain the following information:
 - 1. A description of both the existing Contract requirements for performing the Work and the proposed changes, together with advantages and disadvantages of each changed item.
 - 2. An itemization of the Contract requirements (e.g., plans and specifications) that must be changed if the proposal is adopted.
 - 3. Justification for changes in function or characteristics of each affected item, and the effect of the change on the performance of the completed Work.
 - 4. A detailed estimate of the cost of performing the Work under the existing Contract and under the proposed change. The estimates of cost shall be determined in the same manner as if the Work were to be paid for on a force account basis as provided in, "Force Account Payment" contained elsewhere in the Contract Documents.
 - 5. A statement of the time within which the District must make a decision thereon.
 - 6. The Bid items of Work affected by the proposed changes, including any quantity variation attributable thereto.
 - 7. Contractor's submittal of its Cost Reduction Proposal shall include a certification by Contractor as follows: "Under the penalty of law for perjury or falsification and with specific reference to the *California False Claims Act, Government Code Section 12650 et seq.*, the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the Cost Reduction Proposal."

- C. The provisions of this section shall not be construed to require the District to consider any Cost Reduction Proposal, which may be submitted hereunder. The District will not be liable to the Contractor for failure to accept or act upon any Cost Reduction Proposal submitted pursuant to this section nor for any delays to the Work attributable to any such proposal. If a Cost Reduction Proposal is similar to a change in the plans or specifications under consideration by the District for the project at the time said proposal is submitted, the District will not accept such proposal, and the District reserves the right to make such changes without compensation to the Contractor under the provisions of this *Section*.

The Contractor shall continue to perform the Work in accordance with the requirements of the Contract until an approved *Contract Change Order*, incorporating the cost reduction proposal have been issued. If an approved *Contract Change Order* has not been issued by the date upon which the Contractor's Cost Reduction Proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, such Cost Reduction Proposal shall be deemed rejected.

The District shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, District reserves the right to disregard the Contract bid prices if in the judgment of the District, such prices do not represent a fair measure of the value of Work to be performed or to be deleted.

The District reserves the right, where it deems such action appropriate, to require the Contractor to share in the District's costs of investigating a Cost Reduction Proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed, the Contractor shall indicate his acceptance thereof in writing, and such acceptance shall constitute full authority for the District to deduct amounts payable to the District from any monies due or that may become due to the Contractor under the Contract.

- D. If the Contractor's Cost Reduction Proposal is accepted in whole or in part, such acceptance will be by an approved *Contract Change Order*, which shall specifically state that it is executed pursuant to this Section. Such change order shall incorporate the changes in the plans and specifications which are necessary to permit the Cost Reduction Proposal or such part of it as has been accepted to be put into effect, and shall include any conditions upon which the District's approval thereof is based if the approval of the District is conditional.

The change order shall also set forth the estimated net savings in construction costs attributable to the cost reduction proposal effectuated by the change order, and shall further provide that the Contractor be paid fifty percent (50%) of said estimated net savings amount. The Contractor's cost of preparing the Cost Reduction Proposal and the District's costs of investigating same, including any portion thereof paid by the Contractor, shall be excluded from consideration in determining the estimated net savings in construction costs.

The Contractor is not entitled to share in either concurrent, collateral or future savings arising from the Cost Reduction Proposal. Collateral savings are those measurable net reductions in District's costs of operation that result from the Cost Reduction Proposal, including maintenance, logistics, and District-furnished equipment.

Acceptance of the Cost Reduction Proposal and performance of the Work thereunder shall not adjust the time of completion of the Contract unless specifically provided for in the approved *Contract Change Order* authorizing the use of the Cost Reduction Proposal.

The amount specified to be paid to the Contractor in the approved *Contract Change Order* which effectuates a Cost Reduction Proposal shall constitute full compensation to the Contractor for the Cost Reduction Proposal and the performance of the Work thereof pursuant to the change order.

The Contractor shall include appropriate Cost Reduction Proposal provisions in all Subcontracts of five thousand dollars (\$5,000.00) or greater, and may include those provisions in any subcontract. Subcontracts shall state that any benefits accruing to the Contractor as a

result of an accepted Cost Reduction Proposal initiated by a Subcontractor shall be shared by the Contractor and the Subcontractor in a manner specified in the agreement between them.

PART 7 – DISPUTE RESOLUTION

7.01 TIMELY NOTICE OF CLAIM

Contractor shall be solely responsible for providing written notice to District of any claims for additional compensation and/or time in accordance with the provisions of the Contract Documents. It is District's intent to investigate and attempt to resolve any Contractor claims before the Contractor has performed any disputed Work. In addition, District desires to mitigate its responsibility (if any) for any Contractor claims before the disputed Work is performed. Therefore, Contractor's failure to provide written notice within the time limitations set forth below shall constitute a waiver of Contractor's claims for additional compensation and/or time.

7.02 NOTICE OF POTENTIAL CLAIM

- A. The Contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the District (including the failure or refusal to issue a Change Order), or the happening of any event, thing or occurrence, unless he shall have given the District due written notice of potential claim as hereinafter specified, provided, however, that compliance with this section shall not be a prerequisite as to matters within the scope of the *Contract Change Order* protest provisions in, "Protest Procedure," or the notice provisions in, "Delays and Extension of Time," elsewhere in these Contract Documents, nor to any claim which is based on differences in measurement or errors of computation as to correct quantities.
- B. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved and, insofar as possible, the amount of the potential claim. If based on an act or failure to act by the District, such notice shall be given to the District prior to the time that the Contractor has started performance of the Work giving rise to the potential claim for additional compensation, but in no event more than three (3) days after the occurrence that gives rise to the Contractor's claim. In all other cases, notice shall be given within three (3) days after the happening of the event or occurrence giving rise to the potential claim.
- C. The Contractor hereby agrees that he shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which a written notice of potential claim as herein required was not timely filed.
- D. If there is a dispute over any claim, the Contractor shall continue to Work during the dispute resolution process in a diligent and timely manner as directed by the District, and shall be governed by all applicable provisions of the Contract.
- E. The Contractor shall maintain cost records of all Work, which is the basis of any dispute. On a daily basis, Contractor shall submit to District completed daily forms, the format of which will be supplied by District, with respect to the Contractor's costs of performing the disputed work. These daily forms shall itemize all Contractor costs in performing the disputed work, including, but not limited to, all costs relating to materials, labor and equipment with respect to the disputed work. These daily forms shall provide names or identification and classification of affected workmen, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated. Said daily work forms shall be duly signed and verified by the Contractor or his authorized representative. District's receipt of Contractor's daily forms shall not constitute an approval of the Contractor's protest. Contractor's failure to submit the daily forms on a daily basis shall constitute a waiver of Contractor's right to claim any additional compensation for the disputed work.
- F. Each Contractor claim shall include full and complete information concerning the Claim. Contractor shall provide a clear, concise recital of the basis, upon which the claim is asserted, including a designation of the provisions of the Contract Documents upon which the claim is

based. Contractor shall also include a statement as to the amount of time and/or compensation sought pursuant to the claim; if Contractor's claim arises from an ongoing occurrence, Contractor shall so state in its claim including a description of the specific Work activities affected by the claim. All costs, expenses or damages and extensions of time claimed shall be described in reasonable detail under the circumstances together with complete supporting documentation.

- G. The District will review any timely claim submitted by Contractor. In conducting this review, the District shall have the right to require the Contractor to submit such additional or supporting documents, data and other information as the District may require. The District will review any timely claim within fifteen (15) days after receipt by the District of all requested additional or supporting documents.
- H. If an agreement can be reached which resolves the Contractor claim, the parties will execute a Contract Change Order to document the resolution of the claim. If the parties cannot reach agreement with respect to the Contractor claim, Contractor shall still be obligated to comply with the claim identification provisions identified in the section entitled "*Final Payment and Claims*", elsewhere in these General Conditions.
- I. In the event a subcontractor or supplier asserts a claim against the Contractor under its agreement with Contractor, the subcontractor or supplier shall look only to the Contractor for any payment or relief. Subcontractors and suppliers shall have no claim or cause of action against the District if such claim or cause of action arises out of the subcontractor's or supplier's agreement with Contractor.

7.03 PUBLIC CONTRACT CODE CLAIM PROCEDURE

Contractor is directed to Section 7.02 of these contract documents regarding the notice provisions applicable to a construction claim. In the event the District and Contractor cannot resolve claims of three hundred seventy-five thousand dollars (\$375,000.00) or less, the claims provisions of *California Public Contract Code Sections 20104-20104.6* shall apply, which provisions are summarized below. Any claim submitted by the Contractor shall be in writing and include the documents necessary to substantiate the claim.

For claims of less than fifty thousand dollars (\$50,000.00), the District shall respond in writing within forty-five (45) days of receipt of the claim, or request additional documentation supporting the claim within thirty (30) days of receipt of the claim. If additional documentation is requested, District will respond in writing to the claim within fifteen (15) days of receipt of the additional documentation, or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

For claims of over \$50,000.00 and less than or equal to \$375,000.00, District shall respond in writing within sixty (60) days of receipt of the claim, or request additional documentation supporting the claim within thirty (30) days of receipt of the claim. If additional documentation is requested, District will respond in writing to the claim within thirty (30) days of receipt of the additional documentation, or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

7.04 CLAIMS PROCESS (*PUBLIC CONTRACT CODE § 9204*)

A claim is a separate demand by the Contractor for one or more of the following: (i) a time extension for relief from damages or penalties for delay, (ii) payment of money or damages arising from work done pursuant to the contract for a public work, or (iii) payment of an amount disputed by the District. A claim must be sent by registered or certified mail, and upon receipt of a claim sent by registered or certified mail, the District will review it and, within forty-five (45) days, provide a written statement identifying the disputed and undisputed portions of the claim. The forty-five (45) day period may be extended by mutual agreement or, until after the next Board of Directors meeting, if the Board must approve the disputed and undisputed portions of the claim. Any payment due on the undisputed portion of the claim must be processed within sixty (60) days.

If the claimant disputes the District's written response or if the District fails to respond to a claim within the time prescribed, the claimant must demand a meet and confer for settlement of the issues in dispute. The District must then schedule a meet and confer conference within thirty (30) days for settlement of the dispute. Any disputed portion of the claim that remains in dispute after the meet and confer conference will be subject to nonbinding mediation, as specified. The District can also require arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if the mediation does not resolve the dispute.

If the District fails to respond to a claim from a contractor within the above referenced time periods, the claim is deemed rejected in its entirety. Unpaid claim amounts which are not paid in a timely manner shall accrue interest at seven percent (7%) per annum.

To read the full AB 626 language, please refer to [PUBLIC CONTRACT CODE § 9204 and all updates](#)

PART 8 – TIME

8.01 DELAYS AND EXTENSIONS TO THE WORK

- A. Contractor must complete all Work within the time specified in *Division I* of these Contract Documents. The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any delay in substantially completing the Work (or parts thereof) beyond the time set forth in the Special Provisions elsewhere in the Contract Documents, provided such delay was caused by unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of public enemy, fire, floods, abnormal weather (as described below), tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes and freight embargoes fire, changes made pursuant to the provisions of "*Changes in Work*" elsewhere in the Contract Documents or acts or neglect of the District not contemplated by the Contract Documents. In all cases, any extension of time is conditioned on the following:
1. That the cause is not due to the fault or negligence of the Contractor, and the Contractor has taken reasonable precautions to prevent the delays and minimize the effects thereof; and
 2. That the Contractor notifies the DDR in writing within three (3) days from the beginning of such delay specifying the nature of the delay and the measures that have been or will be taken to prevent or minimize the delay. Failure to submit written notice within this time period shall constitute an absolute waiver of any claim for a time extension.
- B. No extension of time will be granted for a delay caused by a shortage of materials, unless the Contractor furnishes to the District documentary proof that he has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work and further proof, in the form of schedule data as required in "Project Scheduling Requirements" elsewhere in the Contract Documents, that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire Work which could not be compensated for by revising the sequence of the Contractor's operations. Only the physical shortage of material will be considered as a cause for extension of time, and no consideration will be given to any claim that material could not be obtained at a reasonable, practical or economical cost or price, unless it is shown to the satisfaction of the District that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and the usual practices in obtaining such quantities.
- C. The term "shortage of materials," as used in this section, shall apply only to materials, articles, parts or equipment which are standard items and shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the Contract Documents.
- D. No extensions of time will be granted for delays that have no measurable impact on the completion of the Work (or parts thereof) under the Contract Documents. When extensions of

time are granted, they will be limited to the period equivalent to the actual number of days lost on the critical path or controlling operations of the Construction Schedule, taking into account the extent to which that delay could be decreased by reasonable mitigation measures by the Contractor. All requests for extensions of time must be supported with a critical path analysis showing the critical path and impacts to it. Contractor's failure to submit this analysis will be sufficient cause for denial of any request for a time extension.

- E. Within a reasonable period of time after the Contractor submits the notice and information required by this section, the District will determine whether an extension of time is justified and, if so, the number of days for the extension.
- F. Abnormal weather, if services are to be performed outside, may be a valid basis for a time extension under the Contract. The term "abnormal weather" is defined as the occurrence of both of the following two (2) conditions: (i) rain conditions that exceed the criteria set forth immediately below; and (ii) rain conditions that cause the below specified impact to Contractor's operations.
- G. Time extensions caused by abnormal weather, if applicable, will be allowed only if there is rain in excess of one-half of one inch (0.5") in a twenty-four (24) hour period, as measured at the EW0993 Oakland weather station maintained by the National Weather Service, for a number of days that exceeds the number of allowable rain days for each particular month.
- H. In addition, before a time extension may be granted for abnormal weather, Contractor must establish that the rain either significantly impacted at least sixty percent (60%) of the planned work of the controlling operations for a particular day or prohibited at least five (5) hours of work on the controlling operations planned for that day. Contractor shall employ reasonable methods to mitigate the impact of abnormal weather (i.e., dewatering, protection of site, etc.) The occurrence of rain during non-work hours or having minimal impact to work on the controlling operation shall not constitute a day of abnormal weather.

In the event that the project experiences favorable weather for a particular month (e.g., a number of actual rain days in a month less than that indicated in the above table for allowable rain days per month), the additional float resulting from such favorable weather shall accrue to the project.

- I. Any Contractor claim for damages or additional compensation based on delay shall be limited to only those circumstances where the Contractor has fulfilled each of the following three (3) requirements:
 - 1. Contractor has established its entitlement to a time extension pursuant to the provisions described above regarding delay and extensions to the Work.
 - 2. The delay was caused solely by the District by District's issuance of changes made pursuant to the provisions of "*Changes in Work*" elsewhere in these General Conditions or by or acts or neglect of the District.
 - 3. The delay was unreasonable under the circumstances and not within the contemplation of the parties.

It is expressly understood and agreed that delays caused by the District will be non-compensable when there are concurrent delays caused by the Contractor. Also, Contractor shall have no entitlement to additional compensation for any delay where there have been concurrent delays caused by non-compensable delays, including, but not limited to, fire, floods, tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes and freight embargoes.

In the event that the Contractor submits a claim for additional costs associated with overhead, the Contractor shall, within sixty (60) calendar days of the DDR's written request, submit to the DDR an audit examination and report performed by an independent Certified Public Accountant of the Contractor's actual unanticipated overhead costs. The independent Certified Public Accountant's

audit examination shall be performed in conformance with the requirements of the American Institute of Certified Public Accountants Attestation Standards. The audit examination and report shall depict the Contractor's project and company-wide financial records and shall specify the actual overall average daily rates for both field and home office overhead for the entire duration of the project, and whether the costs have been properly allocated. The rates of field and home office overhead shall exclude all unallowable costs as determined in the *Federal Acquisition Regulations, 48 CFR, Chapter 1, Part 31*. The audit examination shall determine if the rates of field and home office overhead:

1. are allowable in conformance with the requirements of the *Federal Acquisition Regulations, 48 CFR, Chapter 1, Part 31*;
2. are adequately supported by reliable documentation; and
3. related solely to the project under examination.

Upon the DDR's written request, the Contractor shall make its financial records available for audit by the District for the purpose of verifying the actual rate of overhead specified in the audit submitted by the Contractor. The overhead specified in the audit, submitted by the Contractor, will be subject to approval by the DDR.

- J. Right of Way Delays. If, through the failure of the District to acquire or clear the right of way as specified in the Contract Documents (if applicable), and the Contractor sustains loss which could not have been avoided by the judicious handling of its Work, Contractor will be entitled to such amount as the District may find to be fair and reasonable for such part of the Contractor's actual loss, as, in the opinion of the District was unavoidable, determined as follows:

1. Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis with the following exceptions:
 - a. The time for which such compensation will be paid will be the actual normal working hours during which such delay conditions exists, but in no case will exceed eight (8) hours in any one day.
 - b. The days for which compensation will be paid will be each calendar day of the work week (defined elsewhere in the Contract Documents), and legal holidays, during the existence of such delay, except that when rental of the equipment is paid for under the provisions in "*Force Account Payment – Equipment*", no payment will be made for right of way delays in accordance with the provisions in this section.
 - c. Actual loss shall be understood to include no items of expense other than idle time of personnel, cost of extra moving of equipment, and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this section, "*Delays and Time Extensions*", and compensation for idle time of personnel will be determined pursuant to "*Force Account – Labor*" elsewhere in the Contract Documents, and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided pursuant to "*Changes to the Work*" elsewhere in the Contract Documents.
 - d. In addition to the compensation described above, if performance of the Contractor's Work is delayed as a result of the failure of the District to acquire or clear right of way, an extension of time determined pursuant to the provisions in "*Delays and Extensions to the Work*", will be granted.

8.02 LIQUIDATED DAMAGES

It is agreed by the parties to the Contract that in case all the Work called for under the Contract in all parts and requirements is not completed within the number of calendar days as set forth in Section 00 52 13, damage will be sustained by the District, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the District will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the District, the sum of two hundred dollars (\$200.00) per day for each and every calendar day in which there is a delay in completing the Work in excess of the number of calendar days prescribed and the number of additional calendar days, if any, authorized by *Contract Change Order*; and the Contractor agrees to pay said liquidated damages herein provided for, and further agrees that the District may deduct the amount thereof from any monies due or that may become due the Contractor under the Contract.

PART 9 – PAYMENTS AND COMPLETION

9.01 SCOPE OF PAYMENT

In consideration for the satisfactory performance of Work under the Contract Documents, District shall pay Contractor the Contract Price identified in the Contract. The Contract Price may not be changed except as specified in the Contract Documents.

If the “payment” clause in the Contract Documents relating to any unit price in the bid schedule requires that said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured nor paid for under any other pay item which may appear elsewhere in the Contract Documents.

9.02 PROGRESS PAYMENTS

- A. Within fifteen (15) days after the effective date in the Notice to Proceed, but in any event prior to the Contractor’s first Application for Payment, Contractor shall submit to District a detailed Schedule of Values for approval, equaling the total bid amount.

Upon its approval, the Schedule of Values will form a basis for determining the compensation payable to Contractor based on his actual progress of Work with respect to each Lump Sum Bid Item. The District prior to any progress payment being made must approve the Schedule of Values.

At the DDR's discretion the approved Schedule of Values may be used as the basis of calculating the adjustment in compensation for a lump sum bid item due to changes ordered by the DDR. When an ordered change increases or decreases the quantities shown in an approved Schedule of Values, at the DDR’s discretion, the adjustment in compensation may be determined in the same manner specified for increases and decreases in the quantity of a bid item of work in accordance with *Section 6.1 C 1*, “Unit Prices” of the General Provisions.

- B. On a monthly basis, Contractor shall submit Applications for Payment in the form required by the District. Contractor’s Applications shall be based on the Schedule of Values and on the Unit Prices (if any) submitted with Contractor’s bid. These applications shall be supported by documentation specified in Division 1. The Contractor shall certify that the Work for which payment is requested has been accomplished. When requested by District, Contractor shall submit receipts, invoices and other documentation that the District requires to be furnished for purpose of evaluating the application.
- C. Pursuant to *Public Contract Code Section 20104.50*, District will pay Contractor within thirty (30) days of its receipt of an undisputed and properly submitted Application for Payment, after deducting all previous payments, retention, and other sums as described in the Contract Documents. Within seven (7) days of its receipt of Contractor’s Application for Payment, District will determine whether it complies with the provisions of the Contract Documents. As appropriate, District will return the application to the Contractor accompanied by a document prepared by District setting forth the reasons for the rejection. Thereafter, Contractor shall correct and resubmit the Application for Payment. Progress payments may be withheld for Work that is not performed in accordance with the Contract Documents.

- D. The District may deduct the following from each progress payment:
1. An amount equal to one hundred percent (100%) of the amount claimed under any stop payment notice or other lien filed against the Contractor, plus an amount to provide for the reasonable cost of any litigation thereunder.
 2. Any liquidated damages or assessments that have accrued as of the date of the application for payment.
 3. Any sums expended by the District in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform.
 4. Any other sums that the District is entitled to recover from the Contractor under the terms of the Contract including damages to District property.
 5. Any sums associated with Contractor not staffing the Project with Project representatives as required in the Special Provisions of the Contract Documents.
 6. The failure of the District to deduct any of the above identified sums from a progress payment shall not constitute a waiver of the District's right to such sums.

9.03 RETENTION OF PROGRESS PAYMENTS

- A. From each progress payment estimate, five percent (5%) will be deducted and held in retention by the District, the remainder less any deductions described above will be paid to the Contractor as progress payments.
- B. Pursuant to *Public Contract Code Section 22300*, the successful Bidder may submit Securities in lieu of retention payments by the District. Upon Contractor's request, District will make payment of funds withheld from progress payments, pursuant to the requirements of *California Public Contract Code Section 22300*, if Contractor deposits in escrow with District or with a bank acceptable to District, securities eligible for investment under *California Government Code Section 16430*, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and District, upon the following conditions:
1. Contractor shall bear the expenses of District and the escrow agent in connection with the escrow deposit made.
 2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to Contractor pursuant to this section.
 3. Contractor shall enter into an escrow agreement satisfactory to District, which agreement shall be substantially similar to the form provided in *California Public Contract Code Section 22300*.
 4. Contractor shall obtain the written consent of the surety to such agreement.

9.04 RELIEF FROM MAINTENANCE AND BENEFICIAL OCCUPANCY

- A. Relief from Maintenance
1. Attention is directed to "Responsibility for Work and Materials" contained elsewhere in these General Conditions regarding Contractor's responsibility to rebuild, replace, repair or restore the Work in the event of any injury, loss or damage to same. Upon written request by the Contractor, District may relieve the Contractor of the responsibility to maintain and protect certain portions of the Work which have been completed in all respects in accordance with the requirements of this Contract ("Relief from Maintenance"). Portions of the Work, for which the Contractor may be granted Relief from Maintenance, shall be identified in *Division 01*.
 2. Relief from Maintenance, if granted, and the scope thereof shall be documented in writing. After District's granting of Relief from Maintenance, Contractor shall still be obligated to perform warranty work with respect to the portions of the

Work covered by the Relief from Maintenance. In addition, District's granting of Relief from Maintenance shall not be construed as an acceptance by the District of any latent defects discovered with regard to Contractor's work. Furthermore, Contractor's obligations under Section 3.13, "Indemnification," shall still remain applicable after District's grant of Relief from Maintenance.

3. With respect to any portion of the Work covered by a District's granting of Relief from Maintenance, the warranty periods called for with respect to in the Contract Documents shall not commence until the date of Relief from Maintenance.

B. Beneficial Occupancy

1. The District may at any time notify the Contractor in writing that it intends to take Beneficial Occupancy of any portion of the Work even though the Work may not be Substantially Complete. Unless the reason for District's taking Beneficial Occupancy is that the Contractor has not completed the Work (or portions thereof) in accordance with the Contract Time (in such event *Paragraph 3*, below, applies), District's Beneficial Occupancy shall relieve the Contractor from its responsibility for maintenance, loss or damage to that portion of the Work for which the District has taken Beneficial Occupancy other than that resulting from the Contractor's act or omission, negligence willful misconduct or breach of warranty.
2. Should the Work (or portion thereof) not be completed in accordance with the Construction Schedule within the Contract Time (as adjusted under the terms of the Contract Documents), the District shall have the right, but not the obligation, to take Beneficial Occupancy of the Work. In such event, Contractor shall not be entitled to any additional compensation on account of said occupancy by District, nor shall Contractor be relieved of any of its responsibilities under the Contract Documents, including, without limitation, Contractor's obligation to complete the Work in accordance with the Construction Schedule.
3. Beneficial Occupancy shall not be deemed an acceptance of the Work. Within a reasonable time after District provides notice that it intends to take Beneficial Occupancy, the Contractor and the District shall make an inspection of that portion of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected before the Work has achieved Final Completion. During any Beneficial Occupancy of the Work, the District shall allow the Contractor reasonable access to complete or correct items on the list and to complete other related Work.
4. District's Beneficial Occupancy shall not relieve the Contractor of his responsibility to maintain all insurance and bonds required under the Contract Documents until the entire Project is accepted by the District.

9.05 TITLE

- A. Title to Work for which progress or other payments have been made shall pass to the District at the time of payment. To the extent that title has not previously been vested in the District by reason of progress payments, full title shall pass to the District at time of delivery or completion of the Work. Work to which the District has received title by reason of progress payments shall be segregated from other Contractor and/or Subcontractor materials related to the Work and clearly identified as District property.
- B. The title transferred as above shall in each case be good and free and clear from any and all security interests, liens, and/or other encumbrances. The Contractor shall not pledge or otherwise encumber any item in any manner that would result in any lien, security interest, charge, and/or claim against said items.
- C. The transfer of title as specified above shall not be deemed as an acceptance of the Work by the District, nor relieve the Contractor from its obligation to perform the Work in accordance with

the Contract Documents. Contractor shall still be obligated to protect the work from damage until District's acceptance of work.

9.06 FINAL INSPECTION AND ACCEPTANCE OF THE WORK

- A. When Contractor believes that the entire Work is fully and finally completed, including the satisfactory completion of inspections, tests, and documentation specified in the Contract Documents and the completion of all punch list and clean-up items, the Contractor shall submit to the District a written request for Final Acceptance within fifteen (15) days thereafter, specifying that the Work is fully and finally completed and the date on which it was completed. Within fifteen (15) days after receipt of the request for Final Acceptance, the District will inspect the Work and will either:
 - 1. Reject the request for Final Acceptance, specifying the defective and/or uncompleted portions of the Work, or
 - 2. Issue an executed Notice of Final Acceptance and record a Notice of Completion with the County Recorder.
- B. If the District rejects the request for Final Acceptance; the Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, the Contractor shall again submit a written request for Final Acceptance of the Work, specifying a new date based on the date the defective and/or uncompleted portions of the Work were corrected. Thereafter, the foregoing procedure shall apply successively until District has verified that the Work is fully and finally completed and given the Contractor an executed Notice of Final Acceptance. Immediately upon and after such formal written acceptance by the District, the Contractor will be relieved of the duty of maintaining the Work as a whole.

All warranties commence upon Final Acceptance of the Work or Relief from Maintenance, whichever occurs first.

District's Final Acceptance of the Work shall not be construed as an acceptance by the District of any latent defects discovered with regard to Contractor's work. Furthermore, Contractor's obligations under Section 3.13, "Indemnification," shall still remain applicable after District's grant of Final Acceptance of the Work.

- C. Record Documents and Operation and Maintenance Manuals: Prior to issuance of the Notice of Final Acceptance by the District, the Contractor shall submit to the District the Record Documents and Operation and Maintenance Manuals as specified under Division 01.

9.07 FINAL PAYMENT AND CLAIMS

- A. Final payment will be made only after Contractor has achieved Final Completion of the Work pursuant to the provisions of the section titled "Final Inspection and Acceptance of the Work" contained elsewhere in the Contract Documents.
- B. Before final payment can be made, the Contractor shall have furnished the District with the following:
 - 1. All As-Built drawings, catalogues, instruction sheets and information as required by the Contract Documents.
 - 2. One set of fully developed Transit Asset information for all improvements. The information shall be prepared in accordance with the Federal Transit Authority Guidbook for Transit Asset Management.
 - 3. One signed copy of the Release as discussed below in this section and on a form furnished by the District.
- C. Within thirty (30) days of the date of the District's Notice of Final Acceptance, the Contractor shall prepare and submit a proposed Final Invoice, showing the proposed total amount due the Contractor, segregated by Bid item quantities, Change Order Work, and other basis for payments; deductions made or to be made for prior payment; and amounts previously retained.

Prior invoices and payments shall be subject to correction in the proposed Invoice for Final Payment. Payments to the Contractor will be made only for the actual quantities of the Contract items of work constructed in accordance with the Contract Documents.

Submitted with Contractor's proposed Final Invoice shall be his/her final documentation with respect to any claims that the Contractor has elected to continue to pursue; if there are no such claims, Contractor shall include a statement that there are no outstanding claims regarding the Work. The District shall consider no Claim filed with the proposed Final Invoice unless the Contractor has fully complied with the conditions of the *Notice of Potential Claims, Change Order Protest Procedures and Delays and Extensions of Time Sections* of the Contract Documents.

- D. The District will review the Contractor's proposed Final Invoice and necessary changes or corrections will be forwarded to the Contractor. Within ten (10) days thereafter, the Contractor shall submit a revised proposed Final Invoice incorporating changes or corrections made by the District together with any new claims resulting therefrom. Upon approval by the District, the corrected proposed Final Invoice will become the approved Final Invoice.
- E. If no claims are submitted with the proposed Final Invoice, and agreements are reached on all questions regarding the proposed Final Invoice, the District in exchange for an executed release, satisfactory in form and substance to the District as provided below, will pay the entire sum found due on the approved application. However, the District will withhold sums sufficient to pay all unsettled claims for which stop payment notices have been filed pursuant to *Section 9350 et seq. of the California Civil Code*, together with the reasonable cost of any litigation thereunder.
- F. If the Contractor does submit claims with the proposed Final Invoice, then upon final determination of all the Contractor's claims, the District will pay the entire sum found due upon the final invoice, including the amount, if any, allowed on claims, except that the District will withhold sums sufficient to pay all unsettled claims for which stop payment notices have been filed pursuant to *Section 9350 et seq. of the California Civil Code*, together with the reasonable cost of any litigation thereunder.

Claims filed by the Contractor shall be fully supported and made in sufficient detail to enable District to ascertain whether the basis and amount of said claims are valid. If additional information or details are required by the District to determine the validity of the claims, Contractor shall furnish such further information or details so that District receives the information or details no later than seven (7) days after receipt of the written request from the District. Failure to submit such information and details to the District within the time specified will be sufficient cause for denying the claim.

Contractor shall maintain and submit full and complete records of the costs and additional time incurred for the work for which a claim for additional compensation is made. District or its designated claim investigator shall have access to any additional records as may be required by the District to determine the facts and contentions involved in the claims. Failure to permit access shall be sufficient cause for denying the claims.

A notarized certificate indicating the following language shall accompany claims submitted by the Contractor:

Under the penalty of perjury or falsification and with specific reference to the *California False Claims Act, Government Code Section 12650 et seq.*, the undersigned hereby certifies that the claim submitted herewith for additional compensation and time, if any, made with respect to the Work on this Contract is a true and accurate statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between Contractor and District.

Name

Title

Date

Notary

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

- G. Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of an independent Certified Public Accountant. Any such overhead claim shall also be subject to audit by the District, and Contractor shall provide all records requested by the District in performing the audit.

Any costs or expenses incurred by the District in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the District, shall be to the extent allowed under the *California False Claims Act*, or other applicable law.

- H. The release from the Contractor shall be from any and all claims arising from the Work under and in connection with the Agreement and shall release and waive any claims against the District. The release shall be accompanied by a certification by the Contractor.

1. That it has resolved any claims made by Subcontractors, Suppliers and other against the Contractor or the Project.
2. That it has no reason to believe that any party has a valid claim against the Contractor or the Project which has not been communicated in writing by the Contractor to the District with the certification; and
3. That all warranties and guarantees are in full force and effect. The release and the certification shall survive Final Payment.

- I. Final payment will be made within thirty (30) days after receipt of an approved final invoice and other required submittals referenced above and determination of all Contractor's claims, or sixty (60) days after acceptance of the work by the District, whichever is later, provided, however, that if an approved final invoice has not been submitted within sixty (60) days after acceptance of the work by the District, the District may elect to make payment of sums not in dispute without prejudice to the right of either the District or the Contractor in connection with such disputed sums.

The District may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of any amount in dispute between the District and the Contractor.

- J. The making of final payment shall not operate to release the Contractor or his sureties from obligations arising under this Contract, the Contract bonds and warranties as herein provided. Specifically, the making of final payment shall not constitute a waiver and release of claims by the District arising from:

1. Unsettled or future liens
2. Failure of the Work to comply with the requirements of the Contract Documents
3. The terms of any warranties required by or contained in the Contract Documents
4. The right to any insurance proceeds or the right to make any insurance or bond claims
5. Any claims with respect to Contractor's obligation of indemnity with respect to claims, asserted by third parties, or
6. Any latent deficiencies with the Work or Contractor's fraud.

9.08 STOP PAYMENT NOTICES

The District will retain and withhold from payment to the Contractor sufficient sums to cover stop payment notices filed pursuant to *Section 9350 et seq. of the California Civil Code*, including an amount to provide for the reasonable cost of any litigation thereunder.

PART 10 – PROTECTION OF PERSONS AND PROPERTY

10.01 SUB-SURFACE EXCAVATIONS, NOTIFICATION

The Contractor shall contact the regional notification center, “Underground Service Alert,” and schedule his Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Without limiting the foregoing, Contractor’s attention is directed to *Government Code Sections 4216 to 4216.9*, and in particular *Section 4216.2*, which provides, in part:

“Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two (2) working days, but no more than fourteen (14) calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.”

10.02 TRENCH EXCAVATION SAFETY PLAN

Attention is directed to California Labor Code Section 6705. At least five (5) days in advance of excavation of any trench five feet or more in depth, the Contractor shall submit Working Drawings to the DDR showing the design of shoring, bracing, sloping and other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such Working Drawings vary from the shoring system standards established by the Cal-OSHA Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared and signed by a civil or structural engineer registered in the State of California. Nothing in this section shall be deemed to allow the use of a shoring, sloping or protective system less effective than that required by the Cal-OSHA Construction Safety Orders of the Division of Industrial Safety.

Contractor’s Working Drawings shall be subject to approval insofar as the details affect the character of the finished Work and for compliance with design requirements applicable to the construction when specified or called for, but details of the design will be left to the Contractor who shall be responsible for the successful construction of the Work. The DDR shall approve working Drawings before any Work involving such drawings is performed. It is expressly understood that approval of the Working Drawings shall not relieve the Contractor of any of his responsibility under the Contract of his obligations under the Contract Documents.

10.03 HAZARDOUS CHEMICALS AND WASTES

The Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances during the course of the Work. The Contractor shall immediately report any such release to the District. The Contractor shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the District by any agency as a result of such release and shall hold harmless, indemnify and defend the District from any claims arising from such release. For purposes of this section only, the term “claims” shall include:

3. All notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and
4. Any claim, cause of action, or administrative or judicial proceeding brought against the District, its directors, employees, and agents for any loss, cost (including

reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including the District.

If the performance of the Work creates any hazardous wastes, those wastes shall be properly disposed of according to federal, state and local laws, at the expense of the Contractor. The Contractor shall dispose of the wastes under its own EPA Generator Number. In no event shall the District be identified as the generator. The Contractor shall notify the District of any such hazardous wastes and the District reserves the right to a copy of the results of any tests conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to its disposition. The Contractor shall hold harmless, indemnify and defend the District from any claims arising from the disposal of the hazardous wastes, regardless of the absence of negligence or other malfeasance by Contractor. Disposal of all Hazardous Materials must be done in accordance with all laws and regulations. Copies of a required regulatory documentation including copies of final manifests shall be supplied to the District.

10.04 PUBLIC SAFETY

- A. The Contractor shall assume all responsibility for public safety during the performance of its Work, and all costs arising therefrom shall be included in the Contract Price. Whenever the Contractor's operations create a condition hazardous to traffic or to the public, he shall furnish, erect and maintain, at his expense, such fences, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public. The Contractor shall establish the pedestrian detours with comparable lighting to the original pedestrian areas. The Contractor shall arrange for such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions affecting traffic. For Work in a public right-of-way, the Contractor shall comply with the rules and regulations of the State, County or local agency that owns the right-of-way.

- B. The Contractor shall promptly and fully comply with and carry out, and shall without separate charge therefor to the District, all safety and first aid requirements prescribed by all applicable Federal, State and local laws and regulations, rules and orders. The Work shall be done in a safe manner; and Contractor shall safeguard the safety and health of its employees, Subcontractors, and the people of local communities. Contractor shall also be responsible for ensuring that its Subcontractors comply with the provisions of this section.

Upon the failure of the Contractor to comply with any of the requirements of this section, the District shall have the authority, but not the duty, to stop the Work until such failure is remedied. Contractor shall not be entitled to an adjustment of the Contract Time or an increase in the Contract Price due to any such suspensions.

- C. When required by the Contract Documents, the Contractor shall construct, maintain and remove detours for the use of public traffic, without additional cost to the District, unless separate payment is specified in the Special Provisions. The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the work until such detours are in satisfactory condition for use by public traffic.
- D. Due care shall be exercised to avoid injury to existing improvements or facilities, utility facilities, adjacent property and trees, shrubs and other plants that are not to be removed.
- E. Trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines, sewer and waterlines, highway facilities, and any other improvements or facilities, under or above ground, that are within or adjacent to the work limit line shall be protected from injury or damage, and the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work site, or as good as required by the Contract Documents if any such objects are a part of the Work. The District may make or cause to be made such temporary repairs as are necessary to restore to service any damaged facility. The cost of such repairs shall be borne by the Contractor, and the costs may be deducted from any monies due or to become due to the Contractor under the Contract.

- F. The fact that any underground facility may not be shown on the Contract Plans shall not relieve the Contractor of his responsibility pursuant to “Non-District Facilities,” elsewhere in the Contract Documents. It shall be the Contractor’s responsibility, pursuant thereto, to ascertain the location of such underground improvements or facilities, which may be subject to damage by reason of his operations.
- G. Full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the Work involved in protecting or repairing property as specified in this section, shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefore.

10.05 EMERGENCIES

In an emergency affecting the safety of life, the Work, or adjoining property, the Contractor, without special instructions or authorization from the District, shall act at his discretion to prevent such threatened loss or injury. In such an emergency, the Contractor may perform such additional work as is reasonably required. Any compensation claimed by the Contractor on account of Work performed pursuant to an emergency shall be determined in accordance with the provisions relating to Force Account payment contained elsewhere in the Contract Documents.

PART 11 - MISCELLANEOUS PROVISIONS

11.01 LAWS TO BE OBSERVED

The Contractor shall keep himself fully informed concerning all requirements of law, including but not limited to all State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the Work, the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Contract Documents for the Work in relation to any such requirements, the Contractor shall immediately report the same to the District in writing.

The laws of the State of California shall govern the Contract Documents.

If any part of the Contract Documents is declared invalid by a court of law, such decision will not affect the validity of the remaining portion, which shall remain in full force. In the event of a dispute or breach of contract, venue shall be in Alameda County, California.

11.02 RIGHTS IN LAND AND IMPROVEMENTS

The Contractor shall make no arrangements with any person or entity to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the District and any third party District, former District or tenant of such land, structure or buildings. The Contractor shall not occupy District-owned property outside the limit of the Work shown on the Contract Drawings unless he obtains prior approval.

11.03 ANTITRUST CLAIMS

The Contractor’s attention is directed to the following provision of Public Contract Code Section 7103.5(b), which shall be applicable to the Contractor and his subcontractors:

“In entering into a public works contract or a sub-contract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all right, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the sub-contract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgement by the parties.”

11.04 THIRD-PARTY RIGHTS

- A. No provisions of the Contract Documents shall in any way inure to the benefit of any third party (including the public at large) so as to constitute such person a third party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract Documents.
- B. Pursuant to Public Contract Code section 9201, District shall have full authority to compromise or otherwise settle any third-party claim relating to the Contract at any time.
- C. District shall provide for timely notification to the Contractor of the receipt of any third-party claim, relating to the contract. Notice shall be in writing and will be provided within thirty (30) days.
- D. District shall be entitled to recover its reasonable costs incurred in providing the notification required by subdivision C.

11.05 ASSIGNMENT

The performance of the Contract may not be assigned except upon the written consent of the District. Consent will not be given to any proposed assignment, which would relieve the original Contractor or his surety of their responsibilities under the Contract, nor will the District consent to any assignment of a part of the Work under the Contract.

The Contractor may assign monies due or to become due him under the Contract and such assignment will be recognized by the District, if given proper notice thereof, to the extent permitted by law, but any assignment of monies shall be subject to all proper set-offs in favor of the District and to all deductions provided for in the Contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by the District for the completion of the Work in the event that the Contractor should be in default therein.

11.06 RIGHTS TO DRAWINGS, TECHNICAL DATA AND PATENTS

- A. Shop Drawings and Working Drawings submitted to the District by the Contractor, Subcontractor or any lower tier Subcontractor pursuant to the Contract, are the property of the District and the District may use, and disclose in any manner and for any purpose, Shop Drawings and Working Drawings delivered under the Contract.
- B. Technical Data including manuals or instructional materials, computer or microprocessor software which are delivered or submitted to the District by the Contractor, Subcontractor, or any lower tier Subcontractor pursuant to the Contract are the property of the District, and the District may use or disclose same in any manner and for any purpose.
- C. Patents. The Contractor shall assume all costs arising from the use of patented materials, equipment, devices or processes, used on or incorporated in the Work and shall indemnify and save harmless the District, and its duly authorized representatives, from all suits at law, or actions of every nature for, or on account of, the use of patented materials, equipment, devices or processes. In case such materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense, shall:
 - 1. Secure for the District the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license or licenses, or
 - 2. Replace such materials, equipment, devices or processes, or
 - 3. Modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid therefor without prejudice to any other rights of the District.
- D. The Contractor represents and warrants that all materials prepared under this solicitation are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under the resulting Agreement do not infringe or

violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

11.07 GRATUITIES AND CONFLICT OF INTEREST

- A. The Contractor shall not offer or provide gratuities in the form of gifts, entertainment, loans, meals, rewards, and/or services to representatives of the District, including but not limited to, employees, agents, Engineering Service Consultants, Consulting Engineers and Architects, Inspectors and/or Testing Agencies retained by the District. If it is found that the Contractor has violated this provision, the Contract may be subject to termination for default as defined elsewhere in these General Conditions.
- B. During the term of the Contract and until the final payment has been made to the Contractor, the Contractor shall not employ or compensate in any manner whatsoever, the District's Directors, Officers, employees and authorized representatives, agents, and any Engineering Service Consultants, Consulting Engineers and Architects, Inspectors, and/or Testing Agencies retained by the District. Any exceptions to the employment or compensation to any of the above named parties must be made in writing by the District. If the Contractor offers or provides employment or compensation to those named above during the term of the Contract, the Contract may be subject to termination for default.

11.08 PROHIBITED INTERESTS

No member, officer, Director or employee of the District during his or her tenure or for one (1) year after that tenure shall have any interest, direct or indirect, in this Contract or proceeds under this Contract.

PART 12 – TERMINATION OF THE CONTRACT

12.01 TERMINATION OF THE CONTRACT FOR CAUSE

- A. An "Event of Default" as referred to in this section shall occur if the Contractor:
 - 1. Fails to maintain progress of the Work in accordance with the requirements of the Contract Documents; or
 - 2. Fails to prosecute the Work or any of its components in accordance with the Contract Documents; or
 - 3. Persistently or repeatedly fails or refuses to supply sufficient properly skilled workers or proper material to permit the performance of the Work in accordance with the Contract Documents; or
 - 4. Fails to make prompt payment to Subcontractors or Suppliers in accordance with the respective agreements between the Contractor and Subcontractor and Contractor and Supplier; or
 - 5. Fails to comply with applicable laws, ordinances or rules, regulations or orders of a public authority having jurisdiction over the Work; or
 - 6. Abandons, assigns or sublets the Contract without approval of the District; or
 - 7. Becomes bankrupt or is subject to appointment of a receiver on behalf of Contractor; or
 - 8. Otherwise is guilty of a substantial breach of a provision of the Contract Documents.
- B. Upon the District's reasonable belief that there has been an Event of Default by Contractor, District may elect to give the Contractor written notice thereof. The Contractor thereafter shall cure the default as soon as possible and in no event after ten (10) days from Contractor's receipt of District's written notice.
- C. If the Contractor does not timely cure its default, the District may, without waiver of any of its other rights and remedies, elect to terminate the Contract, or portion thereof.

Upon the District's election to terminate the Contract, or portion thereof, the District shall have the right to complete the Work, or the portion involved, by whatever means and methods it deems expedient, including the hiring of others on such terms as the District deems advisable. The District shall have the right to take possession of the Contractor's materials, plant, tools, equipment and property of any kind provided by or on behalf of the Contractor for the purpose of the Work, or a portion of them, without being responsible to the Contractor for fair wear and tear. The Contractor shall have no rights in such property during its use by the District. The District shall not be required to obtain the lowest prices for completing the Work or a portion of it but shall make such expenditures as, in the District's sole judgment, best accomplish such completion.

The expense of completing such Work or portion thereof, together with a reasonable charge for engineering, managerial and administrative services, as certified by the District, shall be charged to the Contractor, and the expense so charged shall be deducted by the District out of such monies as may be due or may at any time thereafter become due to the Contractor. In case such expense is more than the sum which otherwise would have been payable to the Contractor under the Contract, then the Contractor or his surety or sureties shall promptly pay the amount of such excess so due. When the District terminates the Contract under this section, the Contractor shall not be entitled to receive any further payments until the Work is completed and there has been a final settlement of costs of completing the Work covered by such notice of default.

- D. The District will issue to the Contractor a written notice specifying that the Contract, or portion thereof, is terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the District, the Contractor shall:
1. Stop all Work under the Contract; or if partial termination, stop Work relating to the terminated portion of the Contract;
 2. Perform Work the District deems necessary to secure the work site for termination including measures to leave the worksite in a safe condition.
 3. Remove equipment from the site of Work, as specified by the District.
 4. Take such action as is reasonably necessary to protect materials from damage.
 5. Notify all Subcontractors and Suppliers that the Contract or portion thereof is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the District.
 6. Provide the District with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the District may request;
 7. Dispose of materials not used in the Work as directed by the DDR. It shall be the Contractor's responsibility to provide the District (a) with good title to all materials purchased by the District hereunder, including materials for which partial payment has been made by District and (b) with bills of sale or other documents of title for such materials;
 8. Subject to the prior written approval of the District, settle all outstanding liabilities and all claims arising out of Subcontracts or orders for materials terminated hereunder. To the extent directed by the District, the Contractor shall assign to the District all rights, title and interests of the Contractor under subcontracts or orders for materials terminated hereunder. District shall be at liberty to negotiate with and engage any Subcontractors who had contracted with Contractor for the Work.
 9. Furnish the District with the documentation required to be furnished by the Contractor under the provisions of the Contract Documents, including, on projects

as to which federal funds are involved, all documentation required under the federal requirements included in the Contract; and

10. Take such other actions as the District may direct.
- E. If only a portion of the Work has been terminated, Contractor shall perform the remainder of the Work in conformity with the Contract Documents and in such a manner as not to interfere with District or others in their performance and completion of the portion of the Work which was terminated.
- F. District may recover from Contractor the amount of any loss or damage, including consequential damages, suffered or incurred as a result of Contractor's default.

12.02 TERMINATION FOR CONVENIENCE OF THE DISTRICT

- A. The District may terminate the Contract, in whole or in part, at any time and for any reason, whenever the District shall determine that such termination is in the best interests of the District. Any termination which is not based on the circumstances set forth in Section 12.01 above shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective. In such event, Contractor shall be paid for all actual substantiated direct costs of materials furnished and Work performed up to the date of termination and such additional compensation as the District deems proper and reasonable to effect termination.
- B. Upon Contractor's receipt of a written notice of termination for convenience, the Contractor shall cease Work as to those portions of the project so terminated and shall undertake the steps outlined in Section 12.01 above.
- C. In the event that the District terminates this Contract under Section 12.01 above and it is determined for any reason that there was not sufficient cause to do so, the District's termination automatically will convert to a termination for convenience under this Section and the terms and conditions outlined in this Section automatically will be applied to effectuate the Contract termination. Thus, damages to which a Contractor may be entitled as a result of an improper default termination will be limited to the amounts provided for in this *Section*.

12.03 TERMINATION FOR FORCE MAJEURE

Each party shall be excused from performance of any of its obligations under this Contract if such inability was caused by an event beyond that party's reasonable control ("Force Majeure Event"). A Force Majeure Event shall include, but not be limited to (i) natural disasters (e.g., earthquake, hurricanes, floods, fire); (ii) major upheavals (e.g., war, riots, act of terrorism, sabotage, labor strikes, embargoes); (iii) performance failures of any person or entity other than a party, such as a party's suppliers or subcontractors (e.g., curtailment of energy sources or other raw materials or feedstock, common carrier failure, contracted labor); (iv) extraordinary events (e.g., machinery and equipment failures); and (v) government intervention (e.g., government orders, court orders, confiscation, condemnation, future laws, government shutdown). Subsections (iii) and (iv) shall not apply to performance under the resulting Contract relating to commissioning of the hydrogen station(s).

If a Force Majeure Event occurs, then the Contractor shall make all commercially reasonable efforts to deliver Product or Services to the District or to provide the District with replacement product or service. In either case, the District shall reimburse Contractor for additional costs incurred by Contractor in order to provide the Product, replacement product or service (e.g., additional costs associated with special purchase, freight or handling, and additional costs of electricity or other types of energy). If a Force Majeure Event affects only a part of Contractor's capacity to deliver Product or service, then Contractor may allocate Product among its customers (including distributors) until its capacity is restored.

If the Force Majeure Event exceeds thirty (30) days, the District may pause or terminate the Contract for Convenience.

SECTION 00 73 00

SUPPLEMENTAL GENERAL CONDITIONS

The following Sections are supplemental to the General Conditions, Section 00 72 13.

<u>SECTION</u>	<u>DESCRIPTION</u>
00 73 16	INSURANCE REQUIREMENTS
00 73 43	PREVAILING WAGES

SECTION 00 73 16
INSURANCE REQUIREMENTS

PART 1 – INSURANCE REQUIREMENTS

1.01 INSURANCE LIMITS

- A. Workers' Compensation (per statutory requirement).
5. Workers Compensation Insurance with STATUTORY LIMITS as required by the labor code of the state of California.
 6. Employers liability with minimum limits of \$1,000,000.00 per accident;
 7. \$1,000,000.00 disease per employee; \$1,000,000.00 disease per policy.
 8. The WC policy shall be endorsed to include a written waiver of the insurer's right to subrogate against the district.
- B. Commercial General Liability coverage (including but not limited to premises and operations; contractual liability; personal and advertising injury; explosion, collapse, and underground coverage; products and completed operations, and; broad form property damage) of not less than:

General Liability Insurance

- Commercial General Liability Insurance on a standard occurrence form, no less broad than ISO form CG 00 01.
- Minimum Limits: The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, The District requires and shall be entitled to coverage for the higher limits maintained by Contractor.
 - **Projects under \$1,000,000.00:** \$2,000,000.00 per Occurrence; \$2,000,000.00 General Aggregate; \$2,000,000.00 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each Project.
 - **Projects from \$1,000,000.00 - \$4,999,999.00:** \$2,000,000.00 per Occurrence; \$4,000,000.00 General Aggregate; \$4,000,000.00 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each Project.
 - **Projects from \$5,000,000.00 - \$9,999,999.00:** \$5,000,000.00 per Occurrence; \$5,000,000.00 General Aggregate; \$5,000,000.00 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each Project.
 - **Projects \$10,000,000.00 and Over:** Minimum Limits: \$10,000,000.00 per Occurrence; \$10,000,000.00 General Aggregate; \$10,000,000.00 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each Project.
- Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000.00 it must be approved in advance by District. Contractor is responsible for any deductible or self-insured retention and shall fund it upon District's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving the District.
- Insurance shall be maintained for the entire period of the Work including any warranty period. Completed operations insurance shall be maintained after the end of the warranty period for the additional periods specified below:

- **Projects under \$1,000,000.00:** one (1) year after the end of the warranty period.
- **Projects from \$1,000,000.00 - \$4,999,999.00:** two (2) years after the end of the warranty period.
- **Projects from \$5,000,000.00 - \$9,999,999.00:** three (3) years after the end of the warranty period.
- **Projects \$10,000,000.00 and Over:** five (5) years after the end of the warranty period.
- **The District etc.** shall be endorsed as additional insureds for liability arising out of ongoing (*CG 20 10 04 13 or its equivalent*) and completed operations (*CG 20 37 04 13 or its equivalent*) by or on behalf of the Contractor in the performance of the Contract Documents. The additional insured endorsement for completed operations shall not be restricted to work performed during the current policy period.
- The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in *ISO Form CG 00 01, or equivalent*).
- The insurance provided to the additional insureds shall be primary to, and non-contributory with any insurance or self-insurance program maintained by them. *ISO Form CG20 01 04 13.*
- The policy shall not exclude injury or damage caused by, or resulting from, explosion, collapse, and/or underground hazards (*XCU*)
- The policy shall not contain a Contractors' Warranty or other similar language which eliminates or restricts insurance because of a subcontractor's failure to carry specific insurance or to supply evidence of such insurance.
- The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against all persons or entities that are, or are required to be, additional insureds.
- The policy shall cover inter-insured suits between Contractor and the additional insureds and shall include a "separation of insureds" or "severability" clause which treats each insured separately.
- **Required Evidence of Insurance:**
 - Additional insured endorsements or policy language granting additional insured status (*ISO Form CG 20 26 04 13 or its equivalent*);
 - Endorsement or policy language indicating that insurance is primary and non-contributory (*ISO Form CG20 01 04 13*) ; and
 - Subrogation waiver endorsement (*CG 24 04 10 93 or its equivalent*) ; and
 - Certificate of Insurance

C. Business Automobile Liability Insurance coverage (Insurance shall cover all owned, hired and non-owned vehicles) of not less than:

1. Two Million Dollars (\$2,000,000.00) combined single limit per occurrence. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Umbrella Liability insurance.
2. Policy shall include a Waiver of Subrogation and
3. Additional Insured endorsement. Any of the following is acceptable evidence that the District is insured on the contractor's auto policy:
 - "Designated Insured" endorsement which states that the District is covered because of the policy definition of "who is an insured";
 - Copy of the definition of "insured" from the policy; or
 - Additional Insured endorsement (*CA 20 48 10 13 or its equivalent*).

Builder's Risk/ "All-Risk" insurance policy covering the full value of the work set forth in the *Invitation for Bid*. "All-Risk" Course of Construction insurance as follows:

- Insured property shall include (1) real property in course of construction; (2) building materials and supplies intended to be in or on the completed Work located at the Site, in storage or in transit, and whether or not owned or paid for by District; (3) fixtures and machinery intended to be in or on the completed Work; (4) scaffolding, cribbing, fencing, forms and temporary trailers, while located on the Site, in storage or in transit.
- The limit of insurance shall be the full contract value.
- No coinsurance penalty.
- District named as loss payee
- Note: During rehab/construction at one hundred percent (100%) replacement cost of all completed improvements and District property in care, custody and control of vendor, including coverage in transit and storage off-site, with deductible NTE ten thousand dollars (\$10,000.00) per loss, including District as loss payee. (EQ and Flood Excluded).

For all insurance types: If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

1.02 GENERAL

Any person, firm or corporation Contractor authorizes to work upon the Property, including any subcontractor, shall be deemed to be Contractor's agent and shall be subject to all the applicable terms of this Section. Prior to entry upon the Property by such agents, Contractor shall provide the District with satisfactory evidence (e.g., in the form of a Certificate of Insurance) that it and its subcontractors or other agents who will perform work under this agreement are insured in accordance with the following. Such insurance shall remain in effect throughout the term of this Agreement and shall be at the sole cost and expense of Contractor (or its agents or subcontractors).

1.03 WORKERS' COMPENSATION COVERAGE

- A. Contractor shall at its own cost and expense procure and maintain Workers' Compensation coverage to its employees, as required by the California Labor Code. The Contractor shall also maintain Employer's Liability coverage with minimum limits of one million dollars (\$1,000,000.00).
- B. The policy shall contain a waiver of subrogation in favor of the District and its respective officers, directors, employees, volunteers and agents while acting in such capacity.
- C. Prior to commencing work or entering onto the Property, Contractor shall provide the DDR with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate and policy shall also provide that the Contractors' policy will not be cancelled without thirty (30) days prior written notice to the DDR.

1.04 COMMERCIAL GENERAL LIABILITY

- A. Contractor shall, at its own cost and expense, procure and maintain Commercial General Liability insurance which shall include, as additional insureds, the District, and their respective directors, council-members, officers, employees, volunteers and agents while acting in such capacity.
- B. This insurance shall include but not be limited to premises and operations; contractual liability, personal and advertising injury; explosion, collapse, and underground coverage, products and completed operations, and broad form property damage.
- C. Prior to commencing work or entering onto the Property, Contractor shall provide the DDR with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy
- D. The policy (or policies) shall indicate that it is primary to any other insurance and the insurance company (or companies) providing such policies shall be liable thereunder for the full amount

of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the District. The policies shall contain a waiver of subrogation in favor of the District and its respective directors, officers, employees, volunteers, agents while acting in such capacity.

The policy shall also contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the District as additional insureds shall not in any way affect the District's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Contractor. Said policy shall protect Contractor and the District in the same manner as though a separate policy had been issued to it, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

1.05 AUTOMOBILE LIABILITY

- A. Contractor shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2 million per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from commercial general liability insurance. Such insurance shall include, as additional insureds, the AC Transit and its respective directors, officers, employees, volunteers, and agents while acting in such capacity. Said policy shall contain a waiver of subrogation in favor of the District and its respective directors, officers, employees, volunteers, agents while acting in such capacity. Prior to commencing work or entering onto the Property, Contractor shall provide the Director, Procurement & Materials of the District with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy.
- B. If Contractor's property is self-insured, Contractor hereby agrees to waive any subrogation rights it may acquire in favor of the District and its respective directors, officers, employees, volunteers, agents while acting in such capacity.

1.06 BUILDER'S RISK INSURANCE

- A. Contractor will be responsible for purchasing and maintaining an "All Risks" Builder's Risk policy, excluding earthquake and flood coverage, insuring the interests of the District, the Contractor and subcontractors of all tiers. The Contractor will be responsible for any deductible under this policy on each and every loss occurrence.
- B. The policy will cover all materials, supplies and equipment that are intended for construction and specific installation in the project, while such materials, supplies and equipment are located at the project site, in transit and while temporarily located away from the project site. The policy will also cover all physical loss to the work on a replacement cost basis with limits no less than the total Contract value. Any loss under the insurance shall be payable to the District and the Contractor as their interests appear in the damaged property.
- C. Any property not covered by the Builder's Risk insurance policy, such as the Contractor's or any subcontractor's personal property, shall also be the Contractor's responsibility. The District will not be responsible for loss or damage to property of any kind owned or leased by the Contractor, the Contractor's subcontractors of all tiers, and/or the Contractor's and subcontractors' employees or agents.
- D. The Contractor shall provide a Certificate of Insurance to the District evidencing this insurance, as well as a waiver of subrogation endorsement.

1.07 GENERAL INSURANCE REQUIREMENTS

Acceptable Insurance. All policies will be issued by insurers acceptable to the (generally with a Best's Rating of an A VII or better). Upon evidence of financial capacity satisfactory to the District, Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-

insurance. All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Contractor's personnel and equipment have been removed from the Property, and the Work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

Prior to commencing work or entering onto the Property, Contractor shall provide the DDR with a Certificate(s) of Insurance evidencing the coverage listed above, and upon request, a certified duplicate original of the policies. The Certificate shall stipulate that the insurance company (or companies) issuing such policies shall give written notice to the DDR of any material alteration or reduction in coverage of aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation.

Claims-Made Insurance. If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

1. Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).
2. Contractor shall make every effort to maintain similar insurance for at least five (5) years following project completion, including the requirement of adding all named insureds.
3. If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement or Permit.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

Failure to Procure or Maintain Insurance. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of the agreement.

Regulatory Compliance. In addition to the requirements described above, Contractor shall comply with any additional coverages required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations. The Contractor and/or subcontractors shall obtain all permits, licenses and other forms or documentation which are required and forward them with the required evidence of insurance to District.

Terms of Policies. Except as provided in Section 1.06.B concerning claims made insurance policies, all insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Contractor's personnel and equipment have been removed from District's property, and the Work has been formally accepted.

Evidence of Insurance. The Contractor shall furnish to the District Certificates of Insurance or, upon request a certified copy of all policies, for all specified coverages prior to commencing work within ten (10) business days of award of Contract. All policies and certificates required hereunder shall provide for thirty (30) days written notice to the District of cancellation or reduction in limits. The certificates and policies shall also evidence any specific requirements of coverage as set forth in this Section

Reporting of Incidents, Losses or Claims. The Contractor agrees to immediately notify the DDR and the Construction Manager following any accident or injury, which occurs in connection with the Work under this Contract. In addition, the Contractor shall provide a detailed written report of the accident or injury to the District within seven (7) days of its occurrence.

**SECTION 00 73 43
PREVAILING WAGES**

PART 14-PREVAILING WAGES

1.01 PAYMENT OF PREVAILING WAGES

This Contract will be subject to California prevailing wage laws. The state requirements are set forth below in Section 1.02.

1.02 CALIFORNIA PREVAILING WAGE REQUIREMENTS

A. General

1. The Contractor and any subcontractor shall comply with *Labor Code Sections 1774 and 1775*. Pursuant to *Section 1775*, the Contractor and any subcontractor shall, as a penalty, forfeit to the state or political subdivision not more than two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the *Director of Industrial Relations* for the work or craft in which the worker is employed under the contract. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of whether the failure to pay the correct rate of per diem wages was due to the Contractor's good-faith mistake, and on the previous record of the Contractor or subcontractor in meeting their respective prevailing wage obligations. In addition to said penalty, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or subcontractor.
2. If a worker employed by a subcontractor on a public works project is not paid at least the general prevailing per diem wages by the subcontractor, the Contractor shall not be liable for the penalties described above unless the Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the Contractor fails to comply with all of the following requirements:
 - a. The contract executed between the Contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of *Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code*.
 - b. The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
3. Upon becoming aware of the subcontractor's failure to pay at least the specified prevailing rate of wages to the subcontractor's workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public work project
4. Prior to making final payment to the subcontractor for work performed on the public works project, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid at least the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amount due pursuant to *1813 of the Labor Code*.
 - a. Pursuant to *Section 1775 of the Labor Code*, the *Division of Labor Standards Enforcement* shall notify the Contractor on a public works project within fifteen (15) days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers at least the general prevailing rate per diem wages.

- b. Pursuant to the provisions of *Section 1773 of the Labor Code*, the District has obtained the general prevailing rate of wages applicable to categories of workers the District anticipates will be utilized for this project for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workers concerned, or if no collective bargaining applies, those holidays identified in *Government Code Section 6700*. Prevailing wage rates for this project are available at the *District Office of Contract Compliance* at 1600 Franklin Street, Oakland, CA 94612 (telephone number: (510) 891-5443). In the event that the Contractor intends to utilize categories of workers different from, or in addition to, those anticipated by the District, it shall be Contractor's responsibility to bring such categories of workers to the District's attention immediately, and to obtain the appropriate wage rate from the Department of Industrial Relations (with the District's assistance if necessary). (See *Title 8 California Code of Regulations Section 16202*.)
- c. The Contractor shall post general prevailing wage rates at a prominent place at the site of the work.
- d. Pursuant to *Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204*, changes in general prevailing wage determinations shall apply to the project only if issued by the *Director of Industrial Relations* prior to the District's bid issuance date.

1.03 FUTURE WAGE INCREASES

The District will not recognize any claim for additional compensation based on the payment by the Contractor of any increased wage rate required during the term of the Contract to the state or federal prevailing wage rate. The possibility of wage increases during the course of the Contract is one of the elements to be considered by the Contractor in determining the bid, and such wage increases will not, under any circumstances, be considered as the basis of a claim against the awarding body with regard to the Contract.

1.04 GENERAL WAGE DETERMINATIONS.

The current California Prevailing Wage rates are available at <http://www.dir.ca.gov/OPRL/PWD/index.htm>