

**METRO GOLD LINE FOOTHILL EXTENSION
CONSTRUCTION AUTHORITY**

Request for Bids (RFB)

**UTILITY RELOCATION PROJECT
RFB C2001**



**Issued July 5, 2017
Addendum #1 Issued August 17, 2017
Addendum #2 Issued August 24, 2017**

VOLUME 3- GENERAL CONDITIONS

GENERAL CONDITIONS

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SECTION 1 - DEFINITIONS AND ABBREVIATIONS

1.1 DEFINITIONS

Wherever the words defined in this Section, or pronouns used in their stead, occur in the Contract Documents, the intent and meaning shall be as follows:

- a) Application for Final Payment. The Contractor's written request for Final Payment of the Contract Price including reconciliation of all claims, changes, or other proper adjustments to the Contract Documents in accordance with Section 5.10.
- b) Agency. Authority.
- c) Authority. The Metro Gold Line Foothill Extension Construction Authority, a public entity of the State of California formerly known as the Pasadena Metro Blue Line Construction Authority.
- d) Authority ROW. The Authority-owned real property (which term is inclusive of all estates and interests in real property) which is necessary for ownership and operation of the Project, as shown on the Contract Drawings.
- e) Certificate of Final Acceptance. The formal written acknowledgment issued by Authority to the Contractor that all Work has been fully completed in accordance with the Contract Documents.
- f) City or Cities. Individually and/or collectively, as the context may require, the Cities of La Verne, Glendora, Claremont, and San Dimas.
- g) Completion Deadline. The Substantial Completion Deadline and/or Final Acceptance Deadline, as the case may be.
- h) Construction Interference. The meaning set forth in Section 3.19(a).
- i) Contractor. The party entering into the Contract with the Authority for performance of the Work.
- j) Contract Documents. The Signature Agreement, the Specifications, the Contract Drawings, and the Master Cooperative Agreements, as any of which may be amended.
- k) Contract Drawings. Those drawings included in Volume 5 of the RFB.
- l) Contract Price. The meaning set forth in Article II of the Signature Agreement.
- m) Critical Path. Each critical path on the schedule of Work which ends on a Completion Deadline (i.e. the term shall apply only following consumption of all available Float).
- n) Day. A calendar day unless otherwise specified.
- o) Extra Work. The meaning set forth in Section 3.4.

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- p) Final Acceptance. The occurrence of all conditions set forth in Section 4.10, as evidenced by issuance of a Certificate of Final Acceptance by the Authority.
- q) Final Acceptance Deadline. The meaning set forth in Section 4.10.
- r) General Conditions. The general conditions included in Volume 3 of the RFB.
- s) Governmental Approvals. Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, registration or ruling, required by or with any Governmental Person in order to construct the Project.
- t) Governmental Person. Any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than Authority.
- u) Governmental Rules. Any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, criteria, standard, policy requirement or other governmental restriction or any similar form of decision or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Person, which is applicable to the Work or the Project, whether now or hereafter in effect.
- v) Master Cooperative Agreement or "MCA". Any agreement between Authority and a third party which allocates responsibilities and liabilities for performance of the Work and is included in Volume 6- Master Cooperative Agreements (including, unless otherwise specified, any modifications and amendments thereto). A document is a "Master Cooperative Agreement" if it meets the definition set forth herein, without regard to the name by which the document designates itself.
- w) Notice to Proceed. The written directive from Authority to the Contractor authorizing the Contractor to begin prosecution of the Work as specified therein.
- x) Project. All work product to be provided by the Contractor in accordance with the Contract Documents.
- y) Provisional Sum. The meaning set forth in Section 3.3.
- z) Provisional Sum Authorization. The written authorization from Authority to perform the Provisional Sum tasks as set forth in Section 3.3.
- aa) Request For Bids or "RFB". Request for Bids No. C2001 regarding the Project issued by Authority, including all addenda and attachments thereto.
- bb) Service Connection. All or any portion of a pipeline (including sewer house laterals), conduit, wire, cable or duct, including meter, between a Utility distribution line and an individual customer or customers when served by a single service connection.
- cc) Shop Drawings. Drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, which illustrates how specific portions of the Work

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shall be fabricated and/or installed. Shop Drawings are not considered to be part of the Contract Documents.

- dd) Signature Agreement. The signature agreement included in Volume 2 of the RFB.
- ee) Special Provisions. The special provisions included in Volume 4 of the RFB.
- ff) Specifications. The General Conditions, the Special Provisions and the Standard Specifications.
- gg) Standard Specifications. The Standard Specifications for Public Works Construction, 2015 Edition, published by Building News, Inc., 3055 Overland Avenue, Los Angeles, California 90034. References to sections within the Standard Specifications are included for reference purposes and do not limit the Contractor's obligation to comply with all applicable portions of the Standard Specifications.
- hh) Subcontractor. Any person, firm, or corporation entering into agreement with the Contractor for performance of any part of the Contractor's obligation under the Contract.
- ii) Substantial Completion. The occurrence of all conditions set forth in Section 4.9, as indicated by issuance of a Certificate of Substantial Completion by the Authority.
- jj) Substantial Completion Deadline. The meaning set forth in Section 4.9.
- kk) Utility. A privately, publicly, or cooperatively owned line, facility or system (including municipal and/or government lines, facilities and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water, or any other similar commodity that directly or indirectly serves the public, including any fire or police signal system. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any Service Connection connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Connection.
- ll) Utility Owner. The owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, municipalities and other governmental agencies).
- mm) Work. All of the administrative, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, documentation and other duties and services to be furnished and provided by the Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by Authority or other Persons. In certain cases the term is also used to mean the products of the Work.
- nn) Working Days. Days excluding Saturday and Sunday and the following legal holidays: New Year's Day, Martin Luther King, Jr Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, and Christmas Day.

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1.2 ABBREVIATIONS

Wherever the following abbreviations are used they shall have the meanings listed:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGA	American Gas Association
AI	The Asphalt Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
API	American Petroleum Institute
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing Materials
AWS	American Welding Society
AWWA	American Water Works Association, Inc.
BMP	Best Management Practice
CASQA	California Storm Water Quality Association
CGP	Construction General Permit
CRSI	Concrete Reinforcement Steel Institute
LRP	Legally Responsible Person
NEMA	National Electrical Manufacturer's Association
NIC	Not in Contract
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
NTP	Notice to Proceed
NTS	Not to Scale
OAE	Or Approved Equal
OSHA	Occupational Safety and Health Act
PCA	Portland Cement Association
PRD	Permit Registration Documents
QSD	Qualified SWPPP Developer
QSP	Qualified SWPPP Practitioner
RWQCB	Regional Water Quality Control Board
SCRRA	Southern California Regional Rail Authority
SMARTS	Storm Water Multi-Application and Reporting System
SSPC	Steel Structures Painting Council
SSPWC	Standard Specifications for Public Works Construction
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	Storm Water Resources Control Board
UBC	Uniform Building Code
UPC	Uniform Plumbing Code
U/L	Underwriters Laboratories, Inc.
WPC	Water Pollution Control

*** END OF SECTION 1 ***

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SECTION 2 - SPECIFICATIONS AND DRAWINGS

2.1 INTERPRETATION OF SPECIFICATIONS AND CONTRACT DRAWINGS

The Specifications and the Contract Drawings are intended to be explanatory of each other. Any Work indicated in the Contract Drawings and not in the Specifications, or vice versa, shall be executed as if indicated in both. As the figured dimensions shown on the Contract Drawings and in the Specifications of the Contract Documents may not in every case agree with scale dimensions, the figured dimensions shall be followed in preference to the scaled dimensions, and drawings to a large scale shall be followed in preference to the drawings to a small scale. 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 apply to the Authority for such further explanations as may be necessary, and shall conform thereto as part of the Contract. In the event of any doubt or question arising respecting the meaning of the Specifications or Contract Drawings, the Contractor shall request an interpretation by the Authority and the Authority's decision therein shall be final.

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to the Contract, references to articles or sections include all subarticles or subsections under the article or section referenced, and references to subarticles include all sub-subarticles; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined that have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Portions of the Contract Documents may be written in the imperative. In sentences using the imperative, unless otherwise specifically stated, the subject "the Contractor," is implied and it is understood the Contractor shall perform such work, comply with the requirements of, furnish such material, or take such action. The word "shall" is also implied, and when implied or stated is to be considered mandatory and pertain to requirements or actions of the Contractor.

2.2 NOT USED

2.3 NOT USED

2.4 SHOP DRAWINGS

- a) The Contractor shall submit Shop Drawings to the Authority as well as to any applicable Utility Owner and Governmental Persons for review. The format and number of copies required to be submitted will be in accordance with the respective entity's requirements. The Shop Drawings shall be approved by the Contractor prior to submittal to the Authority as well as to any applicable Utility Owner and Governmental Persons. Unless otherwise required, said submittals/drawings shall be submitted at a time sufficiently early to allow review of and to accommodate the rate of construction progress required

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under the Contract Documents.

- b) The Contractor shall stamp the Shop Drawings stating its approval of the submittal and that the Contractor has determined and verified all field measurements and quantities, field construction criteria, materials, catalog numbers and similar data, and that the Contractor has reviewed and coordinated the information in the Shop Drawings with the requirements of the Work and the Contract Documents. Any Shop Drawings submitted without complying with this section will not be reviewed by the Authority or any applicable Utility Owner or Governmental Persons.
- c) The Authority as well as any applicable Utility Owner and Governmental Persons will review and respond to the Shop Drawings within 45 days following their receipt.
- d) If the Shop Drawings are returned to the Contractor marked APPROVED AS SUBMITTED, formal revision and re-submittal of said drawing will not be required.
- e) If the Shop Drawings are returned to the Contractor marked APPROVED AS NOTED, formal revision and re-submittal of said drawing will not be required unless otherwise stated. However, in both instances, the noted correction shall be adhered to by the Contractor.
- f) If the Shop Drawings are returned to the Contractor marked REVISE AND RESUBMIT, the Contractor shall revise said Shop Drawing and resubmit to the Authority as well as to any applicable Utility Owner and Governmental Persons.
- g) Fabrication of an item shall not be commenced before the Authority as well as any applicable Utility Owner and Governmental Persons has reviewed the pertinent Shop Drawings and returned to the Contractor marked either APPROVED AS SUBMITTED or APPROVED AS NOTED. Revisions indicated on Shop Drawings shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as the basis of claims for Extra Work. The Contractor shall have no claim for damages or extension of time due to any delay resulting from the Contractor's having to make the required revisions to Shop Drawings (unless review by the Authority as well as any applicable Utility Owner or Governmental Persons, of said drawings is delayed beyond 45 days and unless the Contractor can establish that the delay in review actually resulted in a delay in the Contractor's construction schedule). The review of said drawings will be limited to checking for general agreement with the Specifications and Contract Drawings and shall in no way relieve the Contractor of responsibility for errors or omissions contained therein, nor shall such review operate to waive or modify any provision contained in the Contract Documents. Fabricating dimensions, quantities of material, applicable code requirements and other Contract requirements shall be the Contractor's responsibility.

2.5 REFERENCE TO STANDARDS, PUBLICATIONS OR STANDARD SPECIFICATIONS

Any reference made in the Contract Documents to any specification, standard, or publication of any organization shall, in the absence of a specific designation to the contrary, refer to the latest edition of the specification, standard or publication in effect as of the date of issuing the RFB.

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2.6 REFERENCE TO PROPRIETARY PRODUCTS

Where references to proprietary products appear in the Specifications or Contract Drawings, whether or not followed by the words "or approved equal", it is for the purpose of establishing an acceptable standard of quality or design. Unless a substitute is expressly prohibited, the Contractor may request approval of a substitute for any such proprietary product. Such approval normally will not be given by the Authority prior to Contract award. A request for substitution must be in writing and must include descriptive literature, specifications, test reports or samples, as appropriate, to enable the Authority as well as any applicable Utility Owner and Governmental Persons, to determine the acceptability of the product proposed for substitution. If substitution is requested as part of a Shop Drawing submittal, the item(s) proposed for substitution shall be clearly indicated. No substitute product shall be used on the Work until written approval has been received from the Authority as well as any applicable Utility Owner and Governmental Persons. Any revisions to structures, piping, mechanical, electrical, instrumentation, or any other Work made necessary by such substitution must be approved by the Authority as well as any applicable Utility Owner and Governmental Persons, and the entire cost of these revisions shall be borne by the Contractor.

2.7 NOT USED

2.8 AS-BUILT DRAWINGS

The Contractor shall maintain, on the job site, a set of full-size blue-line or back-line prints of the Contract Drawings. On these the Contractor shall mark in red ink all as-built conditions, locations, configurations, and other details which may vary from the details represented on the original Contract Drawings. The Contractor shall maintain the master record of as-built conditions, including all revisions made necessary by addenda, Change Orders and field conditions up-to-date during the progress of the Work.

Upon completion of the Work but prior to Final Acceptance, the as- built drawings maintained by the Contractor shall be delivered to the Authority in MicroStation v8.1 format.

***** END OF SECTION 2 *****

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SECTION 3 - AUTHORITY-CONTRACTOR RELATIONS

3.1 ROLE OF AUTHORITY

The Authority shall have full rights to review, inspect, test and approve the Project as well as undertake any action to fulfill the Authority's responsibility to develop the Project, including delegation of any such action to third parties. Authority is the judge of the Contractor's performance of the Contract, with full authority to give approval of and order changes in the Work and to review and approve the Contractor's invoices and authorize payments.

3.2 INSPECTION AND TESTING

- a) All materials furnished and all Work performed under the Contract Documents shall be subject to inspection by the Authority as well as any applicable Utility Owner and Governmental Persons. Such inspection may include mill, plant, shop or field inspection as required. The Authority, and the applicable Utility Owner, and Governmental Persons, shall be permitted access to all parts of the Work, including plants where material or equipment are manufactured or fabricated, and shall be furnished with such materials, information and assistance by the Contractor and Subcontractors and suppliers as is required to make a complete and detailed inspection.
- b) Work done in the absence of prescribed inspection may be required to be removed and replaced under proper inspection, and the entire cost of removal and replacement shall be borne by the Contractor, regardless of whether the Work removed is found to be defective or not. Work shall not be covered up without the approval of the Authority as well as any applicable Utility Owner and Governmental Persons. If so covered without approval, the Work, upon order of the Authority as well as any applicable Utility Owner or Governmental Person shall be uncovered, and the Contractor similarly shall bear the entire cost of performing all the Work and furnishing all the material necessary for the removal of the covering and its subsequent replacement, as directed and approved by the Authority as well as by any applicable Utility Owner and Governmental Persons.
- c) Inspections shall not be scheduled on days when the Authority, a Utility Owner or Governmental Person is closed, unless otherwise approved.
- d) The cost for City and Utility Owner inspection fees will be allocated per the applicable Master Cooperative Agreement, to the extent addressed in the Master Cooperative Agreement. All other fees and costs imposed by agencies or not identified in the MCAs, including fees and costs imposed by SCRRRA, shall be paid by the Contractor.
- e) The Contractor shall perform all tests as required by the Specifications and Contract Drawings to ensure that the Work is being accomplished in accordance with the requirements of the Contract Documents. Unless otherwise specified in the Contract Documents, the cost of such testing will be the responsibility of the Contractor and included in the Contract Price. In the event such tests reveal non-compliance with the requirements of the Contract Documents, the Contractor shall bear the cost of such corrective measures deemed necessary by the Authority as well as by any applicable Utility Owner and Governmental Persons, as well as the cost of subsequent re-testing.
- f) Any shutdown of any portion of a Utility Owner's water system will require the review and

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approval of the applicable Utility Owner and City.

- g) The Authority shall decide within the provisions of the Specifications all questions which may arise concerning the quality or acceptance of materials furnished and Work performed and all questions concerning the acceptable fulfillment of the Contract by the Contractor.
- h) All Work shall be done in a thorough and workmanlike manner and to the satisfaction of the Authority as well as any applicable Utility Owner and Governmental Persons, and the materials used shall comply with the Contract Documents. Work shall be started and continued at such time and at such points as may be designated by the Authority as well as any applicable Utility Owner and Governmental Persons, and shall be carried on diligently and without unnecessary delay.
- i) Each day the Contractor shall furnish the Authority as well as any applicable Utility Owner and Governmental Person a duplicate copy of all delivery and shipment tags or slips for all materials delivered for the Work. Tags or slips shall show the actual quantity of material received for the Work. No materials shall be used for the Work until such tags or slips have been furnished to the Authority as well as to any applicable Utility Owner and Governmental Persons.
- j) The Contractor shall give written notice to the Authority as well as to any applicable Utility Owner and Governmental Persons before beginning any Work in accordance with the applicable Master Cooperative Agreement, or if no Master Cooperative Agreement applies, at least 48 hours prior to beginning any Work, and shall furnish all reasonable facilities for obtaining full information respecting the progress and manner of Work.

3.3 PROVISIONAL SUMS

The Contract Price includes the following amounts (“Provisional Sums”):

Provisional Sum Item	Provisional Sum Task Description	Provisional Sum
Miscellaneous	As set forth in a Provisional Sum Authorization	\$150,000
		Total: \$150,000

- a) To the extent available funds remain in an applicable Provisional Sum, Authority may elect, in its sole discretion, to authorize and pay any tasks set forth above using a Provisional Sum Authorization; upon such authorization, such tasks shall become part of the Work with a corresponding increase to the Contract Price and decrease to the Provisional Sum. Payment for and performance of all Provisional Sum items shall be in accordance with this Section 3.3. To the extent insufficient funds remain in an applicable Provisional Sum, at Authority’s election, payment for and performance of such tasks shall be authorized and become part of the Work by a Change Order.
- b) The Contractor shall perform Work set forth in a Provisional Sum Authorization as indicated in the Provisional Sum Authorization. If the Provisional Sum Authorization contemplates payment on a time and materials basis, the applicable provisions of Section 3.4 shall apply as though it were a Time and Materials Change Order. If the

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Provisional Sum Authorization is based on unit prices or a lump sum, the applicable provisions of Section 3.4 shall apply as though it were a unit priced or lump sum Change Order, and the Work will be paid in accordance with the agreed upon unit prices or lump sum, with no additional mark-up.

- c) At any time, in the event that funds remain in a Provisional Sum, Authority may, in its sole discretion, elect to issue a Change Order to reduce or remove the unused portion of the Provisional Sum.
- d) To the extent that the Contractor undertakes performance of any Provisional Sum task without first receiving a Provisional Sum Authorization (or Change Order to the extent there are insufficient funds in an applicable Provisional Sum) executed by Authority, the Contractor shall be deemed to have performed such work voluntarily and shall not be entitled to any compensation in connection therewith. In addition, the Contractor may be required to remove or otherwise undo any such work, at its sole cost.

3.4 CHANGE ORDERS

“Extra Work” is defined as added Work of a different character or function and for which no basis for payment is prescribed; or that involves revisions of the details of the Work in such a manner as to render inequitable payment under items upon which the Contractor bid.

The signing of the Contract by the Contractor will be deemed to be an agreement on the part of the Contractor to perform Extra Work, as and when ordered by the Authority.

To the extent that the Contractor undertakes performance of any Extra Work without receiving a Change Order executed by Authority, the Contractor shall be deemed to have performed such work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, the Contractor may be required to remove or otherwise undo any such work at its sole cost.

- a) Authority-initiated changes:

The Authority shall have the right to order changes in the Work through additions, deletions or modifications. Such changes will be effected through written “Change Orders” delivered to the Contractor describing the change required in the Work, together with any adjustment in Contract Price or time in completion as hereinafter provided. No such change shall constitute the basis of claims for damage or anticipated profits; however, the Authority will make reasonable allowance for the value of any Extra Work, materials or equipment furnished and subsequently rendered useless because of such changes. Any adjustment in Contract Price resulting from a Change Order will be considered in computing subsequent monthly payments due the Contractor. Any Extra Work performed in accordance with a Change Order shall be subject to all provisions of the original Contract, and the Contractor's sureties shall be bound thereby to the same degree as under the original Contract.

Upon decision of the Authority to have Extra Work performed, or to delete or modify Work, the Authority will so inform the Contractor, acquainting the Contractor with the essential details. The Contractor shall thereupon prepare an estimate of cost and schedule impact and submit to the Authority for approval before the Extra Work is started. The Authority reserves the right to reject any claims as a result of extending the

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Work under the bid prices, which has not been approved by the Authority in the same manner herein provided.

b) Contractor-initiated changes:

If the Contractor believes there is Extra Work, the Contractor may submit a Request for Change Order to increase the Contract Price and/or to extend the Completion Deadline.

1. Any increase in the Contract Price allowed hereunder shall exclude costs:
 - i. caused by the breach of contract or fault or negligence, or act or failure to act of the Contractor or any Subcontractors;
 - ii. which could reasonable have been avoided by the Contractor including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (in which event additional costs that would reasonably have been incurred in connection with such reallocation or redeployment would be allowable);
 - iii. associated with protecting, supporting, repairing, or maintaining Service Connections; and
 - iv. for any rejected Work which failed to meet the requirements of the Contract Documents and any necessary remedial Work.
2. If extension of the Completion Deadline is requested, the Contractor shall be required to demonstrate to Authority's satisfaction that the change in the Work or other event or situation which is the subject of the Request for Change Order has caused or will result in an identifiable and measurable disruption of the Work which has impacted any activity on the Critical Path. The Contractor may be entitled to an extension of Contract time as follows (and for no other reason): (1) if the Work has been suspended by the Authority, in whole or in part; or (2) where weather or other circumstances occur which delay progress and which are clearly beyond the control of the Contractor; provided that, in either case, the Contractor is not at fault and is not negligent under the terms of the Contract. The extension of time allowed shall be as determined by the Authority. The Contractor will not be entitled to damages or additional payment due to such delays, except for the following delays: (a) the Authority initiates a change in the Work under Section 3.4(a); (b) the Work has been suspended by the Authority and the suspension is not the result of fault or negligence by the Contractor; or (c) failure of the Authority to provide a response to a submittal or matter for which a response is required within the time period indicated in the Contract Documents. Costs of rearranging the Contractor's work plan to accommodate changes in the Work not associated with a Critical Path delay shall not be compensable hereunder.
3. Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it i) did not impact the Critical Path; ii) was due to the negligent acts or omissions, fault, recklessness, willful misconduct, breach of contract, or violation of law of the Contractor or any Subcontractor; or iii) could

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reasonably have been prevented or avoided by the Contractor including by resequencing, reallocating or redeploying its forces to other portions of the Work.

4. The Request for Change Order shall be delivered as promptly as possible after the occurrence of such event or situation which the Contractor believes constitutes Extra Work and shall include the following:
 - i. The scope of the proposed Extra Work.
 - ii. The reasons why such work is not required by the Contract Documents and why the Contractor believes additional compensation or time will or may be due and the date of occurrence.
 - iii. A cost estimate that includes a breakdown of labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless Authority agrees otherwise.
 - iv. A time impact analysis if the Contractor believes such proposed Extra Work affects the Critical Path indicating all activities represented or affected by the change.
 - v. Any other supporting documentation as may be required by Authority.
- c) The adjustment in Contract Price shall be based on a lump sum or unit price agreed upon by the Authority and the Contractor based upon current prevailing fair prices for materials, labor, overhead, and profit prior to executing the Change Order.
- d) If the Authority and the Contractor are unable to agree upon a lump sum or unit price prior to executing the Change Order, the adjustment in Contract Price shall be made on a "Time and Materials" basis. In such an event, the following items (and no others) will be eligible as the direct costs:
 1. Materials and supplies (including tools and equipment).
 2. Labor (including foremen's wages).
 3. Worker's compensation insurance.
 4. Unemployment insurance contributions paid to the State.
 5. Social Security taxes paid to the Federal Government.
 6. Labor union health and welfare, pension, vacation-holiday and apprenticeship fund contribution.
 7. Value for use of equipment for actual time of use according to Caltrans "Labor Surcharge and Equipment Rental Rates" for the current year.
 8. Equipment on the Project necessarily idled during and by reason of such Extra Work. The Authority's obligation to repair damage to such a facility and to

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compensate the Contractor for idled equipment shall not extend to damage resulting from the failure of the Contractor to use reasonable care.

In addition to the direct costs enumerated above, the Authority will pay to the Contractor for said Extra Work the percentage below of said direct costs to compensate for the following profit and overhead items:

1. Profit.
2. General expenses.
3. All insurance except workmen's compensation insurance.
4. Excise taxes.
5. Property taxes.
6. License and inspection fees.
7. Bond premiums.
8. All other items of expense not specifically enumerated above.

Said percentage will be 20 percent of direct labor costs and 15 percent of all other direct costs provided the Contractor actually performs said Extra Work. In the event said Extra Work is performed by a Subcontractor, the percentage paid to the Contractor will be 25 percent of said Subcontractor's direct labor costs and 20 percent of said Subcontractor's other direct costs and includes allowance for profit and overhead costs for both the Contractor and Subcontractor. In the event said Extra Work is performed through more than one Subcontractor in succession, said percentage will not exceed 30 percent of direct labor costs and 25 percent of all other direct costs.

- e) When Extra Work is being performed on a Time and Materials basis, the Contractor shall submit to the Authority daily reports showing an itemized breakdown of labor, tools, and equipment used in performing the Extra Work. If required by the Authority, the Contractor shall furnish books, time sheets, vouchers, invoices and other records to substantiate the direct cost items listed in said reports. No payment will be made for Extra Work performed on a Time and Materials basis not verified by the Authority.
- f) Each Change Order (other than Change Orders issued unilaterally by Authority) shall contain a sworn certification in form acceptable to Authority by the Contractor that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change and that the Contractor has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.
- g) The completed Change Order, when signed by the Contractor and the Authority shall become a contractual extension of the Contract and all sureties, bonds and insurance in effect under the Contract shall be extended intact to include the Work described in the

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Change Order.

3.5 CONTRACTOR'S PLANT AND EQUIPMENT

The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of the Contractor's plant and equipment and any Subcontractor's plant and equipment.

3.6 ASSIGNMENT OF CONTRACT

- a) The Contractor shall not assign, sublet, sell, transfer or otherwise dispose of the Contract or any portion thereof, or its right, title or interest therein, or its obligations there under, without the prior written consent of the Authority. The Authority shall have no obligation whatsoever to provide such written consent.
- b) If the Contractor violates the provisions of this section, the Contract may be terminated at the option of the Authority and the Authority shall be relieved of all liability and obligations to the Contractor, and to its assignee or transferee, growing out of such termination.

3.7 SUBCONTRACTS

- a) All proposed Subcontractors shall be listed by the Contractor at the time of bid opening and shall be contained in the bid. The Contractor may request a replacement of a previously approved Subcontractor only through the specific procedures contained in Public Contract Code, Section 4107. Any such request is subject to approval by the Authority.
- b) The Contractor shall perform not less than 50 percent of the Work with its own forces (i.e., without subcontracting). This requirement shall be understood to refer to Work, the value of which totals not less than 50 percent of the Contract Price. Refer to Section 2-3 of the Standard Specifications.
- c) In the Authority's discretion, subject to the requirements of this Section 3.8, subcontracts may be permitted to such extent as shall be shown to be necessary or advantageous to the Contractor in the prosecution of the Work and without injury to the Authority's interests. The re-subletting of Work by a Subcontractor shall be subject to the same limitations as an original subletting. Each Subcontractor shall be properly licensed for the type of Work which it is to perform.
- d) A copy of each subcontract, if in writing (or if not in writing, then a written statement signed by the Contractor giving the name of the Subcontractor and the terms and conditions of each subcontract), shall be filed promptly with the Authority upon the Authority's request. Each subcontract shall contain a reference to the Contract, and the terms of that Contract shall be made a part of each subcontract insofar as applicable to the Work covered thereby. The Contractor shall include a copy of the provisions of California Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815 in all Subcontracts entered into between the Contractor and a Subcontractor. Each subcontract shall provide for annulment of same by the Contractor upon written order of the Authority if, in the Authority's opinion, the Subcontractor fails to comply with the requirements of the Contract insofar as the same may be applicable to this Work.

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- e) The Contractor shall be responsible to the Authority for the acts and omissions of its Subcontractors and their employees. Nothing contained in this section shall create any contractual relationship between any Subcontractor and the Authority to relieve the Contractor of any liability or obligation under the Contract.
- f) The Contractor shall be permitted to rent equipment maintained and operated as long as the Work performed is directed and constantly supervised by the Contractor. Any other arrangement will be construed as unauthorized subcontracting and such action will be subject to Contract termination.

3.8 CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of persons employed by the Contractor and any Subcontractor or persons employed by the Subcontractor. All workers must have sufficient knowledge, skill and experience to perform properly the Work assigned to them. The Site Superintendent shall be dedicated full-time to the Work.

3.9 ATTENTION TO WORK

The Contractor shall supervise the Work and at all times shall be represented by a competent English-speaking superintendent who shall receive and obey all instructions or orders given under the Contract Documents, and who shall have full authority to execute the same, and to supply materials, tools and labor without delay, and who shall be the legal representative of the Contractor.

3.10 SERVICE OF NOTICES

Any notice, order, direction, request or other communication given by the Authority to the Contractor under the Contract Documents shall be deemed to be well and sufficiently given to the Contractor if emailed to any of the Contractor's officers or left at any office used by the Contractor, or delivered to any of the Contractor's officers, or mailed in any post office addressed to the Contractor at the address mentioned in the Contract Documents, or at the Contractor's last known place of business. If mailed it shall be deemed to have been given to and received by the Contractor two Working Days after the day of mailing in any post office in the vicinity of the Work.

3.11 DEVIATION FROM CONTRACT

The Contractor shall not make any alteration or variation in or addition to or deviation or omission from the Contract Documents without the advance written consent of the Authority.

3.12 SUSPENSION OF WORK

The Authority may, by written notice to the Contractor, suspend the Work, in whole or in part, for such period or periods as it may deem necessary due to unsuitable weather, delay in delivery of Authority furnished equipment or materials, or such other conditions as are considered unfavorable for prosecution of the Work, or failure on the part of the Contractor to carry out the provisions of the Contract Documents or to provide material or workmanship meeting the

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requirements of the Specifications. Suspended Work shall be resumed by the Contractor within a reasonable time, as designated by the Authority, after receipt from the Authority of written Notice to Proceed. The Contractor shall not be entitled to receive extra or additional compensation, except as may otherwise be provided for explicitly in the Contract Documents, on account of suspension of Work pursuant hereto.

3.13 TERMINATION OF CONTRACT BY AUTHORITY (CONTRACTOR NOT AT FAULT)

The Authority may terminate the Contract upon ten days written notice to the Contractor, at the Authority's sole discretion. In such a case, the Contractor shall have no claims against the Authority except (1) for the value of Work performed up to the date the Contract is terminated, and (2) for the cost of materials and equipment on hand, in transit, or on definite commitment as of the date the Contract is terminated, which would be needed in the Work and which meet the requirements of the Contract Documents. The value of Work performed and the cost of materials and equipment delivered to the site, as mentioned above, shall be submitted to the Authority in accordance with the procedure prescribed in Section 5.10 and payment and shall be paid in accordance with the same procedure.

3.14 TERMINATION OF CONTRACT BY AUTHORITY (CONTRACTOR AT FAULT)

- a) The Authority may terminate the Contract upon ten days written notice to the Contractor in the event of any default by the Contractor. Without limitation, it shall be considered a Contract default whenever the Contractor shall: (1) declare bankruptcy, become insolvent or assign assets for the benefit of creditors, (2) disregard or violate provisions of the Contract Documents or Authority's instruction or fail to prosecute the Work according to the approved progress schedule, or (3) fail to provide a qualified superintendent, competent workers or Subcontractors, or materials or equipment meeting the requirements of the Specifications and Contract Drawings.
- b) In the event the Contract is terminated, the Authority may take possession of the Work and of all materials which have been provided in connection with the Work and may complete the Work by whatever method or means is selected. The cost of completing the Work shall be deducted from the balance which would have been due the Contractor had the Contract not been terminated and the Work completed in accordance with the Specifications and Contract Drawings. If such cost exceeds the balance which would have been due, the Contractor shall pay the excess amount to the Authority. If such cost is less than the balance which would have been due, the Contractor shall have no claim to the difference except to such extent as may be necessary, in the opinion of the Authority, to reimburse the Contractor or the Contractor's sureties for any expense properly incurred for materials, tools, equipment, property and labor devoted to the execution of the Work, of which the Authority shall have received the benefit. In computing such expense, as it relates to equipment and property, the salvage value at completion of the Work shall be deducted from the depreciated value at the time the Contract was terminated and the difference shall be considered as an expense.

3.15 TERMINATION OF CONTRACT BY CONTRACTOR

The Contractor may terminate the Contract upon ten days written notice to the Authority whenever: (1) the entire Work has been suspended in accordance with Section 3.12, for 60 consecutive days and such suspension was caused through no fault or negligence of the

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Contractor and notice to resume Work or to terminate the Contract has not been received from the Authority within this time period, or (2) the Authority shall fail to pay the Contractor any substantial sums due in accordance with the terms of the Contract and within the time limits prescribed. In the event of such termination, the Contractor shall have no claims against the Authority except for those claims specifically enumerated in Section 3.13 and determined in accordance with that section.

3.16 FAILURE TO COMPLY

If the Contractor should refuse or neglect to comply with the provisions of the Contract Documents or the orders of the Authority, the Authority may have such provisions or orders carried out by others at the expense of the Contractor.

3.17 PROTESTS

If the Contractor considers any Work demanded of him to be outside the requirements of the Contract Documents, or if the Contractor considers any order or ruling of the Authority, or of any inspector to be contrary to the Contract Documents, the Contractor shall, immediately upon such Work being demanded or such order or ruling being made, ask for written instructions or decision, whereupon the Contractor shall proceed without delay to perform the Work or to conform to the order or ruling; but unless the Contractor finds such instructions or decisions satisfactory, it shall, within five days after receipt of same, file a written protest with the Authority, stating clearly and in detail any objections and the reasons therefor. The Authority shall, as soon as practicable after receipt of such written protest from the Contractor, issue a decision on the protest to the Contractor. The decision of the Authority on all such matters shall be considered final and binding upon all parties concerned. Except for such grounds for protests or objections as are made of record in the manner specified and within the time stated herein, the Contractor hereby waives all grounds for protests or objections to the orders, rulings, instructions or decisions of the Authority and hereby agrees that, as to all matters not included in such protest, the orders, instructions and decisions of the Authority shall be final and conclusive.

3.18 RIGHT-OF-WAY

- a) The Authority will provide access to the Authority ROW; however, access to the Authority ROW will require the Contractor first to obtain a permit from SCRRA (refer to Special Provisions Section 1.5). Nothing contained in the Specifications or Contract Drawings shall be interpreted as giving the Contractor exclusive occupancy of the Authority ROW. Any right-of-way required in addition to the Authority ROW shall be provided by the Contractor at the Contractor's own expense.
- b) Except as may otherwise be provided, the Contractor shall secure from the agencies having jurisdiction the necessary permits to create obstructions, to make excavations if required under the Contract Documents and to otherwise encroach upon public or private right-of-way and shall present evidence to the Authority that such permission has been granted before Work is commenced. Regulations and requirements of all agencies concerned shall be strictly adhered to in the performance of the Project, including the furnishing of insurance and bonds if required by such agencies. The enforcement of such requirements under the Contract Documents shall not be made the basis for claims for additional compensation.
- c) The Contractor shall not do any Work that would affect any third party, nor enter upon

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the right-of-way involved until the Contractor has secured approval from the applicable parties. After approval has been obtained, the Contractor shall notify the Authority and give said party due notice of any intention to begin Work.

3.19 CONSTRUCTION INTERFERENCES

- a) The term "Construction Interference" shall include any surface or subsurface Utility, Service Connection, structure, or other facility located in an area where Work is performed.
- b) In the event any Construction Interference is required to be disturbed or removed to permit construction of the Work, such disturbance or removal shall be done in accordance with the applicable Utility Owner or facility or structure owner's requirements and only with the approval of the Authority and applicable Utility Owner or facility or structure owner. Any such Construction Interference removed or otherwise disturbed shall be reconstructed as promptly as possible in its original or other authorized location in a condition at least as good as prior to such removal or disturbance, subject to the inspection of the owner of same. The Contractor's responsibility under this section shall apply even in the event such removal or disturbance occurs after backfilling or is not discovered until after completion of backfilling. The applicable Utility Owner or facility or structure owner shall be notified immediately after removal or disturbance occurs or is discovered.
- c) During the performance of the Work, the applicable Utility Owner, City or agencies in control of any of the facilities affected by the Work shall have the right to enter when necessary upon the right-of-way, or upon any portion of the Work thereof, for the purpose of maintaining service and of making changes in or repairs to said facilities.
- d) The Contract Drawings show the approximate position of known Construction Interferences as they are supposed to exist in the immediate vicinity of the Work; provided, however that the Authority does not guarantee that all existing Construction Interferences are shown on the Contract Drawings and Service Connections are not shown on the Contract Drawings. The Contractor, before commencing any excavation, shall ascertain from records or otherwise, the existence, horizontal and vertical position, and ownership of all existing Construction Interferences. The Contractor shall notify the Authority immediately after identifying any Construction Interference omitted from or shown incorrectly on the Contract Drawings.
- e) All costs involved in protecting, supporting, repairing, or maintaining any Construction Interference shall be borne by the Contractor, except as provided in this clause (e).

All costs involved in protecting, supporting, repairing, or maintaining any Construction Interference that is not located within five feet of what is shown on the Contract Drawings will be paid for by the Authority as Extra Work in accordance with Section 3.4; provided, however, that if the Construction Interference relates to a Service Connection or could have been determined by the surface inspection during the Contractor's investigations described in Section 3.27, then all costs involved in protecting, supporting, repairing, or maintaining the Construction Interference shall be borne by the Contractor.

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- f) The Contractor shall not disturb, but shall support and protect against injury and maintain in good operating condition all Construction Interferences whether or not they are shown on the Contract Drawings.
- g) Once the actual position of the existing Construction Interferences has been determined, the Authority reserves the right to order changes in the Project pursuant to Section 3.4 including when, by so doing, the necessity for relocation of existing Construction Interference will be avoided.

3.20 LINES AND GRADES

- a) All surveying necessary to complete the Work shall be the responsibility of the Contractor.
- b) The Contractor shall be responsible for all lines and grades required for proper execution of the Work and will be held responsible for constructing the Work to the lines and grades shown on the Contract Drawings.
- c) Grades for all Work will be set on the surface of the ground and the Contractor shall transfer them to the construction as necessary. At no time shall less than three consecutive grade points be used in common so that any variation from a straight grade can be detected. The Contractor shall report any such variation to the Authority and shall be responsible for any error in the grade of the finished Work.
- d) The Contractor shall preserve all bench marks, stakes and other survey marks, and in case of their removal or destruction by the Contractor's employees or by a Subcontractor's employees, the Contractor shall be liable for the cost of their replacement.

3.21 NOT USED

3.22 COORDINATION AND NOTIFICATION OF CONSTRUCTION

- a) The Contractor shall notify the applicable Police Department, Fire Department and refuse department or refuse contractor of any construction causing lane closures 48 hours prior to start of such closure.
- b) The Contractor shall notify any applicable Utility Owner, City, and Governmental Persons, in accordance with applicable Governmental Rules, permit requirements, and Master Cooperative Agreements, or at least 48 hours prior to start of any construction if no such notification requirement applies.
- c) The Contractor shall provide all necessary information and staff support to assist the Authority in creating and distributing construction-related public notices to provide affected stakeholders advanced notice of closures and impacts at least five Working Days prior to the start of such closure or impact.
- d) The Contractor shall coordinate construction as required by the Authority with other adjacent Utility and construction projects, and provide adequate access to adjoining properties at all times.

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3.23 FIRE HYDRANTS

Free access shall be provided to all fire hydrants at all times. The Contractor shall not draw any water from a fire hydrant for use on the Work, other than for extinguishing fire, without first obtaining permission from the applicable City and Utility Owner.

3.24 EXCAVATION

Excavation shall be braced/shored in accordance with CAL OSHA Standards and SCRRA "Excavation Support Guidelines" so that they will be safe and the ground alongside the excavations will not slide or settle, and all existing improvements of any kind, either on public or private property, shall be fully protected from damage. If any damage does result, the necessary repairs as directed by the Authority, shall be made by and at the expense of the Contractor.

3.25 USE OF IMPROVEMENT DURING PROGRESS OF CONSTRUCTION

At any time during the progress of Work, the Authority may, upon written notice to the Contractor, takeover and utilize the whole or any part of the improvement or appurtenance thereto which has been completed, giving if desired, permits to utilize same. Such uses by the Authority shall constitute a limited acceptance of that part of the improvement so taken over and utilized which shall relieve the Contractor and the Contractor's sureties from responsibility for any damage to or defect in that part of the improvement not inherent in the construction which may be caused by the use of such part by the Authority or by property owners.

3.26 METHODS OF CONSTRUCTION

The Contract Documents do not purport to control the method of performing the Work but only the requirements of the Work. The selection of the method of construction or the type of equipment to be used is up to the Contractor. It shall be the Contractor's responsibility to select and use methods which will satisfactorily perform the Work under the conditions encountered.

3.27 EXAMINATION OF WORK

- a) The Contractor must examine the location, physical conditions and surroundings of the proposed Work and judge for itself the nature of the excavation to be made and the Work to be done.
- b) Execution of the Contract shall be conclusive evidence that the Contractor has satisfied itself through its own investigation as to the conditions to be encountered; the character, quality and quantity of Work to be performed; materials and equipment to be furnished; Governmental Rules that are applicable; and all requirements and contents of the Contract Documents.

***** END OF SECTION 3 *****

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SECTION 4 - MATERIAL, EQUIPMENT AND WORKMANSHIP

4.1 QUALITY

- a) Material and equipment shall be new and of the quality specified. All Work shall be executed in conformity with the best accepted standard practice of the trade so as to contribute to maximum efficiency of operation, accessibility and appearance, and minimum cost of maintenance and construction of future alterations and additions.
- b) The materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market from firms of established good reputation or, if not ordinarily carried in stock, shall conform to the usual standards for first-class materials or articles of the kind required with due consideration of the use to which they are to be put. In general, the Work performed shall be in full conformity and harmony with the intent to secure the best standard of construction and equipment of the Work.

4.2 SAMPLES AND TESTS OF MATERIAL

- a) Samples of materials to be supplied by the Contractor shall be prepared and submitted for checking, if required by the Authority as well as by any applicable Utility Owner and Governmental Persons. The samples or test specimens shall be prepared and furnished with information as to their source in such quantities and sizes as may be required, with all freight and charges prepaid.
- b) The Contractor shall submit all samples to the Authority as well as to any applicable Utility Owner and Governmental Persons, before shipment of the material to the site of the Work and in ample time to permit the making of proper tests, analyses, examinations, rejections and resubmissions before the time at which it is desired to incorporate the material into the Work. No such materials shall be used in the Work unless or until they have been accepted in writing by the Authority as well as by any applicable Utility Owner and Governmental Persons and samples of materials may be retained by the Authority for reference and comparison purposes.
- c) The cost of material inspection and testing in the vicinity of the Work, unless specified otherwise herein, will be borne by the Contractor. If the inspection and testing of material in the vicinity of the Work is not practicable, the Contractor may request such inspection and testing take place at the point of manufacture. If the Authority as well as any applicable Utility Owner and Governmental Persons, approves such a request, the additional cost of remote inspection and testing shall be paid for by the Contractor. Such additional costs will consist of reimbursement for travel time and expense to and from the remote point.

4.3 PROOF OF COMPLIANCE WITH CONTRACT

In order for the Authority to determine whether the Contractor has complied with the requirements of the Contract Documents not readily determinable through inspection and tests of plant, equipment, work or materials, the Contractor shall, at any time when requested, submit to the Authority as well as to any applicable Utility Owner and Governmental Persons, properly authenticated documents or other satisfactory proof as to compliance with such requirements.

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4.4 SAFEGUARDING OF EQUIPMENT, MATERIAL AND WORK

The Contractor shall properly safeguard all equipment, material and Work against loss, damage, malicious mischief or tampering by unauthorized persons until Final Acceptance. Locked and covered storage or continuous surveillance by a watch-man shall be provided if required to accomplish this purpose.

4.5 DEFECTIVE MATERIAL, EQUIPMENT AND WORKMANSHIP

- a) Inspection of the Work shall not relieve the Contractor of any of its obligations under the Contract Documents. Even though equipment, material or Work required to be provided under the Contract Documents have been inspected, accepted and estimated for payment, the Contractor shall, at the Contractor's own expense, replace or repair any such equipment, material or Work found to be defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guarantee period set forth in Section 4.8(a).
- b) Any equipment or material brought upon the job site by the Contractor and subsequently rejected by the Authority or any applicable Utility Owner or Governmental Persons, as not complying with the requirements of the Contract Documents shall be removed immediately by the Contractor.
- c) If the Contractor shall fail to repair or replace unsatisfactory equipment, material or Work or to remove unsatisfactory equipment or material from the job site within 10 days after being ordered to do so by the Authority or by any applicable Utility Owner or Governmental Persons, the Authority may make the ordered repairs or remove the condemned equipment or material and the Authority will deduct the cost thereof from any moneys due or to become due the Contractor.

4.6 CHARACTER OF WORKERS

Skilled workers shall be employed on Work requiring special qualifications. When required in writing by the Authority, the Contractor or any Subcontractor shall discharge any person who is, in the opinion of the Authority, incompetent, unfaithful, disorderly or otherwise unsatisfactory and shall not again employ such discharged person on the Work except with the consent of the Authority. Such discharge shall not be the basis of any claim for compensation or damages against the Authority or its board members, agents or employees.

At all times, the Contractor shall provide a superintendent on the job site who shall be able to speak, read and write the English language per Section 7-6 of the Standard Specifications.

4.7 RUBBISH AND DUST CONTROL

- a) During the progress of the Work, the Contractor shall keep the site of the Work and other areas utilized by the Contractor in a neat and clean condition and free from any accumulation of rubbish.
- b) The Contractor shall at all times conduct Work so as to avoid unnecessary dust. The Contractor shall provide adequate equipment, water and implement procedures to comply with the South Coast Air Quality Management District rules to prevent dust emissions.

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4.8 GUARANTEE

- a) The Contractor shall and hereby does guarantee all Work for a period of one year after the date of Final Acceptance and shall repair and replace any and all such Work, together with any other Work which may be displaced, that may prove defective in workmanship and/or materials within the one-year period from the date of Final Acceptance, without expense whatsoever to the Authority. Ordinary wear and tear and usual abuse or neglect is expected. In the event of failure to comply with the above-mentioned conditions within seven days after being notified in writing, or in the event of an emergency, the Authority is hereby authorized to proceed to have the defects repaired and make good at the expense of the Contractor, who hereby agrees to pay the cost and charges therefor immediately on demand.
- b) The Contractor hereby guarantees that the entire Work constructed under the Contract will meet fully all requirements thereof as to quality of workmanship and of materials furnished by the Contractor. The Contractor hereby agrees to make any repairs or replacements made necessary by defects in materials or workmanship supplied by the Contractor that becomes evident within the guarantee period, and to restore to full compliance with the requirements of these Specifications, including the test requirements set forth herein for any part of the Work constructed hereunder, which during said period is found to be deficient with respect to any provision of the Specifications. The Contractor also agrees to hold the Authority and its board members, agents and employees harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Authority. If the Contractor fails to make the repairs and replacements promptly, the Authority may do the Work and the Contractor and the Contractor's surety shall be liable to the Authority for the cost of such Work.
- c) As a condition to Final Acceptance, the Contractor shall deliver any and all manufacturer's guarantees held by the Contractor to the Authority.
- d) The guarantees and agreements set forth herein before shall be secured by a surety bond which shall be delivered by the Contractor to the Authority before the notice of completion shall be filed by the Authority. Said bond shall be in an approved form and executed by a surety company or companies satisfactory to the Authority, in the amount of ten percent of the Contract Price. Said bond shall remain in force for the period specified herein. Instead of providing a surety bond, the Contractor may, at its option, provide for the Faithful Performance Bond furnished under the Contract to remain in force for said amount until the expiration of the required period.

4.9 SUBSTANTIAL COMPLETION

The Contractor shall achieve Substantial Completion by 12 months after NTP. Said deadline for Substantial Completion, as it may be extended hereunder, is referred to herein as the "Substantial Completion Deadline."

Substantial Completion occurs when the Contractor has completed all elements of the Project in accordance with the Contract Documents. The Contractor shall deliver an "Application for Substantial Completion" when all of the following have occurred:

- a) The Contractor has completed all Work.

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- b) The Contractor has ensured that all Work has been performed in accordance with the requirements of the Contract Documents.
- c) The Contractor has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any person.
- d) All applicable Utility Owners and applicable Governmental Persons have accepted the Work.
- e) The Contractor shall have furnished to Authority for Authority's approval a certification, in form and substance satisfactory to Authority, certifying that the Work is in conformance with all applicable Governmental Rules and shall have supplied to Authority any supporting documentation demonstrating such conformance as requested by Authority.

Authority will issue a Certificate of Substantial Completion to the Contractor at such time as Authority determines that Substantial Completion has occurred.

4.10 FINAL ACCEPTANCE

The Contractor shall achieve Final Acceptance within 120 days after Substantial Completion. Said deadline for Final Acceptance, as it may be extended hereunder, is referred to herein as the "Final Acceptance Deadline."

On or before the Final Acceptance Deadline, the Contractor shall perform all Work and satisfy all of its obligations under the Contract Documents, including ensuring that the Project has been completed and all components have been properly inspected and tested. Final Acceptance shall be deemed to have occurred when all of the following have occurred:

- a) The Contractor has achieved Substantial Completion.
- b) The Contractor has delivered all as-built drawings to the Authority in accordance with Section 2.8.
- c) The Contractor shall have delivered to Authority a certification representing that there are no outstanding claims of the Contractor or claims, liens or stop notices of any Subcontractor or laborer with respect to the Work.
- d) The Contractor has delivered all manufacturer's guarantees in accordance with Section 4.8(c).
- e) All of the Contractor's obligations under the Contract Documents shall have been satisfied in full or waived in writing by Authority.
- f) The Contractor shall have delivered to Authority a Notice of Completion for the Project in recordable form and meeting all statutory requirements.
- g) The Contractor shall have prepared and Authority shall have approved a final invoice in accordance with Section 5.10.

Authority will issue a Certificate of Final Acceptance to the Contractor at such time as Authority

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determines that Final Acceptance has occurred.

***** END OF SECTION 4 *****

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SECTION 5 - PROGRESS AND PAYMENT

5.1 CONTRACT TIME

- a) The Work shall commence within 10 Working Days after the date set forth in the "Notice to Proceed" to begin Work. No Work, services, materials or equipment shall be performed or furnished unless and until the Authority has issued a Notice to Proceed to the Contractor.
- b) Time is of the essence.

5.2 CONTRACT PRICE

Prior to commencement of the Work, the Contractor shall submit a detailed price breakdown of any of the bid items for the Work contained in lump sum items. Such price breakdown shall include any information necessary in sufficient detail to enable it to be used in preparing monthly progress estimates.

5.3 CONSTRUCTION SCHEDULE

After Notice to Proceed and prior to commencing construction of any portion of the Project, the Contractor shall submit to the Authority for review and approval a detailed schedule of Work showing the order in which the Contractor proposes to carry on the Work and the dates when the various parts are to begin and be completed. The schedule shall be in a form approved by the Authority and shall be in sufficient detail to show chronological relationship of all activities of the Work including estimated starting and completion dates of various activities, submission of submittals per Special Provisions Section 1.2, procurement of materials and scheduling of equipment.

If in the Authority's opinion the schedule submitted is inadequate to secure the completion of the Work in the time agreed upon, or is otherwise not in accordance with the Contract Documents, the Authority may require the Contractor to submit a new schedule which will ensure timely completion of the Work. The Authority shall have the right to revise or alter the Contractor's Work schedule. It is mandatory that an up-to-date construction schedule be submitted with each request for progress payment.

In addition, the Contractor shall prepare "three-week rolling bar chart" schedules in accordance with Special Provisions Section 1.6(a).

5.4 OVERTIME WORK

Except as otherwise provided in this section, the Contractor shall receive no additional compensation for overtime work even though such overtime work may be required under emergency conditions and may be ordered by the Authority in writing. Additional compensation will be paid to the Contractor for overtime work only in the event Extra Work is ordered by the Authority and the Change Order specifically authorizes the use of overtime work, and then only to such extent as overtime wages are regularly being paid by the Contractor for overtime work of a similar nature in the same locality.

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5.5 LATE COMPLETION

- a) As the result of late completion of the Project, the Authority will suffer financial damages which cannot be quantified as of the date of execution hereof. Therefore, the Contractor and the Authority have agreed to a stipulated amount to be paid by the Contractor in the event of its failure to achieve Substantial Completion by the Substantial Completion Deadline. The parties intend for the liquidated damages set forth herein to constitute liquidated damages as such term is used in Government Code section 53069.85 to the extent said statute may apply, and to constitute stipulated damages to the extent that said statute is not applicable. The Contractor acknowledges and agrees that the liquidated damages are intended to compensate the Authority solely for the Contractor's failure to meet the Substantial Completion Deadline, and shall not excuse the Contractor from liability from any other breach of the Contract Documents, including any failure of the Work to conform to applicable requirements. The fact that the Authority has agreed to accept liquidated damages as compensation for its damages associated with a delay in meeting the Substantial Completion Deadline shall not preclude the Authority from exercising its other rights and remedies under the Contract Documents other than the right to collect compensation for other damages associated with such delay.
- b) In the event that the Contractor fails to achieve Substantial Completion by the Substantial Completion Deadline, the Contractor agrees to pay the Authority liquidated damages in the amount of \$1,600 for each day of delay, starting on the Substantial Completion Deadline and ending on the date Substantial Completion is achieved. In no event shall the amount of Liquidated Damages exceed \$288,000 under this Section 5.5.
- c) The Contractor acknowledges and agrees that the foregoing damages have been set based on an evaluation by the Authority of damages which it will incur in the event of late completion, including additional administrative costs. The Contractor and the Authority agree that the amount of such damages is impossible to ascertain as of the date of execution hereof and the parties have agreed to such liquidated damages in order to fix the Contractor's costs and to avoid later disputes over which items are properly chargeable to the Contractor. Any liquidated damages payable in accordance with this Section 5.5 are in the nature of liquidated damages and not a penalty and that such sums are not manifestly unreasonable under the circumstances existing as of the date of execution and delivery of the Contract.
- d) Liquidated damages shall be payable by the Contractor to the Authority within 10 days after the Contractor's receipt of an invoice therefor from the Authority.
- e) Permitting or requiring the Contractor to continue the Work or any part thereof after the Substantial Completion Deadline shall not act as a waiver of the Authority's right to receive liquidated damages hereunder or any rights or remedies otherwise available to the Authority.

5.6 NOT USED

5.7 MONTHLY ESTIMATES AND PAYMENTS

- a) On or about the 25th of each month, the Contractor will prepare and certify an estimate of the amount and value of Work performed during the prior month and the cumulative amount and value of Work performed by the Contractor through the end of the prior

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month. All payments will be paid within 30 days after receipt of an acceptable invoice. Except as may otherwise be provided in the Contract Documents, said amount will include 80 percent of the value of all acceptable materials and equipment delivered to the site of the Work. Said value will be based on certified copies of paid invoices delivered by the Contractor to the Authority. To this figure will be added all amounts due or paid the Contractor for performance of Extra Work in accordance with Change Orders.

The Contractor must pay the amount owed Subcontractors within seven days of receipt of each progress payment. If there is a good faith dispute over all or any portion of the amount due on a progress payment from the Contractor or Subcontractor to a subcontractor, then no more than 150% of the disputed amount may be withheld. The Contractor or Subcontractor violating this section must pay a penalty to the subcontractor owed payment equal to 2% of the amount due per month for every month that payment is not made.

From the total computed above, a deduction of 5 percent for retention will be made. Further deductions will be made for: (1) amounts due the Authority for equipment or materials furnished or services rendered; (2) amounts due the Authority under the terms of the Contract; (3) amounts of any claims of lien filed with the Authority in accordance with Section 6.2(b), and (4) amounts required to be deducted by federal, state or local governmental authority. From the balance thus determined will be deducted the amount of all previous payments and the remainder shall constitute the monthly payment due the Contractor.

The Contractor shall not withhold retention from a Subcontractor in an amount exceeding the amount withheld by the Authority.

The Authority shall release retention 60 days after: (1) occupation of project by the Authority accompanied by cessation of labor; (2) Final Acceptance; (3) cessation of labor for a continuous period of 100 days or more, due to factors beyond the control of the Contractor, or (4) cessation of labor for a continuous period of 30 days or more, if the Authority files for record a notice of cessation or a notice of completion. The Authority is liable for interest on excess amounts withheld. The Authority may withhold not more than 150% of the value of disputed items following completion under Public Contract Code Section 7107.

The Contractor shall pay retention to Subcontractors within seven days of its receipt of retention from the Agency, or a 2% penalty for improper withholding will be charged. The Subcontractor may not waive the requirements of the statute under Public Contract Code Section 7107.

- b) Pursuant to the provisions of Public Contract Code Section 22300, the Contractor is permitted to substitute securities for any moneys withheld to ensure performance of the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the State Treasurer or a state or federally chartered bank in California as the escrow agent, who shall then pay the moneys to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Alternatively, the Contractor may request and the Authority shall make payment of

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retentions earned directly to the escrow agent. The Contractor may direct the investment of the payments into securities and the Contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the Authority pursuant to the terms of this section.

Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Authority.

The Contractor shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

The escrow agreement used pursuant to this section shall be null, void and unenforceable unless it is substantially similar to the form enclosed.

- c) The Contractor's estimate of the monthly payment does not need to be calculated with strict precision, a reasonable approximation will suffice. The monthly payments may be withheld or reduced if, in the Authority's opinion, the Contractor is not diligently or efficiently endeavoring to comply with the intent of the Contract Documents or if the Contractor fails to pay labor and material bills as they become due.
- d) A copy of the Contractor's certified payroll, as well as those of all Subcontractors, shall be required to be submitted with each invoice. The Contractor shall post a copy of the wage rate schedule at each job site. The invoice is required to include items specifically required in this General Conditions and any other information deemed appropriate by the Authority. The Authority is not required to pay any incomplete invoice.
- e) The Contractor shall furnish the Authority promptly, upon request, all other information and records necessary to determine the cost of the Work for purposes of estimating monthly payments, including an itemized statement, in a form satisfactory to the Authority, of the actual cost of all acceptable materials delivered by the Contractor to the site.
- f) No monthly payment shall be construed as an acceptance of the Work or of any portion of the Work, nor shall the making of such payment preclude the Authority from demanding and recovering from the Contractor such damages as it may sustain by reason of the Contractor's failure to comply with the requirements of the Contract Documents.
- g) The parties acknowledge that Public Contract Code section 9204 requires the Authority to make payments to the Contractor, separate from the invoicing process under this Section 5.7, with respect to any portion of a "claim" as that term is defined in Public Contract Code section 9204, which the Authority identifies as undisputed in a written statement under Section 6.20 or 6.21, within 60 days after the date of the written statement. The Contractor acknowledges that approval of the Authority's board may be required before payments are made. If any such payments are made, future invoices

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shall account for such payments in a manner acceptable to the Authority.

- h) In the event the Contract is terminated, any funds due the Contractor and retained by the Authority shall become the property of the Authority to the extent necessary to repay to the Authority any excess in the Contract Price above the cost of the Work completed at the time of termination. After issuance of notice to discontinue Work, no further payment will be made to the Contractor for the Work covered by the notice until completion of the Work and final settlement has been made.

5.8 UNPAID CLAIMS

If, upon or before completion of the Work, or at any time prior to expiration of the period within which claims of lien or stop notices may be filed for record, any person claiming to have performed any labor or to have furnished any materials, supplies or services toward the performance of the Contract, or to have agreed to do so, shall file with the Authority a verified statement of such claim stating in general terms the kind of labor and materials, the value of same and the name of the person to or from whom the same was furnished, together with a statement that the same has not been paid; or if any person shall bring against the Authority or any of its agents any action to enforce such claim or stop notice, the Authority will, until the action is settled, withhold from moneys due to the Contractor an amount sufficient to satisfy the decision of the court together with costs.

5.9 FULFILLMENT OF CONTRACT

The Contractor shall protect and care for all Work until the Contract has been fulfilled to the satisfaction of the Authority, and subsequent acceptance of the Work by the Authority as well as by any applicable Utility Owners and Governmental Persons.

The Contractor shall promptly remove all rubbish, unused material, concrete forms, equipment and temporary structures used during construction, excess earth and rock, leaving the site of the Work in a neat, orderly and presentable condition before the Authority makes final inspection of the Work to determine the fulfillment of the Contract. Additional clean-up Work, if provided in the Special Provisions, shall be performed by the Contractor.

5.10 FINAL PAYMENT

- a) When the Contractor is of the opinion that it has completely performed all Work required under the Contract Documents, the Contractor shall submit to the Authority an Application for Final Payment. The Contractor shall not be entitled to the Final Payment prior to delivery of its Application for Final Payment. In addition, the Application for Final Payment shall list all outstanding claims, stating the amount at issue associated with each such claim. The Application for Final Payment shall be accompanied by complete and legally effective releases or waivers of liens and stop notices satisfactory to Authority, from all persons legally eligible to file stop notices in connection with the Work, and such other documentation as Authority may reasonably require. Disputed contract claims in stated amounts may be specifically excluded by the Contractor for the operation of the release.
- b) Authority will review the Contractor's Application for Final Payment, and will send any changes or corrections to the Contractor for correction. If no changes or corrections are required, Authority will approve the Application for Final Payment.

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- c) Once the Application for Final Payment is approved, Authority will pay the entire sum found due no later than 30 days after issuance of the Certificate of Final Acceptance.

5.11 FINAL PAYMENT TERMINATES LIABILITY OF AUTHORITY

The acceptance by the Contractor of the Final Payment shall be a release of the Authority and its board members, officials, designated agents, volunteers and employees, and LACMTA and its board members, officials, designated agents, volunteers and employees from any and all claims, demands, actions or causes of action and liability of whatever kind or nature to the Contractor arising out of or in any way concerned with the Work under the Contract, except for disputed claims in stated amounts specifically excluded by the Contractor in the Application for Payment as provided in Section 5.10.

5.12 NOTICE OF COMPLETION

Within ten days after the date of Final Acceptance, the Contractor will provide a notice of completion to the Authority. The Authority will file a notice of completion of the Work with the county recorder's office.

***** END OF SECTION 5 *****

GENERAL CONDITIONS

SECTION 6 - LEGAL RESPONSIBILITY, SAFETY, BONDS AND INSURANCE

6.1 RESPONSIBILITY OF CONTRACTOR

- a) The Work shall be under the Contractor's responsible care and charge. Subject to Sections 6.17 and 6.19, the Contractor shall bear all loss and damage whatsoever and from whatever cause, including any costs resulting therefrom, except to the extent caused by the active negligence of the Authority. If any loss or damage occurs, the Contractor shall immediately rebuild, repair and restore and/or pay compensation for any such loss or damage and in the event of the Contractor refusing or neglecting so to do, the Authority may itself or by the employment of some other person rebuild, repair and restore any such loss or damage and to the extent the Contractor is responsible, the cost and expense of so doing shall be charged to the Contractor.
- b) The Contractor alone shall at all times be responsible for the safety of employees and any Subcontractor's employees and for plant and equipment and any Subcontractor's plant and equipment and the method of prosecuting the Work.

6.2 LIABILITY OF CONTRACTOR

- a) The Contractor shall be liable for all damages and injury which shall be caused to Authority of property on or in the vicinity of the Work or which shall occur to any person or persons or property whatsoever arising out of the performance of the Contract, whether or not such damage or injury is caused by the negligence of the Contractor and whether or not such damage or injury is caused by the inherent nature of the Work as specified, except to the extent caused by the willful or active negligent acts of the Authority, its officers or agents.
- b) Subject to Section 6.19, in case any suit or legal proceedings shall be brought against the Authority or any of its officers, board members, agents or employees on account of loss or damage sustained by any person or property as a result of the performance of the Work covered by the Contract, whether or not such injuries or damage is due to the negligence of the Contractor and whether or not such injuries or damage is caused by the inherent nature of the Work as specified, the Contractor agrees to assume the defense thereof and to pay all expenses connected therewith including reasonable attorneys' fees and any judgment that may be obtained against the Authority or any of their officers, agents or employees in such suits, and in the event that any lien is placed upon the property of the Authority or any of its officers, agents or employees, as a result of such suits, the Contractor agrees to at once cause the same to be dissolved and discharges by giving bond or otherwise.

6.3 LAWS, REGULATIONS AND PERMITS

- a) The Contractor shall be fully informed of, and comply with, all Governmental Rules which may affect the conduct of the Work, those engaged or employed by the Contractor, the materials used, and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work. The Contractor shall protect and indemnify the Authority, its board members, agents and employees against any claim or liability arising from or based on the violation thereof.

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- b) The Contractor shall give all notices required by Governmental Rules and comply with all Governmental Rules pertaining to the conduct of the Work. The Contractor shall be liable for all violations of Governmental Rules in connection with the Work furnished by the Contractor or any Subcontractor. If the Contractor observes that the Contract Drawings or Specifications are at variance with any Governmental Rule, the Contractor shall promptly notify the Authority in writing and any necessary changes shall be made by Authority approval and issuance of a Change Order. If the Contractor performs any Work contrary to such Governmental Rules and without giving such notice to the Authority, the Contractor shall bear all cost arising therefrom.
- c) Unless otherwise specified in the Special Provisions, all Governmental Approvals and licenses which are necessary for and during the prosecution of the Work and the subsequent guaranty period thereafter shall be secured and paid for by the Contractor. The Contractor shall comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect, all Governmental Approvals, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person.
- d) The Contractor shall secure all necessary Governmental Approvals and licenses before starting Work and shall pay for all associated costs to obtain such permits and licenses with the exception of any fees that are waived per the applicable MCA.
- e) Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.

6.4 PATENTS AND COPYRIGHTS

The Contractor shall hold harmless, indemnify and defend the Authority, its board members, officers, agents and employees against all claims of liability arising from the use of any patented or copyrighted design, device, material or process, furnished, or used by the Contractor or any Subcontractors in the performance of the Work.

6.5 NOT USED

6.6 SALES AND USE TAXES

The Contractor shall pay all sales and use taxes assessed by federal, state or local authorities in the performance of the Work.

6.7 LABOR DISCRIMINATION

The Contractor shall not discriminate against any person or group of persons on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Contractor shall keep complete and

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accurate records of all procedures in regard to hiring and, especially in regard to programs, efforts and actions relating to minority hiring. Those records shall be available to Authority at all reasonable times. The Contractor shall include this nondiscrimination provision in all subcontracts to perform work under the Contract.

6.8 WAGE DETERMINATIONS

- a) As required by the California Labor Code, the Contractor shall pay not less than the prevailing rate of per diem wages as determined by the Director, Department of Industrial Relations, and State of California, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1, Part 7 of Division 2 of the California Labor Code. Copies of such prevailing rate of per diem wages may be obtained directly from the California Department of Industrial Relations (DIR) website at <http://www.dir.ca.gov>. The Contractor shall post a copy of such determination at each job site.
- b) The Contractor shall, as penalty to the Authority, forfeit \$50.00 for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such Work or craft in which such worker is employed, whether paid by the Contractor or by any Subcontractor.
- c) In accordance with the provisions of the California Labor Code, the Contractor shall secure the payment of compensation to employees.
- d) The DIR is responsible for monitoring and enforcing prevailing wage requirements of applicable labor laws to ensure that all contractors working on the Project are in compliance with prevailing wage statutes and regulations. Accordingly, the Project is subject to the requirements of DIR's compliance monitoring and enforcement program as set forth in Title 8, Chapter 8, Subchapter 4.5 of the California Code of Regulations, which include, among other requirements, the obligation to furnish payroll records directly to the DIR Labor Commissioner.

6.9 APPRENTICES ON PUBLIC WORKS PROJECTS

The Contractor shall comply with all applicable provisions of the California Labor Code relating to employment of apprentices on public works projects. The Contractor's obligations specifically include, but are not limited to: (a) compliance with the obligation to submit contract award information to an applicable apprenticeship program (Labor Code section 1777.5(e)); (b) compliance with the apprentice to journeyman ratio requirements (Labor Code section 1777.5(g)); (c) compliance with the training contribution requirements (Labor Code section 1777.5(m)(1)). The Contractor shall contact the Division of Apprenticeship Standards before starting Work for answers to any questions regarding its obligations. The Authority shall deduct from periodic payments civil penalties assessed by the Chief of the Division of Apprenticeship Standards for violating Labor Code section 1777.5 (Labor Code section 1777.7).

6.10 WORKING HOURS

The Contractor shall be permitted to Work on Working Days during hours allowed by the applicable City and SCRRA but no earlier than 8am, or as otherwise approved by the Authority. No Work shall be performed on non-Working Days unless approved by the Authority as well as by any applicable Utility Owner and Governmental Persons.

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The Contractor shall comply with all applicable provisions of the California Labor Code relating to working hours.

6.11 PUBLIC SAFETY AND CONVENIENCE

Public access and safety shall be maintained in accordance with Section 7-10 of the Standard Specifications and the following provisions:

- a) The Contractor shall at all times conduct Work so as to assure the least possible obstruction to traffic and pedestrian access and inconvenience to the general public and adequate protection of persons and property in the vicinity of the Work. No street shall be closed to the public without first obtaining permission of the Authority and applicable Governmental Person. Where excavation is being performed in primary streets or highways, one lane in each direction shall be kept open to traffic at all times unless otherwise provided or shown. Toe boards shall be provided to retain excavated material. Fire hydrants on or adjacent to the Work shall be kept accessible to fire-fighting equipment at all times. Temporary provisions shall be made by the Contractor to assure the use of sidewalks and the proper functioning of all gutters, storm drain inlets and other drainage facilities.
- b) The Contractor shall provide, throughout the period of construction, all signs, lights, flags and other devices which may be deemed necessary for safe and orderly conduct of pedestrian or vehicular traffic as directed by the Engineer. All traffic devices shall conform to the "Manual of Warning Signs, Lights, and Devices, for Use in Performance of Work Upon Highways," issued by the Department of Transportation, State of California. All barricades used as warning and guiding devices shall bear the name of the Contractor in legible letters. Full compensation for furnishing signs, lights, flags, and other devices and for furnishing flagmen shall be considered as included in the prices paid for various Contract items of Work and no additional compensation will be allowed therefor.
- c) The Contractor shall provide adequate barricades, signs, warning lights, watchmen and flagmen as required, as directed by the Authority and agency having jurisdiction, to protect the Work and the safety of the public. Warning lights using inflammable liquids will not be permitted. Only electrically-operated warning lights will be approved for use. Warning lights shall operate from sunset to sunrise. Barricades shall be painted to increase their visibility at night.
- d) "NO PARKING" signs with specific time frames shall be supplied and posted by the Contractor 48 hours prior to start of Work. The Contractor shall notify the local Police Department of such restrictions and obtain approval for the posting.

6.12 TRENCH EXCAVATION

The Contractor shall comply with all trenching and excavation requirements of CAL OSHA, Construction Safety Orders, applicable Utility Owner, and all other applicable Governmental Persons. Prior to excavating any trench the Contractor shall submit to the Authority as well as to any applicable Utility Owner and Governmental Persons, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such plan varies from the shoring system standards established by the

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Construction Safety Orders of the California Division of Industrial Safety, the plans shall be prepared by a civil or structural engineer registered in California. In no case will the Contractor be permitted to use a shoring, sloping or other protection system less effective than that required by said Construction Safety Orders. Nothing contained herein shall be construed to impose a tort liability upon the Authority or any of their officers, board members, agents or employees.

6.13 SHORING

The Contractor shall comply with the requirements of CAL OSHA, Construction Safety Orders, regarding the design of shoring systems and the inspection of same prior to trench excavation. The Contractor shall employ a civil engineer registered in California to prepare design calculations and working drawings of the shoring system.

6.14 SANITARY PROVISIONS

The Contractor shall provide and maintain sanitary facilities for the use of employees and Subcontractors necessary to comply with the requirements of state and local health departments.

6.15 SAFETY AND HEALTH REGULATIONS

All Work shall be performed in accordance with requirements of the California Division of Industrial Safety, the California Occupational Safety and Health Act and the William Steiger Occupational Safety and Health Act of 1970. The job safety conditions will be the responsibility of the Contractor.

6.16 LABOR, MATERIAL AND PERFORMANCE BONDS

The Contractor has furnished two bonds each in the form attached to the Signature Agreement, one as security for the faithful performance of the Work and the other as security for the faithful payment and satisfaction of all persons furnishing materials and performing labor on the Work. The bonds shall be issued by a corporation duly and legally licensed to transact surety business in the State of California. Such bonds shall remain in force throughout the period required to complete the Work. The bond must be executed by a duly licensed surety company approved by the Authority.

6.17 CONTRACTOR NOT RESPONSIBLE FOR DAMAGE RESULTING FROM CERTAIN ACTS OF GOD

As provided in Section 7105 of the Public Contract Act, the Contractor shall not be responsible for the cost of repairing or restoring damaged portions of the Work determined to have been caused by an Act of God, in excess of five percent of the Contract Price, provided, that the Work damaged was constructed in accordance with accepted and applicable building standards and the Specifications and Contract Drawings.

6.18 INSURANCE

- a) GENERAL. The Contractor shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, Contractor's agents, representatives, employees or Subcontractors. The cost of said

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insurance shall be included in the Contractor's bid. The Contractor shall not commence Work under the Contract until all insurances required herein are obtained and until such insurance has been approved by the Authority. The Contractor shall not allow any Subcontractor to commence Work on any subcontract until the insurance required of the Subcontractor has been so obtained and approved.

The insurance required herein shall be maintained continuously during the life of the Contract up to the date of Final Acceptance, however, the Contractor's liabilities under the Contract shall not be limited in any way to the insurance coverage required. Each insurance policy required herein shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to the Authority. Insurance is to be placed with insurer's having a Best's rating of no less than A VIII.

b) **GENERAL LIABILITY AND AUTOMOBILE LIABILITY COVERAGES.** The policies are to contain, or be endorsed to contain the following provisions:

1. The Authority, LACMTA, and their respective Board Members, officials, employees, designated agents and volunteers are to be covered as insureds with the following: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Authority, LACMTA or their respective Board Members, officials, employees, designated agents or volunteers.
2. The Contractor's insurance coverage shall be primary insurance with respect to the Authority, its Board Members, officials, employees, designated agents and volunteers. Any insurance or self-insurance maintained by the Authority, its Board Members, officials, employees, designated agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Authority, its Board Members, officials, employees, designated agents or volunteers.
4. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

c) **WORKERS' COMPENSATION INSURANCE.** The Contractor shall procure and maintain workers' compensation insurance as required by applicable state law for all employees to be engaged in Work at the site of the Project under the Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's workers' compensation insurance. The Subcontractor's insurance coverages shall be subject to all of the same requirements stated herein for the Contractor's insurance coverage. In case any class of employees engaged in hazardous Work under the Contract is not protected under the workers' compensation statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate employers' liability

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insurance for the protection of such employees that are not otherwise protected. The Contractor and its insurer shall waive all rights of subrogation against the Authority and LACMTA. This waiver of subrogation shall be evidenced by an endorsement to the workers' compensation insurance policy.

- d) **INSURANCE REQUIREMENTS.** The Contractor shall either: (1) require each Subcontractor to procure and to maintain subcontractor's public liability and property damage insurance and vehicle liability insurance of the type and in amounts specified, or (2) insure the activities of Subcontractors in the Contractor's own policy, in like amount.
- e) **BUILDER'S RISK INSURANCE (ALL RISK COVERAGE).** The Contractor shall procure and maintain builder's risk insurance (all risk coverage) on a 100 percent completed value basis for the benefit of the Authority, the Contractor and Subcontractors as their interest may appear.
- f) **MINIMUM SCOPE OF INSURANCE.** Coverage shall be at least as broad as:
 - 1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" From CG 0001).
 - 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 "any auto" and endorsement CDA 0025.
 - 3. Workers' Compensation insurance as required by the State of California and Employers Liability insurance.
- g) **MINIMUM LIMITS OF INSURANCE.** The Contractor shall maintain limits no less than the following:
 - 1. Comprehensive General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 2. Automobile Liability: \$5,000,000 per accident for bodily injury and property damage.
 - 3. Workers' Compensation: Limits as required by the State of California and Employers Liability limits of \$1,000,000 per accident.
- h) **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** Any deductibles or self-insured retentions must not exceed \$25,000 unless otherwise approved by the Authority, such approval not to be unreasonably withheld. At the option of the Authority, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the Authority, its directors, officials, employees, designated agents and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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- i) VERIFICATION OF COVERAGE. The Contractor shall furnish the Authority with certified copies of insurance or other evidence acceptable to the Authority and with original endorsements affecting coverage required by this section. The insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

The verification of coverage and endorsements are to be on forms provided by the Authority and are to be received and approved by the Authority before Work commences.

6.19 INDEMNIFICATION OF AUTHORITY

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Authority and its board members, officers, agents and employees against and from all liabilities, claims, suits or actions to the extent caused in whole or in part by any negligent or wrongful act, error, or omission of the Contractor or any Subcontractor or their employees or agents arising under or by reason of the Work agreed to be undertaken in the Contract or any performance of the Work, except to the extent caused by the active negligence or willful misconduct of the Authority, provided such active negligence or willful misconduct is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where the Authority is shown to have been actively negligent or engaged in willful misconduct in accordance with the preceding sentence, and where the Authority's active negligence or willful misconduct accounts for only a percentage of the liability involved, the obligation of the Contractor will be for that entire portion or percentage of liability not attributable to the active negligence or willful misconduct of Authority.

The Authority shall notify the Contractor promptly upon receipt of any third-party claim for which the Authority is entitled to indemnity hereunder. The Authority is entitled to recover reasonable costs incurred in providing notification under Public Contract Code section 9201.

6.20 CLAIMS

The Contractor shall give the Authority written notice within 10 days after the occurrence of any event which becomes known to the Contractor which the Contractor believes should or potentially will result in an increase in price or scheduled time for performance of the Work. This notice shall contain a statement of the Contractor's claim or potential claim, and shall include a detailed estimate of the change in price or scheduled time for performance occasioned thereby, or both. The Authority shall not be liable for, and the Contractor hereby waives, any claim or potential claim of the Contractor of which the Contractor knew or should have known and which the Contractor did not report in accordance with the provisions of this section. The Contractor shall not suspend performance of the Work during the time any Contractor claim is pending. No Contractor claim under the Contract shall be allowed if asserted after final payment under the Contract.

The Contractor notices under this Section 6.20 shall be delivered by registered or certified mail, return receipt requested. For purposes of Public Contract Code section 9204, receipt of the notice of claim under this Section 6.20 shall be deemed to be receipt of a claim as set forth therein; provided that the Contractor indicates, in writing, that the notice constitutes such a claim.

Upon receipt of a notice under this Section 6.20, the Authority shall conduct a reasonable review

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of the claim. Within 45 days after receipt of the notice, the Authority shall provide the Contractor with a written statement identifying the disputed and undisputed portions of the claim unless the Contractor agrees to extend the time for a response, or unless the determination requires approval from the Authority's governing body, in which case the Authority shall provide its response within three days following the next duly publicly noticed meeting of said governing body after the 45-day period, or extension, expires. The Authority's receipt of the full and final potential claim record must be evidenced by postal return receipt or the Authority's written receipt if delivered by hand. If the Authority fails to respond within said time period, the entire amount claimed is deemed to be disputed by the Authority.

6.21 DISPUTE RESOLUTION

The following mechanisms shall apply in order to obtain a prompt and expeditious resolution of disputes between the Contractor and the Authority.

The Authority and the Contractor acknowledge that either may be made a party to a dispute brought by or against a third party. Each agrees that it will participate in and be bound by any such dispute resolution at the demand of the other, whether arbitration, a reference, litigation or other form of dispute resolution, if the claim of the other party or a defense to the claim involves work performed or actions taken by either the Authority or the Contractor. To the maximum extent permitted by law, the provisions of this section shall not be a defense to being brought in to the third party dispute resolution proceeding, and that proceeding shall have precedence over any dispute resolution provided for herein. The Contractor further acknowledges and agrees that the Authority may join a third party or third parties to the dispute resolution proceedings provided for herein when the Authority determines, in its sole discretion, that a dispute between the Authority and such third party(ies) involves facts, work performed or actions taken by the Contractor pursuant to the Contract, and that any decision rendered in such proceeding shall have the same binding effect with respect to the Authority, the Contractor and such joined third party(ies) as provided herein with respect to disputes between the Contractor and the Authority.

a) Partnering

The Contractor may request the formation of a "partnering" relationship by submitting a request in writing to the Authority. If the Contractor's request for "partnering" is approved by the Authority, scheduling of a "partnering" workshop, selecting the "partnering" facilitator and workshop site and other administrative details shall be as agreed to by both parties. The purpose of this relationship is to maintain cooperative communication and mutually resolve conflicts at the lowest possible management level.

The costs involved in providing a facilitator and a workshop will be borne equally by the Authority and the Contractor. The Contractor shall pay all compensation for the wages and expenses of the facilitator and of the expenses for the workshop. The Authority's share of such costs will be reimbursed to the Contractor by Change Order. Markups will not be added. All other costs associated with the "partnering" relationship will be borne separately by the party incurring the costs.

The establishment of a "partnering" relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements of the Contract.

b) Informal Process and Mediation for Resolution of Claims

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If the Contractor disputes the Authority's written response (or deemed response) to a claim, the Contractor may notify the Authority that it wishes to proceed with informal discussion of the matter through partnering or through a separate informal process as described in Public Contract Code section 9204. Such notice shall be hand delivered or sent by registered mail or certified mail, return receipt requested. Upon receipt of such notification, the public entity shall schedule a meet and confer conference within 30 days.

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Authority shall provide the Contractor with a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed.

Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with both parties sharing the associated costs equally, unless both parties agree to proceed with formal dispute resolution proceedings without mediation. The parties shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to dispute resolution as specified below.

c) Resolution by the Authority's Chief Executive Officer

Disputes between the parties that are not governed by Public Contract Code section 9204 shall be presented to the Chief Executive Officer of the Authority or his duly authorized representative (the "CEO") for resolution. The CEO shall provide a determination within 30 days after receipt of notice from the Contractor identifying the issues in dispute and including a particular statement of the grounds of the dispute. The CEO may also provide a determination on his own initiative. The CEO's determination shall be transmitted to the Contractor. If the Contractor does not accept the CEO's determination, it shall provide a written response within 10 days after receipt of the CEO's determination, stating in general terms the factual or legal objections, or both, to the determination. The Contractor's failure to object in writing within the above-specified time limit shall constitute acceptance of the CEO's determination. Thereafter, either the Contractor (if the Contractor objects to the CEO's determination in accordance with this section), or the Authority, at the Authority's discretion, may seek a determination of the dispute by the dispute resolution procedure set forth below.

d) Judicial Reference

Any dispute aggregating more than \$375,000, not resolved under the procedures in Section 6.21(b) or (c), shall be heard by a referee upon a general reference pursuant to the provisions of Code of Civil Procedure sections 638 to 645.1, inclusive. The reference shall be initiated by either party filing a complaint in the Superior Court for the State of California, County of Los Angeles, within 30 days following issuance of the CEO's determination under Section 6.21(c) or personal or mailed service of the notice

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set forth in Government Code section 913 if the dispute involves a claim by the Contractor.

If the Contractor and the Authority are unable to agree upon a referee within 10 days of a written request to do so by either the Authority or the Contractor, then the requesting party may thereafter have one appointed pursuant to Code of Civil Procedure sections 638 et seq. The referee shall be a retired judge or a lawyer experienced in the subject matter of the dispute. The venue of any proceeding hereunder shall be in Los Angeles County, California (unless changed by order of the judge or referee).

e) Arbitration

Public Contract Code section 10240 et seq. (the "State Arbitration Act") provides for the resolution of contract claims by arbitration. As permitted by Public Contract Code section 20104(a)(2), each dispute involving \$375,000 or less, not resolved under the procedures in Section 6.21(b) or (c), shall be heard and determined by an arbitrator selected pursuant to the State Arbitration Act, and in accordance with the procedures set forth in California Code of Regulations, Title 1, sections 1300 et seq. Either the Contractor or the Authority shall initiate the arbitration by serving on the other party a demand for arbitration within 30 days following issuance of the CEO's determination under Section 6.21(c). The arbitrator shall be a member of JAMS/Endispute, experienced in the subject matter of the dispute, as agreed upon by the Contractor and the Authority.

If the Contractor and the Authority are unable to agree upon such arbitrator within 10 days after a written request to do so by either the Contractor or the Authority, then either party may petition the Presiding Judge of the Los Angeles Superior Court to appoint an arbitrator. The venue of any proceeding under the Contract shall be in Los Angeles County, California (unless changed by order of the judge or referee).

f) Binding Effect

Any decision by such referee or arbitrator(s) shall be binding on the Contractor and the Authority and judgment thereon may be entered in any court having jurisdiction thereof.

g) Cooperation

The Contractor shall diligently cooperate with the Authority and the person(s) appointed to resolve the dispute, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute. If either party refuses to diligently cooperate, and the other party, after first giving notice to the other of intent to rely on the provisions of this section, incurs additional expenses or attorneys' fees solely as a result of such failure to diligently cooperate, the referee or arbitrator may award such additional expenses and attorneys' fees to the party giving such notice, even if the party is not the prevailing party in the dispute.

h) Costs

The cost of the proceeding shall initially be borne equally by the Contractor and the Authority but the prevailing party in such proceeding, except as set forth in Section 6.21(g), shall be entitled to recover reasonable attorneys' fees and all other costs, its

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contribution for the reasonable cost of the referee or arbitrator as an item of damage or recoverable costs, or both. If either the Contractor or the Authority refuses to pay its share of the costs, at the time(s) required, the other party may do so, in which event that party will be entitled to recover (or offset) the amount advanced, with interest, even if that party is not the prevailing party. The referee or arbitrator(s) shall include such costs in the award.

i) No Admission or Waiver

Neither the Authority's determination, nor either party's response in connection with a dispute, nor the continued performance of the Contract by either party shall constitute an admission by either party as to any factual and/or legal position in connection with the dispute or a waiver of its rights under the Contract or at law.

j) Provisional Remedies

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy which may be necessary, and which is not otherwise available under this Section 6.21 (or for which relief under this section will not provide an effective remedy), to protect its rights, including without limitation temporary and preliminary injunctive relief, attachment, claim and delivery, receivership and any extraordinary writ.

k) Attorneys' Fees

The prevailing party in any dispute resolution proceeding hereunder shall be entitled to recover from the losing party the reasonable expenses and costs incurred in connection with the proceeding including, without limitation, reasonable attorneys', expert witness', advisors' and consultants' fees, as determined by the arbitrator or judge. Such amounts shall be included in the award.

l) Continued Performance

The existence of a dispute shall not excuse or justify any suspension of the Contractor's performance of the Contract which shall proceed with due diligence. Neither the Authority's determination, nor either party's response in connection with a dispute, nor the continued performance of the Contract by either party shall constitute an admission by either party as to any factual or legal position, or both, in connection with the dispute or a waiver of its rights under the Contract or at law.

m) Government Claims Act

Both parties agree that the provisions of this Section 6.21 govern resolution of disputes and shall apply in lieu of the requirements in the Government Claims Act, Gov. Code sections 810 through 996.6. Compliance with the Government Claims Act shall not be necessary and any such compliance is hereby waived.

The parties agree that, except to the extent that any provision of Government Code Gov. Code sections 900 et seq. require presentation of a claim on a date prior to the deadline for submitting a claim under this Section 6.21, all statutes of limitation shall be tolled from the date of submission of a dispute to the referee or arbitrator (as the case may be) to

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the date of the final recommendation.

n) Payment

Upon resolution of any such dispute, each party shall promptly pay to the other party any amount owing.

***** END OF SECTION 6 *****