

APPENDIX 1

ABBREVIATIONS AND DEFINITIONS

As used in the Contract to which this Appendix is attached and in the Contract Documents described therein, the following abbreviations and terms shall have the meanings set forth below. References to Sections shall mean Sections of the Contract unless otherwise specified.

ABBREVIATIONS

AAN	American Association of Nurserymen, Inc.
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
AC	Alternating Current
AD	Active Directory
ACE	Advanced Conceptual Engineering
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
ADU	Aspects Display Unit
AEIC	Association of Edison Illuminating Companies
AF	Audio Frequency
AFE	Authority Furnished Equipment
AFI	American Filter Institute
AGC	Association of General Design-Builders of America
AGMA	American Gear Manufacturers Association
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISC-SJI	American Institute of Steel Construction - Steel Joist Institute
AISI	American Iron and Steel Institute
AJCHN	American Joint Committee on Horticulture Nomenclature
AMCA	Air Moving and Conditioning Association
AMTRAK	National Railroad Passenger Corporation
ANSI	American National Standards Institute (Formerly USASI, United States of American Standards Institute, and ASA, American Standard Association)
APA	American Plywood Association (Formerly Douglas Fir Plywood Association)
API	American Petroleum Institute
APTA	American Public Transportation Association
APWA	American Public Works Association
ARA	American Railway Association
AREA	American Railway Engineering Association

AREMA	American Railway Engineering and Maintenance of Way Association
ASA	See ANSI
ASNS	American Standards for Nursery Stock
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating and Air Conditioning Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASQC	American Society of Quality Control
ASTM	American Society for Testing and Materials
A TEL	Administrative Telephone
ATMS	Automated Traffic Management System
ATC	Automatic Train Control
ATP	Automatic Train Protection
ATS	Administrative Telephone System
ATSAC	Automated Traffic Surveillance and Control System
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BDS	Bridge Design Specifications
BLS	Blue Light Station
BOCA	Building Officials Conference of America
CADD	Computer-Aided Design and Drafting
Caltrans	State of California Department of Transportation
CBD	Civil Braking Distance
CCC	Central Control Console
CCF	Central Control Facility
CCO	Central Control Operator
CCTV	Closed Circuit Television
CDRL	Contract Data Requirements List
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CNEL	Community Noise Equivalent Level
CPM	Critical Path Method
CPUC	California Public Utilities Commission
CRSI	Concrete Reinforcing Steel Institute
CSI	Construction Specifications Institute
CTC	California Transportation Commission
CTS	Cable Transmission System
CWR	Continuous Welded Rail
D-B	Design-Build
dB	Decibel
DBCS	Duct Bank and Conduit System
DC	Direct Current

DID	Direct Inward Dialing
DOT	Department of Transportation
DTE	Diagnostic and Test Equipment
DVA	Digital Voice Annunciation
DWP	Department of Water and Power of the City of Los Angeles
E&M	Ear and Mouth
EEI	Edison Electric Institute
EEO	Equal Employment Opportunity
EIA	Electronic Industries Association
EMC	Electromagnetic Compatibility
EMI	Electromagnetic Interference
EMR	Electromagnetic Radiation
EOL	End of Line
EPA	Environmental Protection Agency
EPROM	Erasable Programmable Read-Only Memory
ETEL	Emergency Telephone
ETS	Emergency Trip Station
FACP	Fire Alarm Control Panel
FAT	Factory Acceptance Test
FC	Facility Control
FCC	Federal Communications Commission
FDS	Fire Detection System
FE	Fast Ethernet
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration of the U.S. Department of Transportation
FLSSC	Fire/Life Safety and Security Committee
FMECA	Failure Modes and Effects Criticality Analysis
FO	Fiber Optic
FRA	Federal Railroad Administration
FRACA	Failure Reporting, Analysis and Corrective Action
FS	Federal Specification
FSS	Federal Specifications and Standards, General Services Administration
FTA	Federal Transit Administration
FXO/FXS	Foreign Exchange Office/Foreign Exchange Subscriber
GO	General Order (pertaining to the CPUC)
GUI	Graphics User Interface
HVAC	Heating, Ventilation & Air Conditioning
Hz	Hertz
IBC	International Building Code
IC	Internal Combustion
ICC	Interstate Commerce Commission or International Code Council
IDS	Intrusion Detection System
IEC	International Electrotechnical Commission

IEEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineering Society
IFS	Iconic Freeway Structure
IGBT	Insulated Gate Bipolar Transistor
IMSA	International Municipal Signal Association
I/O	Input/Output
IOS	Initial Operating Segment
IP	Internet Protocol
IPCEA	Insulated Power Cable Engineers Association
ISO	International Standards Organization
ITE	Institute of Transportation Engineers
JIC	Joint Industrial Council
JRG	Joint Review Group
L&W	Light and Water
LADOT	City of Los Angeles Department of Transportation
LAN	Local Area Network
LCD	Liquid Crystal Display
LCP	Local Control Panel
LED	Light Emitting Diode
LFAT	Local Field Acceptance Test
LLRU	Lowest Level Replaceable Unit
LRFD	Load and Resistance Factor Design
LRT	Light Rail Transit
LRU	Line Replaceable Unit
LRV	Light Rail Vehicle
MI&H	Mobility Impaired and Handicapped
MIL	Military Specification
MP	Management Provisions
Metro	Los Angeles County Metropolitan Transportation Authority
MOS	Mean Opinion Score
MTBF	Mean Time Between Failures
MTEL	Maintenance Telephone
MTTR	Mean Time-to-Restore
MUTCD	Manual of Uniform Traffic Control Devices
NBFU	National Board of Fire Underwriters
NBHA	National Builders Hardware Association
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NESC	National Electric Safety Code
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
NLMA	National Lumber Manufacturers' Association
NPRD	Non-electric Parts Reliability Data
NRC	Noise Reduction Coefficient
NTP	Notice to Proceed

NVLAP	National Voluntary Laboratory Accreditation Program
OBE	Other Business Enterprise
OCS	Overhead Contact System
O&SHA	Operating & Support Hazard Analysis
OEM	Original Equipment Manufacturer
OSHA	Occupational Safety and Health Administration, and Occupational Safety and Health Act of 1970, and amendments thereto; United States Department of Labor
PA	Public Address
PBX	Private Branch Exchange
PCA	Portland Cement Association
PCI	Prestressed Concrete Institute
PCO	(Notice of) Proposed Change
PDS	Power Distribution System
PDSR	Project Development Status Report
PF	Power Frequency
PGL	Profile Grade Line or Pasadena Gold Line
PHA	Preliminary Hazard Analysis
PM	Preventative Maintenance
PMC	Project Management Consultant
POE	Power over Ethernet
PPM	Pulses per Minute
PRI	Primary Rate Interface
PROM	Program Read-Only Memory
PSTN	Public Switched Telephone Network
PTEL	Passenger Telephone
PTZ	Pan/Tilt/Zoom
PWP	Pasadena Water and Power
QA/QC	Quality Assurance and Quality Control
QOS	Quality of Service
QSIG	Q-Signaling Protocol
RAC	Reliability Analysis Center
RF	Radio Frequency
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RFSC	Request for Special Consideration
RMA	Rubber Manufacturer's Association
RMS	Root Mean Square
RM&S	Reliability, Maintainability and Safety
ROD	Revenue Operations Date or Record of Decision
ROM	Read-Only Memory
ROC	Rail Operations Control
ROW	Right-of-Way
RPR	Resilient Packet Ring
RSVP	Resource Reservation Protocol

RTU	Remote Terminal Unit
SAE	Society of Automotive Engineers
SAPP	Systems Assurance Program Plan
SAV	Stand Alone Validator
SBD	Safe Braking Distance
SBE	Small Business Enterprise
SCADA	Supervisory Control and Data Acquisition
SCAT	Simple Catenary, Auto-Tensioned
SCE	Southern California Edison
SCFT	Simple Catenary, Fixed Termination
SCIL	Safety-Critical Items List
SCPI	Structural Clay Products Institute
SCPM	Safety-Critical Preventative Maintenance
SCR	Safety Certification Report
SCRRA	Southern California Regional Rail Authority
SDI	Steel Door Institute
SFP	Small Form-Factor Pluggable
SIMP	Systems Interface Management Plan
SIT	Systems Integration Tests
SMACNA	Sheet Metal and Air Conditioning Contractors National Association, Inc.
SONET	Synchronous Optical Network
SOQ	Statement of Qualifications
SPD	System Performance Demonstration
SPI	Society of the Plastics Industry
SPN	Standardized Plant Names
SRST	Survivable Remote Site Telephony
SSCP	Safety and Security Certification Plan
SSPC	Steel Structures Painting Council
SSPP	System Safety Program Plan
SWFT	Single Wire, Fixed Termination
T1	T-Carrier
TACAS	Terminal Access Controller Access System
TC&C	Train Control and Communications
T/R	Top of Rail
TOR	Top of Rail
TP	Technical Provisions
TPIS	Transit Passenger Information System
TPOCR	Traction Powered OCS Capacity Report
TPPSR	Traction Power Short-Circuit and Protection Settings Report
TPSS	Traction Power Supply Substation
TVM	Ticket Vending Machine
TWC	Train-to-Wayside Communications
UBC	Uniform Building Code of the International Conference of Building Officials
UFAS	Uniform Federal Accessibility Standards

UL	Underwriters' Laboratories, Inc.
UPS	Uninterruptible Power Supply
USACE	United States Army Corps of Engineers
USAS	United States of American Standards (See ANSI)
USASI	See ANSI
USDOT	United States Department of Transportation
USG	Union Station Gateway
USSG	United States Standard Gage (for uncoated sheets and thin plates)
USSWG	United States Steel Wire Gage
VE	Value Engineering
VECP	Value Engineering Change Proposals
VDC	Volts Direct Current
VMS	Visual Message Sign
VOIP	Voice over Internet Protocol
WAN	Wide Area Network
WCLA	West Coast Lumbermen's Association
WIDS	Wayside Intrusion Detection System
WUTC	Western Union Telegraph Company

DEFINED TERMS

“Acceleration Costs” shall mean those fully documented increased costs reasonably incurred by Design-Builder (that is, costs over and above what Design-Builder would otherwise have incurred) which are directly attributable to increasing the performance level of the Work in an attempt to complete necessary Activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for resequencing in connection with acceleration efforts. Profit, overhead and indirect costs in connection with acceleration efforts shall not exceed the limits set forth in Contract Section 12.

“Advanced Conceptual Engineering” shall mean preliminary engineering covering major design features of the Work included in Volume 3- Technical Provisions, Document 9.

“Affiliate” shall mean (1) (a) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any of its members, partners or shareholders holding a 10% or greater interest in Design-Builder; and (b) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Design-Builder, (ii) any of Design-Builder’s members, partners or 10% or greater shareholders or (iii) any Affiliate of Design-Builder under part (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise; and (2) Subcontractor affiliates determined using the definition in (1) but substituting the term “Subcontractor” for “Design-Builder.” In the context of impartiality of Disputes Board members, the term “Affiliate” shall also mean local agencies that are represented on Authority’s board.

“Alteration” shall mean a change or substitution in the form, character, or detail of the work done or to be done within the original scope of the Contract.

“Application for Final Payment” shall mean Design-Builder's written request for Final Payment of the Contract Price including reconciliation of all claims, changes or other proper adjustments to the Contract Documents, as described in Contract Section 7.5.1.

“Approval” or “Approve” shall mean acceptance in writing by the entity in question, or its designated representative, as applicable. Authority’s approval of Design Documents for construction as described in the Volume 3-Technical Provisions, Document 1- General Requirements, Section 10.8 shall constitute approval of the design by the Authority for purposes of Government Code section 830.6, but shall not be deemed to relieve Design-Builder of liability for the design.

“Approved as Noted” shall have the meaning set forth in Volume 3- Technical Provisions, Document 1- General Requirements, Section 10.8.

“Approved for Construction” shall have the meaning set forth in Volume 3- Technical Provisions, Document 1- General Requirements, Section 10.8.

“Approved Invoice” shall have the meaning set forth in Contract Section 7.3.1(d).

“Approved Invoice Amount” shall have the meaning set forth in Contract Section 7.3.1(d).

“Authority” shall mean the Pasadena Metro Blue Line Construction Authority, a public entity of the State of California also known as the Metro Gold Line Foothill Extension Construction Authority.

“Authority-Caused Delay” shall mean delays, to the extent that they affect a Critical Path, arising from the following matters and no others: (a) a suspension order pursuant to Contract Section 6.4.1; (b) Authority-Directed Changes; (c) failure or inability of Authority to provide access to the Right of Way as provided in Contract Section 3.3 (subject to Design-Builder’s obligations set forth therein); (d) failure or inability of Authority to provide Authority-Furnished Materials and Equipment in a timely manner (subject to Design-Builder’s compliance with applicable requirements for such materials and equipment); (e) failure of Metro to procure Indefinite Delivery Indefinite Quantity contracts as specified in Section 9.2 of the Metro Cooperative Agreement, subject to the limitations and conditions set forth therein; (f) failure or inability of Authority to provide responses to proposed schedules, plans, Design Documents and other submittals and matters for which response is required, within the time periods indicated in the Contract Documents; (g) uncovering, removing and restoring Work, to the extent provided in Volume 3-Technical Provisions, Document 1, Section 5.5.4(C); (h) delay in issuance of NTP to the extent provided in Contract Section 6.5.1; and (i) any improper action by Authority’s designated representative with binding authority as specified in Contract Section 20.5, any improper action of the Program Manager pursuant to authority as specified in the Contract, or any improper failure to act by Authority within a reasonable time after delivery of notice by Design-Builder to Authority requesting such action. Any court order to suspend Work shall not be considered an Authority-Caused Delay (although it may qualify as a Force Majeure event) despite the fact that Authority may specifically direct Design-Builder to comply with the court order.

“Authority Decision” shall have the meaning set forth in Contract Section 16.6.2.2.

“Authority-Directed Changes” shall mean any changes in the Work (including changes in the standards applicable to the Work) which Authority has directed Design-Builder to perform as described in Contract Section 12.

“Authority-Furnished Materials and Equipment” shall mean materials and equipment for the Project provided by the Authority as set forth in Volume 3- Technical Provisions, Document 2- Performance Specifications, Section 1.9 and as described in Contract Section 8.12.

“Authority-Provided ROW” shall mean the property within the Right of Way described in Volume 3-Technical Provisions, Document 3- Advanced Conceptual Engineering Drawings and the property identified in the Property Acquisition Matrix as set forth in Volume 3- Technical Provisions, Document 2- Performance Specifications, Appendix 3,

including such property as may be added to said Property Acquisition Matrix according to Volume 3- Technical Provisions, Document 2- Performance Specifications, Section 3.4 and subject to the limitations and availability constraints set forth in such documents.

"Availability" shall mean the ratio of the total time that a given system is operational, as designed, during a given interval, to the length of the interval.

"Baseline Schedule" shall have the meaning set forth in Volume 3-Technical Provisions, Document 1, Section 4.2.

"Betterment" with respect to Utilities shall mean the upgrading of a Utility that is not attributable to construction of the Project or is made solely for the benefit of and at the election of the Utility Owner. The primary aim of Betterment is to make the facility affected more useful, functional, durable, efficient or of greater capacity. Betterment shall not include technological improvements which are able to achieve greater usefulness, efficiency, durability or capacity at costs equal to or less than the cost of a "like-for-like" replacement or relocation. The term "Betterment" shall have the meaning set forth in each City Agreement to the extent it refers to City Facilities, and the meaning set forth in the Metro Cooperative Agreement with respect to design review comments provided by Metro.

"Bid Item List" shall mean that certain list of items included as Form S of Volume 1- Instructions to Proposers, Appendix D and as submitted in the Proposal.

"BNSF" shall mean the BNSF Railway (formerly known as the Burlington Northern and Santa Fe Railway), an American freight railroad company headquartered in Fort Worth, Texas, that has operating rights to provide freight service in the Shared Corridor.

"Certificate of Final Acceptance" shall mean the formal written acknowledgment issued by Authority to Design-Builder that all Work has been fully completed in accordance with the Contract Documents.

"Certificate of Substantial Completion" shall mean the formal written acknowledgment issued by Authority to Design-Builder that the Project has attained Substantial Completion.

"Change Order" shall have the meaning set forth in Contract Section 12.

"City" or "Cities" shall mean individually and/or collectively, as the context may require, the Cities of Pasadena, Arcadia, Monrovia, Duarte, Irwindale, Azusa, and Glendora.

"City Agreement" shall mean a Master Cooperative Agreement between a City and Authority, as the same may be modified or amended from time to time by versions provided by Authority to Design-Builder and identified as such by Authority.

"City Facility" shall have the meaning set forth in each City Agreement.

"City Facility Work" shall mean the Work associated with design, construction, or Rearrangement of City Facilities, including the Work described in Volume 3-Technical Provisions, Document 2- Performance Specifications and any City Agreement.

"City Utility" shall mean any Utility owned or operated by a City.

"Claim" shall mean a separate demand by Design-Builder for (a) a time extension which is disputed by Authority, or (b) payment of money or damages arising from work done by or on behalf of Design-Builder in connection with this Contract which is disputed by Authority. For purposes of determining the jurisdiction of the Disputes Board, arbitrator or referee, Claims and other disputes shall be valued based on the amount claimed exclusive of interest, costs and attorneys' fees. The Disputes Board may require consolidation of related Claims if requested by either party, but consolidation of separate Claims shall not affect jurisdiction of the Disputes Board, arbitrator or referee with respect to each Claim. Except as specified in Contract Section 16, all requests for time extensions and all disputes seeking equitable relief, such as but not limited to specific enforcement of any provision of the Contract Documents are deemed to have a value in excess of \$375,000 and less than or equal to \$1,000,000. A Claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order or Contract amendment signed by all parties.

"Completion Deadline(s)" shall mean the Substantial Completion Deadline, Punch List Completion Deadline and/or Final Acceptance Deadline, as the case may be.

"Composite Utility Drawings" shall mean the utility drawings that have been provided to Design-Builder in Volume 3, Document 11, Advanced Conceptual Engineering.

"Conduit" shall mean any conduit, casing, sleeve, hanger, attachment, or blockout for installation or protection of Utilities attached to or installed through structures, or installed under rail or roadway crossings, and any associated pull-ropes for Utility cables.

"Construction Documents" shall mean all Shop Drawings, Working Drawings and samples necessary for construction of the Project in accordance with the Contract Documents.

"Construction Safety and Security Program" shall mean the plans and other elements required to satisfy the safety and security provisions as specified in Section 8.0 of Volume 3-Technical Provisions, Document 1.

"Contaminated Groundwater" shall mean extracted groundwater including contaminants above legally-permitted discharge levels so as to require treatment prior to re-use or disposal. Contaminated groundwater which may legally be re-used without treatment, including use for dust control, or which merely requires dilution prior to re-use or disposal, shall specifically be excluded from the term.

"Contaminated Substances" shall mean those substances identified in Volume 3-Technical Provisions, Document 8.4- Substance Screening Levels Table in

concentrations that exceed the levels set forth in such Substance Screening Levels Table.

"Contract" shall mean, depending on the context, (a) the Design-Build Contract, or (b) collectively, the Contract Documents which establish the respective rights and obligations of Authority and Design-Builder.

"Contract Data Requirements List" shall mean the list set forth in Volume 3-Technical Provisions, Document 1-General Requirements, Appendix A.

"Contract Documents" shall have the meaning set forth in Contract Section 1.2.

"Contract Price" shall have the meaning set forth in Contract Section 7.1.

"County" shall mean Los Angeles County, California.

"CPUC Grade Crossing Approvals" shall mean the California Public Utilities Commission grade crossing approvals included in Volume 3-Documents 12.

"Critical Path" shall mean each critical path on the Baseline Schedule or Current Project Schedule, as appropriate, which ends on a Completion Deadline (i.e. the term shall apply only following consumption of all available Float). The lower case term "critical path" shall mean the activities and durations associated with the longest path(s) through the Baseline Schedule or Current Project Schedule, as appropriate.

"Current Project Schedule" shall have the meaning set forth Volume 3- Technical Provisions, Document 1- General Requirements, Section 4.2.

"Design-Builder" shall mean the Person identified as Design-Builder on the first page of the Design-Build Contract.

"Design-Build Contract" shall mean that certain Design-Build Contract No. C1135 executed by Authority and Design-Builder, as it may be amended from time to time.

"Design-Builder-Related Entity" shall mean Design-Builder; if Design-Builder is a joint venture, partnership or limited liability company, any joint venture member, partner or member; Subcontractors; their employees, agents and officers; and all other Persons for whom Design-Builder may be legally or contractually responsible.

"Design Documents" shall mean all drawings (including plans, elevations, sections, details and diagrams), Project Specifications, reports, calculations, records and submittals necessary for design of the Project in accordance with the Contract Documents, following final review thereof by Authority and others as required by the Contract Documents.

"Design Load" shall mean all applicable loads and forces or their related internal moments and forces used to proportion members. For "strength design," refers to loads multiplied by the appropriate load factors provided by the applicable codes.

"Serviceability design" or "allowable stress" design refers to the loads without load factors.

"Design Manager" shall mean the Person authorized by Design-Builder to manage and monitor the design of the Work.

"Design Package" shall have the meaning set forth in Volume 3, Document 1- General Requirements, Section 2.2.7.

"Designer of Record" shall mean the Person authorized by Design-Builder to sign, and who signs the Approved for Construction documents and revisions thereto.

"Differing Site A Conditions" shall have the meaning set forth in Contract Section 8.2.1.

"Differing Site B Conditions" shall have the meaning set forth in Contract Section 8.3.9.

"Directive Letter" shall mean a letter issued by Authority, or its duly authorized designee, directing Design-Builder to proceed with added, deleted or changed Work.

"Disputes Board" shall have the meaning set forth in Contract Section 16.2.

"Disputes Board Agreement" shall mean the agreement among Authority, Design-Builder and the members of the Disputes Board as described in Contract Section 16. This agreement shall be in the form of Appendix 9.

"Early Work Schedule" shall mean that certain schedule of work submitted within 30 days after Notice to Proceed as described in Volume 3, Document 1- General Requirements, Section 4.7.

"Environmental Approvals" shall mean the Governmental Approvals included in Volume 4-Environmental Requirements.

"Environmental Laws" shall mean all Governmental Rules now or hereafter in effect relating to the environment or to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment including into the air, surface water or ground water or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare or the natural environment (including protection of nonhuman forms of life, land, surface water, groundwater and air), including Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency Regulations (40 C.F.R. Part 15) and California Environmental Quality Act (CEQA).

"EPD" or "EPDs" shall have the meaning set forth in Contract Section 19.1.

"Equal" shall mean providing the same function, performance and reliability.

“Event of Default” shall have the meaning set forth in Contract Section 17.

“Excusable Delay” shall have the meaning set forth in Contract Section 12.3.1.

“Final Acceptance” shall have the meaning set forth in Contract Section 13.4.

“Final Acceptance Date” shall mean the date on which Final Acceptance occurs.

“Final Acceptance Deadline” shall have the meaning set forth in Contract Section 6.2.3.

“Final Design” shall mean the engineering phase of the Project that culminates in design products that are fully suitable for construction and advancement of the Project.

“Final Invoice Payment Date” shall have the meaning set forth in Contract Section 7.5.2.

“Finish-out” shall mean all construction work in addition to the basic structure and shell to finish a building, or space completely so that it requires no additional work prior to use for its intended purpose.

“Fixed Facilities” shall mean the civil works, stations, buildings, trackwork, and all associated elements, including fixtures, grading, drainage, track bed, sub-ballast, trackway structures, track-support structures, grade separations, landscaping, fencing, traffic signals, and street lighting.

“Flexural Structural Frequency” shall mean the first vertical frequency of vibration of an unloaded elevated structure, based on the flexural stiffness and mass distribution of the superstructure.

“Float” shall have the meaning set forth in Volume 3- Technical Provisions, Document 1- General Requirements, Section 4.6.5.

“Foothill Extension” shall have the meaning set forth in Contract Recital A.

“Force Majeure” shall have the meaning set forth in Contract Section 8.6.2.

“For Record Only” shall have the meaning set forth in Volume 3- Technical Provisions, Document 1- General Requirements, Section 10.8.

“Free Float” shall mean the maximum number of days that the early finish of any activity that can slip without delaying the early start of any of that activity’s successor.

“Funding Agreement” shall mean the Foothill Extension Funding Agreement dated June 30, 2010 by and between Metro and Authority. A copy of said agreement is located in Volume 5- Agreements, Document 16.

“Governmental Approval” shall mean any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, registration or ruling, required by or with any Governmental Person in order to design and construct the Project.

“Governmental Person” shall mean 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.

“Governmental Rule” shall mean 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.

“Guaranty” shall mean the document, if any, evidencing Guarantor’s guarantee of performance of the Contract, to be delivered concurrently with the executed Contract in the form attached to the ITP as Form Q. A copy of the executed Guaranty is attached to the Contract as Appendix 4-3.

“Guarantor” shall mean an entity (if any) required under ITP Section 1.13 to guarantee performance of the Contract.

“Hazardous Substance” shall mean any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 13000 et seq., all as amended, (the above-cited California state statutes are hereinafter collectively referred to as the “State Toxic Substances Laws”) or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil excluding de minimus amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles, (d) asbestos or asbestos-containing materials in structures and or other improvements on or in the Site

(other than mineral asbestos naturally occurring in the ground), and (e) Contaminated Substances.

"Iconic Freeway Structure Project" shall mean the project that is the subject of that certain agreement (C1134) dated July 1, 2010 between the Authority and Skanska USA Civil West California District Inc.

"Incidental Utility Work" shall mean all Work associated with (a) Service Line Relocations, (b) Utility Appurtenance Adjustments, (c) purchases and installations of Conduits, (d) Protections in Place, (e) street and parkway modification and restoration, including resurfacing and restriping of streets (including sidewalks), landscape restoration, and relocation of street lights and traffic signals made necessary by Utility Work (whether performed by Design-Builder or by Utility Owners), (f) potholing, electronic detection and/or surveying to determine Utility locations, (g) design, construction and as-built surveys, (h) obtaining permits required for Utility Work, and (i) abandonment of Utilities, including removal and disposal of abandoned Utilities.

"Indemnified Parties" shall have the meaning set forth in Contract Section 11.1.

"Inspection" shall mean the checking or testing for condition, performance, and safety of equipment against established standards.

"Interface" shall mean the points where two or more functional systems, subsystems, or structures come into physical or functional contact.

"Interim NTP" shall mean a written directive from Authority to Design-Builder, if any, authorizing Design-Builder to begin prosecution of the Work as specified therein as described in Contract Section 6.1.

"Key Personnel" shall have the meaning set forth in Contract Section 2.3.2.

"KIP" shall mean a force equivalent to 1,000 pounds.

"Liens" shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).

"Liner" (as in interior liner) shall mean the visible covering material for the walls, ceiling and other interior surface.

"Liquidated Damages" shall mean the damages payable by Design-Builder to Authority as specified in Contract Section 6.3.

"Load Factor" shall mean a factor by which the service load is multiplied to obtain the design load.

"Main or Trunkline Utility" shall mean a Utility, which is not a Service Line, and which relative to the particular system of which it is a part, (a) is a larger line serving as a main line to connecting tributary lines and (b) serves a larger area, all as reasonably determined by Authority. In so determining, reference may be made by Authority to definitions in the relevant manual or code of the applicable Utility Owner, if any.

"Maintenance and Operations Facility" or "M&O Facility" shall mean that certain Maintenance and Operations Facility as generally described in Volume 3-Technical Provisions, Document 2- Performance Specifications, Section 13.

"Manufacturer" shall mean the builder or producer supplying materials, equipment or apparatus for installation.

"Master Cooperative Agreement" shall mean any agreement between Authority and a third party which allocates responsibilities and liabilities for performance of Project-related work (including, unless otherwise specified, any modifications and amendments thereto). The definition of Master Cooperative Agreement shall include:

- (a) any City Agreement; and
- (b) any Utility Agreement.

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.

"Metro Cooperative Agreement" shall mean the Master Cooperative Agreement for the Metro Gold Line – Phase 2A dated June 30, 2010 by and between Metro and Authority. A copy of said agreement is located in Volume 5- Agreements, Document 1.

"Mitigation Monitoring Program" shall mean the mitigation monitoring program, described in Volume 3- Technical Provisions, Document 1, Section 11.1.

"Monthly Data Date" shall mean the date on a given schedule or report prior to which all Work progress is reported and after which all Work is scheduled to be performed.

"Negative Float" shall have the meaning set forth in Volume 3- Technical Provisions, Document 1- General Requirements, Section 4.2.

"New Utility" shall mean any Utility constructed or installed as a result of the Project for the purpose of providing service to the Project, either directly or indirectly.

"New Utility Work" shall mean the Work associated with (a) the design and/or construction and installation of New Utilities, and (b) the alteration, removal, relocation, replacement, and/or reconstruction of existing Utilities (including provision of temporary facilities as necessary), in order to provide service to the Project, either directly or indirectly. If any Work is undertaken for both the purpose of accommodating or permitting construction of the Project and for the purpose of providing service to the Project, such Work shall be deemed New Utility Work.

“Non-Conformance Report” shall mean a report issued by the Design-Builder’s Quality Manager, the Authority, or other Governmental Person indicating the Work, processes or procedures that do not conform to the Quality Control/Quality Assurance Plan (QCQAP) and any other Contract Documents as well as corrective actions to be taken.

“Non-Conforming Work” shall mean the Work that does not conform to the requirements of the Contract Documents.

“Non-Contaminated Substances” shall mean those substances identified in Volume 3- Technical Provisions, Document 8.4- Substance Screening Levels Table that are in concentrations less than or equal to the levels identified in such Substance Screening Levels Table.

“Non-Excusable Delay” shall have the meaning set forth Contract Section 12.3.5.

“Notice of Proposed Change” shall mean a notice issued to Design-Builder by Authority specifying a proposed addition, deduction or change to the Contract Documents. A Notice of Proposed Change is not an order to incorporate revisions into the Work.

“Notice of Termination” and “Notice of Partial Termination” shall mean a notice issued by Authority to terminate the Contract and the performance of Work by Design-Builder, either in whole or in part, pursuant to Contract Section 18.1.

“Notice to Proceed (NTP)” shall mean the written directive from Authority to Design-Builder authorizing Design-Builder to begin prosecution of the Work as specified therein.

“Operating System” shall mean the aspect of the light rail transit line regarding the movement of vehicles on it; the culmination of systems, equipment, and rules implemented to enable, regulate, and facilitate train movements.

“Parking Facilities Project” shall mean the project that is the subject of that certain agreement not yet procured that will provide for the design and construction of parking facilities to be located along the Phase 2A alignment.

“Payment Bond” shall mean the payment bond described in Contract Section 9.2 in the form initially attached to the Contract as Appendix 4-2. A copy of the executed Payment Bond is attached to the Contract as Appendix 4-2.

“Payment Due Date” shall have the meaning set forth in Contract Section 7.3.3.

“Performance Bond” shall mean the performance bond described in Contract Section 9.1 in the form initially attached to the Contract as Appendix 4-1. A copy of the executed Performance Bond is attached to the Contract as Appendix 4-1.

“Person” shall mean any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, Authority, or Governmental Person.

“Potential Change Order” shall have the meaning set forth in Contract Section 12.2.1.

"Preliminary Schedule" shall mean the Preliminary Schedule included with the Proposal.

"Program Manager" shall mean the Authority's Chief Project Officer, Hill International, or such other Person designated in writing by Authority as its Program Manager.

"Project" shall have the meaning set forth in Contract Recital C, and shall also include all other work product to be provided by Design-Builder in accordance with the Contract Documents.

"Project Management Plan" shall mean the plan established by Design-Builder as specified in Volume 3-Technical Provisions, Document 1, Section 1.2.

"Project Manager" shall have the meaning set forth in Contract Section 2.3.1.

"Proof" (used as a suffix) shall mean the device and contents are impervious to, or unharmed by the indicated materials, environment or other outside elements, as in splash proof or dust proof.

"Proposal" shall mean those documents constituting Design-Builder's proposal in response to the RFP, including any best and final offers or supplements to proposals as may have been requested by Authority.

"Proposal Date" shall mean _____, 2011 *[to be provided in execution version]*.

"Proposal Price" shall mean the amount set forth in Box 1A of Proposal Form S.

"Proposer" shall mean an individual, firm, partnership, corporation, joint venture, or limited liability company which submits a Proposal for the Project.

"Protection in Place" or "Protect in Place" shall mean any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection in Place; whereas temporarily moving power lines to another location after cutting them would not be considered Protection in Place.

"Proven Design" shall mean, as used here, those technologies that have been successfully deployed in day-to-day service in rail transit applications in North America.

"Provide" shall mean design, construct, furnish, install, and test complete in place.

"Provisional Sum" shall have the meaning set forth in Contract Section 7.1.2.

"Provisional Sum Authorization" shall mean (a) the written authorization from Authority regarding the scope and maximum cost of Utility Work to be paid for out of the Provisional Sum for Utilities as set forth in Contract Section 8.4.1.1 and (b) the written

authorization from Authority to perform the other Provisional Sum tasks as set forth in Contract Section 7.1.2.

“Provisional Sum Utility Work” shall mean that certain Utility Work payable by a Provisional Sum as described in Contract Section 8.4.1.2.

“Public and Business Impacts Mitigation Plan” shall mean the plan required to be provided under Volume 3-Technical Provisions, Document 1, Section 1.5.1.

“Punch List” shall mean the list of Work with respect to the Project which remains to be completed after achievement of Substantial Completion of the Project, and shall generally be limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety or operability of the Project but which must be completed as a condition of Punch List Completion.

“Punch List Completion” shall have the meaning set forth in Contract Section 13.3.

“Punch List Completion Deadline” shall have the meaning set forth in Contract Section 6.2.2.

“Quality Control/Quality Assurance Plan” shall mean those plans described in Volume 3-Technical Provisions, Document 1, Section 5.

“Railroad Agreement” shall mean that certain Shared Use Agreement between BNSF and Metro as successors to Atchinson, Topeka and Santa Fe Railway Company and Los Angeles County Transportation Commission respectively (such Shared Use Agreement is attached hereto as Volume 5- Agreements, Document 11), and as amended by that certain Amendment No. 1 attached hereto as [*To be provided by Addendum*]

“Railroad Operator” shall mean Southern California Regional Rail Authority (SCRRA, a joint powers authority existing under the laws of the State of California) and/or BNSF.

“Record Documents” shall mean the documents to be provided by Design-Builder as described in Volume 3-Technical Provisions, Document 1, Section 7.0.

“Rearrangement” shall have the meaning set forth in each City Agreement.

“Recovery Schedule” shall mean the schedule Design-Builder is required to provide under Volume 3-Technical Provisions, Document 1- General Requirements, Section 4.8.1.

“Redundancy” shall mean a design approach in which more than one unit that can meet the required functionality is implemented. Redundancy has one of two objectives, to enable a function to be performed in the event of the failure of one unit, or to enable failure to be detected by comparing the outputs of two units. The second purpose is called "checked redundant" and enables a system to revert to a safe state in the event of failure.

“Reference Documents” shall mean the documents designated in the RFP as "Reference Documents."

“Regulations” shall have the meaning set forth in Contract Section 16.6.2.11.

“Rejected, Revise and Re-Submit” shall have the meaning set forth in Volume 3- Technical Provisions, Document 1- General Requirements, Section 10.8

“Reliability” shall mean the probability that a system, subsystem, component or part will perform satisfactorily when used under stated conditions for a stated period of time.

“Relocation” shall mean each alteration, removal, relocation, replacement, reconstruction, support, including provision of temporary facilities as necessary, of any and all Utilities that is necessary in order to accommodate or permit construction of the Project. When used in the context of City Utilities, “Relocation” shall mean “Rearrangement”.

“Request for Change Order” shall mean a written request from the Design-Builder to increase the Contract Price or Completion Deadline.

“Request for Information” or “RFI” shall mean a written request submitted by the Design-Builder internally or to the Authority, detailing any need for clarification or information on a portion of the Work or the Contract.

“Request for Proposals” or “RFP” shall mean Request for Proposals No. C1135 regarding the Project issued by Authority, including all addenda and attachments thereto.

“Retainage” shall have the meaning set forth in Contract Section 7.4.1.

“Revenue Operations Date” shall mean the date Metro commences revenue operations for the Project.

“RFC Notice” shall have the meaning set forth in Contract Section 12.5.1.

“Right of Way” shall mean the real property (which term is inclusive of all estates and interests in real property) which is necessary for ownership and operation of the Project. The term specifically excludes:

- (a) the Utility Easements; and
- (b) any temporary easements or other real property interests which Design-Builder deems necessary or advisable in connection with performance of the Work.

The term ‘Right of Way’ is sometimes used to mean Project right of way and is sometimes used to mean rights of way for other facilities.

"Safety" shall mean freedom from those conditions that can cause death, injury, occupational illness, or damage to or loss of equipment.

"SBE Program" is the Small Business Enterprise Program adopted by the Authority. A copy of the current SBE Program is set forth in Contract Appendix 6.

"SBE Subcontracting Plan" shall mean the comprehensive SBE Subcontracting Plan provided by Design-Builder as described in Article IV of the SBE Program.

"Schedule of Values" shall mean the schedule of all items, activities, and work necessary to complete the Work developed in accordance with Contract Section 7.2 and Volume 3- Technical Provisions, Document 1- General Requirements, Section 4.6.4.

"Schedule Activity" shall mean any of the items included on the Schedule of Values approved by Authority and as described in Contract Section 7.2.1.1.

"Service Line" shall mean a Utility line, the function of which is to connect an individual service location (e.g., a single family residence or an industrial warehouse) to another Utility line which connects more than one such individual line to a larger system. The term "Service Line" also includes any Utility on public or private property that services structures located on such property.

"Service Load" shall mean live and dead loads as specified in these Technical Provisions without load factors.

"Settlor" shall mean Metro, in its capacity as settlor under the Trust.

"Shared Corridor" shall mean the segment of the Project where, upon completion of the Project, light rail transit operations and freight rail operations will both occur within the Project Right of Way.

"Shop Drawings" shall mean original drawings, plans, diagrams, schedules and other data specifically prepared for the Work by the Design-Builder or any of its subcontractors or suppliers of any tier, and which show in detail:

1. The proposed fabrication and assembly of a specific portion of the Work; and
2. The installation (form, fit and attachment details) of a specific portion of the Work.

Shop drawings shall include product data, literature, and performance and test data, as appropriate.

"Site" shall mean those areas designated in writing by Authority for performance of Work and such additional areas as may, from time to time, be designated in writing by Authority for Design-Builder's use in performance of the Work. The Site initially includes the area within the planned Right of Way. For purposes of indemnification, safety and security requirements and payment for use of equipment the term "Site" also includes any areas on which Utility Work is performed and any property being temporarily used by Design-Builder for storage of equipment and/or construction Work.

“Site A” shall mean the Right of Way from Station 973+00 to Station 976+00; Station 980+00 to Station 982+50; Station 1000+00 to Station 1008+00; Station 1021+00 to Station 1027+50; Station 1033+00 to Station 1035+50; Station 1062+00 to Station 1064+00; Station 1119+00 to Station 1121+00; Station 1234+50 to Station 1245+50; Station 1351+00 to Station 1359+50; Station 1415+50 to Station 1419+50; Station 1427+00 to Station 1429+00 as set forth in Volume 3- Technical Provisions, Document 3. Site A also shall mean the “M&O” locations identified in line items #34 through #54 in Appendix 3 (Property Acquisition Matrix Phase 2A) to Volume 3- Technical Provisions, Document 2- Performance Specifications.

“Site B” shall mean the Site other than Site A.

“Site Conditions Baseline Report” shall mean Volume 3- Technical Provisions, Document 10- Geotechnical Reports.

“Small Business Enterprise” shall have the meaning set forth in Article V.A of the SBE Program.

“Specifications” shall mean various specification documents as referenced in the Technical Provisions.

“State Arbitration Act” shall have the meaning set forth in Contract Section 16.6.2.11.

“Statement of Qualifications” shall mean Design-Builder’s response to Authority’s Request for Qualifications, dated January 28, 2010, as amended, in connection with the Project.

“State Standard Specifications” shall mean the Standard Specifications of the California Department of Transportation, Business and Transportation Agency, dated May 2006.

“Subcontract” shall mean any subcontract to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work between Design-Builder and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.

“Subcontractor” shall mean any Person with whom Design-Builder has entered into any Subcontract, and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.

“Substantial Completion” shall mean completion of all elements of the Project in accordance with the Contract Documents as described in Contract Section 13.2.

“Substantial Completion Deadline” shall have the meaning set forth in Contract Section 6.2.1.

“Supplier” shall mean any Person, other than employees of Design-Builder, not performing work at the Site, that supplies machinery, equipment, materials or systems

to Design-Builder or any Subcontractor in connection with the performance of the Work. The term "Supplier" includes fabricators and material dealers.

"Surety" shall mean each properly licensed surety company approved by Authority which issued the Payment Bond and/or the Performance Bond.

"Systems" shall mean traction power, overhead contact system (OCS), signaling, all communications elements described in the Performance Specifications, fare collection, vehicles, central control, and all other associated equipment.

"System Performance Demonstration" shall have the meaning set forth in Volume 3- Technical Provisions, Document 1- General Requirements, Section 9.8 and Document 2- Performance Specifications, Section 16.4.4.

"Technical Provisions" shall mean Volume 3 of the RFP.

"Temporary Relocation" shall mean (a) any interim relocation of a Utility (i.e. the installation, removal and disposal of the interim facility) pending installation of the permanent facility in the same or a new location, and (b) any removal and reinstallation of a Utility in the same place without an interim relocation.

"T&M Cost Summary Report" shall mean an electronically-generated report summarizing the Time and Materials Change Order reports described in Contract Section 12.8.6.4.

"Time and Materials Change Order" shall have the meaning set forth in Contract Section 12.8.

"Total Amount" shall have the meaning set forth in Contract Section 7.1.3.

"Track 1" shall have the meaning set forth in Volume 3- Technical Provisions, Document 2- Performance Specifications, Section 16.1.1.

"Track 2" shall have the meaning set forth in Volume 3- Technical Provisions, Document 2- Performance Specifications, Section 16.1.1.

"Trackway" shall mean that portion of the system's rail line, which has been prepared to support the track and its appurtenant structures.

"Traction Power Substation" shall mean any of those certain traction power substations to be provided by Metro pursuant to the Measure R Traction Power Supply Substations Project Performance Specifications dated July 2010 and attached hereto as Volume 3- Technical Provisions, Document 4.6.

"Truck" shall mean a vehicle undercarriage assembly containing wheels and axles, motors, gearboxes, brakes, collectors, cable, piping, etc.

"Trust" shall mean the trust established pursuant to the Trust Agreement.

“Trust Agreement” shall mean that certain document entitled Los Angeles - Pasadena Metro Blue Line Governmental Purpose Property Trust Agreement dated as of August 19, 1999, between Metro as settlor and Authority as trustee, as it may be amended from time to time. A copy of the Trust Agreement is included in RFP Volume 5.

“Trustee” shall mean Authority, in its capacity as trustee of the Trust, and not in its individual capacity.

“Utility” shall mean 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 not connected with drainage of the property on which the Project is to be constructed, 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 Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. When used in the context of the removal, relocation and/or protection of facilities to accommodate the Project, the term “Utility” or “utility” specifically excludes traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such facilities if they do not carry electricity that will serve any other types of facilities.

“Utility Agreement” shall mean a Master Cooperative Agreement and/or Work Order, as the context may require, between Authority and a Utility Owner regarding Utility Work, as such agreement and/or Work Order may be modified or amended from time to time.

“Utility Appurtenance Adjustment” shall mean the adjustment of Utility appurtenances (e.g. manholes, valve boxes, and vaults) for line and grade upon completion of roadway work.

“Utility Easement” shall mean a permanent replacement easement and/or other interest in real property located outside of the Right of Way limits that is necessary for Utility Work.

“Utility Information” shall mean the Composite Utility Drawings and all information regarding size, type and location of Utilities contained in the Reference Documents.

“Utility Owner” shall mean the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, municipalities and other governmental agencies).

“Utility Work” shall mean all Work associated with Utilities, including Design-Builder’s obligation to coordinate with Utility Owners and make payments to Utility Owners relating to Relocations, New Utilities, as well as activities to be performed in accordance

with Volume 3-Technical Provisions, Document 2- Performance Specifications, Section 4.0.

“Value Engineering Change Proposals (VECPs)” shall have the meaning set forth in Contract Section 15.

“Warranties” shall mean the warranties made by Design-Builder in Contract Section 14.

“Work” shall mean all of the administrative, design, engineering, Utility Work, 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 Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project except for those efforts which the Contract or Technical Provisions specify will be performed by Authority or other Persons. In certain cases the term is also used to mean the products of the Work.

“Work Order” shall mean a work order or agreement, as the same may be amended from time to time, issued by Authority or between Authority and a Utility Owner or other third party, authorizing and providing for the performance of specific work and or services and/or the purchase of materials and equipment. A document is a “Work Order” if it meets the definition set forth herein, without regard to the name by which the document designates itself, and without regard to whether it is issued pursuant to the provisions of an applicable Master Cooperative Agreement.

“Working Days” shall mean those days during which Authority conducts regular business.

“Working Drawings” shall mean plans for temporary structures such as decking, temporary bulkheads, support of excavation, support of Utilities, groundwater control systems, and forming and falsework for underpinning and for such other work as may be required for construction but which does not become an integral part of the completed Project.

APPENDIX 2

LABOR CODE REQUIREMENTS

A. Worker's Compensation

Design-Builder shall comply with the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code.

B. Prevailing Wages

Pursuant to the provisions of Section 1773 of the State Labor Code, Authority has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. Copies of the prevailing rates of wages are on file at Authority's offices, and will be furnished to Design-Builder and other interested parties on request. For crafts or classifications not shown on the prevailing wage determinations, Design-Builder may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for design-build Work.

C. Hours of Work

Eight hours labor constitutes a legal day's work.

D. Specific Labor Code Provisions

Design-Builder's attention is directed to the following requirements of the Labor Code. A copy of each such Code section shall be included in each subcontract hereunder:

Labor Code Section 1771

1771. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

Labor Code Section 1775

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid

less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

Labor Code Section 1776

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable

attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

Regulations implementing Labor Code Section 1776 are located in Sections 16000, 16400, 16401, 16402, 16403, and 16500 of Title 8, California Code of Regulations.

Labor Code Section 1777.5

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at

the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in

the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

Labor Code Section 1813

1813. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

Labor Code Section 1815

1815. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

E. Labor Nondiscrimination

Design-Builder's attention is directed to Section 1735 of the Labor Code, which reads as follows:

"A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

Design-Builder's attention is directed to the following "Nondiscrimination Clause" that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

Nondiscrimination Clause

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

APPENDIX 3

FEDERAL REQUIREMENTS

- 3-1: FEDERAL REQUIREMENTS
- 3-2: GENERAL WAGE DECISIONS
- 3-3: CERTIFICATE REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
- 3-4: CERTIFICATE REGARDING LOBBYING
- 3-5: EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATE

APPENDIX 3-1 FEDERAL REQUIREMENTS

The Design-Builder understands that Authority intends to apply for FTA funding for the Foothill Extension and acknowledges that as a result federal laws, regulations, policies, and related administrative procedures apply to the Contract. The Design-Builder will comply with all applicable federal laws, regulations, policies, and related administrative practices. The most recent of such federal laws, regulations, policies and related administrative practices at the time will govern the Project, unless FTA issues a written determination otherwise. The Design-Builder shall ensure compliance by its Subcontractors with and include appropriate flow down provisions in each of its lower-tier Subcontracts as required by applicable federal laws, regulations, policies, and related administrative practices, whether or not required herein.

1. COMPLIANCE WITH FEDERAL REQUIREMENTS

Design-Builder shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, which may be found on the FTA website, including without limitation those listed directly or by reference in the FTA Master Agreement (Form FTA MA(15)), as they may be amended or promulgated from time to time during the term of this Contract. Design-Builder's failure to so comply shall constitute a material breach of this Contract.

2. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

The Design-Builder agrees to comply with, and assure that any Subcontractor under this Contract complies with all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable federal regulations, including any amendments thereto.

3. ENVIRONMENTAL REQUIREMENTS

The Design-Builder and any Subcontractor under this Contract shall comply with all applicable environmental requirements and regulations, including any amendments, as follows:

A. Clean Air.

1. The Design-Builder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Design-Builder agrees to report each violation to Authority and understands and agrees that Authority will, in turn, report each violation as required to assure notification to Federal Transit Administration (FTA) and the appropriate Environmental Protection Agency Regional Office.

2. The Design-Builder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

B. Clean Water.

1. The Design-Builder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Design-Builder agrees to report each violation to Authority and understands and agrees that Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Design-Builder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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

D. Environmental Protection. The Design-Builder shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.

4. RECYCLED PRODUCTS

The Design-Builder agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

5. FLY AMERICA

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

the requirements of this section in all Subcontracts that may involve international air transportation.

6. RESTRICTIONS ON LOBBYING

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. See form entitled "Certification of Restrictions on Lobbying".

7. FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. The Design-Builder acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U. S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Design-Builder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the Design-Builder further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Design-Builder to the extent the Federal Government deems appropriate.

B. The Design-Builder also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U. S. C. § 1001 and 49 U.S.C. § 5307 (n) (1) on the Design-Builder, to the extent the Federal Government deems appropriate.

C. The Design-Builder agrees to include the above two (2) clauses in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

8. NO OBLIGATION BY THE FEDERAL GOVERNMENT

A. Authority and the Design-Builder acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to Authority, Design-Builder, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Design-Builder agrees to include the above clause in each Subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

9. DEBARMENT AND SUSPENSION

A. This Contract is a covered transaction for purposes of 2 C.F.R. Part 29. As such, the Design-Builder is required to verify that none of the Design-Builder, its principals, as defined at 2 C.F.R. 1200.995, or affiliates, as defined at 2 C.F.R. 1200.905, are excluded or disqualified as defined at 2 C.F.R. 1200.945 and 29.940. During the term of this Contract, the Design-Builder shall inform Authority of any change in the suspension or debarment status of the Design-Builder or of its affiliates or principals within ten days after such change occurs.

B. The Design-Builder is required to comply with 2 C.F.R. 29, Subpart C and must include the requirement to comply with 2 C.F.R. 29, Subpart C in any lower tier covered transaction it enters into.

C. The Design-Builder has submitted Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction, for the Design-Builder.

The certification identified in this clause is a material representation of fact relied upon by Authority. If it is later determined that the Design-Builder knowingly rendered an erroneous certification, in addition to remedies available to Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Design-Builder agrees to comply with the requirements of 2 C.F.R. 29, Subpart C throughout the period of any Contract that may arise from this offer. The Design-Builder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. CIVIL RIGHTS

The following requirements apply to the Agreement:

- (1) Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of

1975, as amended; 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990; 42 U.S.C. §12132; and federal transit law at 49 U.S.C. §5332, the Design-Builder agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Design-Builder agrees to comply with applicable federal implementing regulations and other implementing requirements that FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the Agreement:

(a) Race, Color, Creed, National Origin, Sex –

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and federal transit laws at 49 U.S.C. §5332, the Design-Builder agrees to comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, “ 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Design-Builder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Design-Builder agrees to comply with any implementing requirements FTA may issue.

(b) Age –

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and federal transit law at 49 U.S.C. § 5332, the Design-Builder agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Design-Builder agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities –

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Design-Builder agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment

Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Design-Builder agrees to comply with any implementing requirements FTA may issue.

- (3) The Design-Builder also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

11. ACCESS TO RECORDS

A. The Design-Builder agrees to provide Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Design-Builder which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Design-Builder also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Design-Builder access to Design-Builder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

B. The Design-Builder agrees to provide Authority, the FTA Administrator or his authorized representatives, including any PMO Design-Builder, access to the Design-Builder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

C. Where Authority enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Design-Builder shall make available records related to the Contract to Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

D. The Design-Builder agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

E. The Design-Builder agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Design-Builder agrees to maintain same until Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39(i)(11).

F. FTA does not require the inclusion of these requirements in Subcontracts.

12. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

The following requirements apply to the Design-Builder and its employees that administer any system of records on behalf of the federal government under any contract:

- (1) The Design-Builder agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Design-Builder agrees to obtain the express consent of the federal government before the Design-Builder or its employees operate a system of records on behalf of the federal government. The Design-Builder understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Design-Builder also agrees to include these requirements in each Subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by FTA.

13. SEISMIC SAFETY

The Design-Builder agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41, and will certify to compliance to the extent required by the regulation. The Design-Builder also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

14. NOT USED

15. BUY AMERICA

This section shall apply only if and when the Project receives Federal funds.

A. The Design-Builder agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7.

B. Appropriate Buy America certifications in the following form shall be provided with the executed Contract and with each Request for Change (RFC) that includes steel, iron, and manufactured products. Authority will not approve such RFC unless the completed Buy America certification is provided. If a Certificate of Non-Compliance is

provided, the RFC will be accepted only if Authority determines that an exception to the Buy America requirements applies.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The Design-Builder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____
Signature _____
Company Name _____
Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The Design-Builder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____
Signature _____
Company Name _____
Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The Design-Builder hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____
Signature _____
Company Name _____
Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The Design-Builder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____
Signature _____

Company Name _____
Title _____

16. CARGO PREFERENCE – USE OF UNITED STATES-FLAG VESSELS

The Design-Builder agrees:

- (a) To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to Authority through the Design-Builder in the case of a Subcontractor’s bill-of-lading and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590 and to Authority in the case of the Design-Builder’s bill-of-lading, marked with appropriate identification of the Project.
- (c) To include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

17. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(1) Minimum wages –

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor attached as Appendix 10-2 to the Contract, regardless of any contractual relationship which may be alleged to exist between the Design-Builder or Subcontractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or

mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Design-Builder and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii) (A) Authority shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Authority shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (4) With respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B) If the Design-Builder and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Authority to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized

representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise Authority or will notify Authority within the 30-day period that additional time is necessary.

- (C) In the event the Design-Builder, the laborers or mechanics to be employed in the classification, or their representatives, and Authority do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Authority shall refer the questions, including the views of all interested parties and the recommendation of Authority, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise Authority or will notify Authority within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Design-Builder shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the Design-Builder does not make payments to a trustee or other third person, the Design-Builder may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Design-Builder, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Design-Builder to set aside in a separate account assets for the meeting of obligations under the plan or program.
 - (v) (A) Authority shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. Authority shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

- (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the Design-Builder and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Authority to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise Authority or will notify Authority within the 30-day period that additional time is necessary.
 - (C) In the event the Design-Builder, the laborers or mechanics to be employed in the classification, or their representatives, and Authority do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Authority shall refer the questions, including the views of all interested parties and the recommendation of Authority, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise Authority or will notify Authority within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

(2) Withholding –

Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Design-Builder under this Contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Design-Builder or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing

Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, Authority may, after written notice to the Design-Builder, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records –

- (i) Payrolls and basic records relating thereto shall be maintained by the Design-Builder during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Design-Builder shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Design-Builder or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) (A) The Design-Builder shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration (FTA). The Design-Builder is also responsible for the submission of copies of payrolls by all Subcontractors.

The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC

20402. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Design-Builder or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Design-Builder or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The Design-Builder or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration (FTA), the Department of Labor (DOL), and Authority and shall permit such representatives to interview employees during working hours on the job. If the Design-Builder or Subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the Design-Builder, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

(4) Apprentices and trainees –

(i) Apprentices –

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Design-Builder as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the Design-Builder is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Design-Builder's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Design-Builder will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees –

Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Design-Builder will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity –

The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

(5) Compliance with Copeland Act requirements –

The Design-Builder shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Contract.

(6) Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions and Use of an Electronic Employment Eligibility Verification System –

The Design-Builder and Subcontractors shall comply with the requirements of President George W. Bush Executive Order No. 12989, as amended, which are incorporated by reference in this Contract, to use an electronic employment verification system as designated by the Secretary of Homeland Security. This system has been designated to be the United States Citizenship and Immigration Service (USCIS) E-Verify System. The Design-Builder and its Subcontractors are further required to comply with the Federal Acquisition Regulations as amended, to require compliance with the E-Verify System and its requirements.

(7) Subcontracts –

The Design-Builder or Subcontractor shall insert in any Subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The Design-Builder shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 C.F.R. 5.5.

(8) Contract termination: debarment –

A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

(9) Compliance with Davis-Bacon and Related Act requirements –

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(10) Disputes concerning labor standards –

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Design-Builder (or any of its Subcontractors) and Authority, the U.S. Department of Labor, or the employees or their representatives.

(11) Certification of eligibility –

- (i) By entering into this Contract, the Design-Builder certifies that neither it (nor he or she) nor any person or firm who has an interest in the Design-Builder is a person or firm ineligible to be awarded government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
- (ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

18. CONTRACT WORK HOURS AND SAFETY STANDARDS

(1) Overtime requirements –

Neither the Design-Builder nor any Subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages –

In the event of any violation of the clause set forth in paragraph (1) of this section the Design-Builder and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Design-Builder and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages –

Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Design-Builder or Subcontractor under any such Contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Design-Builder or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Final Labor Summary. The Design-Builder and each Subcontractor shall furnish to the recipient, upon the completion of the Work, a summary of all employment, indicating, for the completed Project, the total hours worked and the total amount earned.

(5) Final Certification. Upon completion of the Work, the Design-Builder shall submit to the Authority with the voucher for final payment for any work performed a certificate concerning wages and classifications for laborers mechanics, including apprentices and trainees employed on the Project, in the following form:

THE UNDERSIGNED CONTRACTOR ON

Contract _____

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

SIGNATURE AND TITLE

(6). Notice to the Recipient of Labor Disputes. Whenever the Design-Builder has acknowledged that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, the Design-Builder shall immediately give notice thereof, including all relevant information with respect thereto, to Authority.

(7) Insertion in Subcontracts. The Design-Builder or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (7) of this Article and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The Design-Builder shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (1) through (7) of this section.

19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in the latest edition of FTA Circular 4220.1 in effect at the time of this contract award, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. The Design-Builder shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause Authority to be in violation of the FTA terms and conditions.

APPENDIX 3-2

GENERAL WAGE DECISIONS AND LABOR CLASSIFICATIONS

[To Be Added]

APPENDIX 3-3

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION
(applicable for contracts with values exceeding \$25,000)

A. This Contract is a covered transaction for purposes of 2 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 C.F.R. 1200.995, or affiliates, as defined at 2 C.F.R. 1200.905, are excluded or disqualified as defined at 2 C.F.R. 1200.945 and 29.940.

B. The Contractor is required to comply with 2 C.F.R. 29, Subpart C and must include the requirement to comply with 2 C.F.R. 29, Subpart C in any lower tier covered transaction it enters into.

C. The Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by Authority. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to Authority, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

I hereby certify that I am authorized to execute this certification on behalf of the Contractor and certify the truthfulness and accuracy of the contents herein or attached hereto to the best of my belief. The Contractor does/does not (strike one) have in-house legal counsel.

Company Name: _____

By: _____
(Signature of Contractor official) Date

(Title of Contractor official)

The following shall also be completed if the Contractor has in-house legal counsel:

The undersigned legal counsel for _____

hereby certifies that _____
has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Contractor Attorney Date

Note:

- 1) If Joint Venturer, each Joint Venture member shall provide the above information and sign the offer.

APPENDIX 3-4

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Executed this _____ day of _____, 2009.

Company Name: _____

By: _____
(Signature of Company Official)

(Title of Company Official)

Note: 1) If Joint Venturer, each Joint Venture member shall provide the above information and sign the certification.

APPENDIX 3-5

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Design-Builder, all joint venture members of the Design-Builder, and all Subcontractors]

The undersigned certifies on behalf of _____, that:
(Name of entity making certification)

[check one of the following boxes]

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not the Design-Builder, relationship to the Design-Builder: _____

APPENDIX 4

BONDS AND GUARANTY

- 4-1 PERFORMANCE BOND
- 4-2 PAYMENT BOND
- 4-3 GUARANTY

APPENDIX 4-1

PERFORMANCE BOND

[EXECUTED COPY OF PERFORMANCE BOND TO BE ATTACHED TO EXECUTED CONTRACT AS APPENDIX 4-1]

Phase 2A Alignment Project

Bond No. _____

WHEREAS, the Los Angeles to Pasadena Metro Blue Line Construction Authority, also known as the Metro Gold Line Foothill Extension Construction Authority (“Obligee”), has awarded to _____, a _____ (“Principal”), a Design-Build Contract for the Phase 2A Alignment Project dated as of _____, 2011 (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents (as defined in the Contract) concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and _____, a _____, and _____, a _____ (collectively “Co-Sureties”), each an admitted surety insurer in the State of California, are held and firmly bound unto Obligee in the amount of \$_____ [insert 100% of the Total Amount] (the “Bonded Sum”), for payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Contract Documents are incorporated by reference herein.

This bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to its liability for Liquidated Damages and Warranties as specified in the Contract Documents, but not to exceed the Bonded Sum.

The guarantee contained herein shall survive the final completion of the design and construction called for in the Contract Documents with respect to those obligations of Principal which survive such final completion.

In the event that Principal is in default, is declared by Obligee to be in default under the Contract Documents, and provided that Obligee is not then in material default thereunder, Co-Sureties shall promptly:

- a. remedy such default;
- b. complete the Contract in accordance with the terms and conditions of the Contract Documents then in effect; or
- c. select a contractor or contractors to complete all Work for which a notice to proceed has been issued in accordance with the terms and conditions of the Contract Documents then in effect, using a procurement methodology approved by Obligee, arrange for a contract between such contractor or contractors and Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph), sufficient funds to pay the cost of completion less the unpaid balance of the Contract Price, but not exceeding, including other costs and damages for which Co-Sureties are liable hereunder, the Bonded Sum.

No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Co-Sureties under this bond and Co-Sureties hereby waive notice thereof.

The Co-Sureties agree to empower a single representative with responsibility for coordinating among all of the Co-Sureties with respect to this bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail with return receipt requested) to Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____, and

the initial agent for service of process shall be

No right of action shall accrue on this bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Co-Sureties have caused this bond to be executed and delivered as of _____, 2011.

Principal: _____

By: _____

Its: _____

(Seal)

Co-Surety: _____

By: _____

Its: _____

(Seal)

Co-Surety: _____

By: _____

Its: _____

(Seal)

[ADD APPROPRIATE CO-SURETY ACKNOWLEDGMENTS]

ADDITIONAL OBLIGEE RIDER

TO BE ATTACHED TO AND FORM PART OF Performance Bond No.

_____ dated _____, 2011, issued by _____
("Principal"), and _____ and _____ (the "Co-Sureties"), in favor of the LOS ANGELES TO PASADENA METRO BLUE LINE CONSTRUCTION AUTHORITY, also known as the METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY, a public entity of the State of California (the "Obligee").

IT IS HEREBY UNDERSTOOD AND AGREED THAT the Los Angeles to Pasadena Metro Blue Line Construction Authority, as trustee under that certain Los Angeles - Pasadena Metro Blue Line Governmental Purpose Property Trust Agreement dated as of August 19, 1999; the Los Angeles County Metropolitan Transportation Authority, as settlor under that certain Los Angeles - Pasadena Metro Blue Line Governmental Purpose Property Trust Agreement dated as of August 19, 1999; and the California Department of Transportation (Caltrans) are hereby added as Additional Obligees under the above-described bond.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the above-described bond is hereby amended to include the following Additional Obligee clause:
"In no event shall Co-Surety be liable to the Obligees in the aggregate for more than the Bonded Sum as a result of the Additional Obligee Rider, nor shall it be liable except for a single payment for each single breach or default. At Co-Surety's election, any payment due to any Obligee may be made by its check issued jointly to all."

IT IS FURTHER UNDERSTOOD AND AGREED that nothing herein contained shall be held to change, alter or vary the terms of the above-described bond except as hereinbefore set forth.

SIGNED, SEALED AND DATED this ____ day of _____, 2011.

"CO-SURETY" _____

By: _____

"CO-SURETY"

Its: _____

By: _____

Its: _____

"PRINCIPAL"

By: _____

Its: _____

"OBLIGEE"

METRO GOLD LINE FOOTHILL EXTENSION
CONSTRUCTION AUTHORITY

By: _____

Its: _____

[include co-surety powers of attorney and notary acknowledgments for co-surety signatures]

APPENDIX 4-2

PAYMENT BOND

[EXECUTED COPY OF PAYMENT BOND TO BE ATTACHED TO EXECUTED CONTRACT AS APPENDIX 4-2]

Phase 2A Alignment Project

Bond No. _____

WHEREAS, the Los Angeles to Pasadena Metro Blue Line Construction Authority, also known as the Metro Gold Line Foothill Extension Construction Authority (“Obligee”), has awarded to _____, a _____ (“Principal”), a Design-Build Contract for the Phase 2A Alignment Project dated as of _____, 2011 (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond guaranteeing payment of claims as described in Civil Code section 3248 concurrently with delivery to Obligee of the executed Contract.

NOW, THEREFORE, Principal and _____, a _____, and _____, a _____ (collectively “Co-Sureties”), each an admitted surety insurer in the State of California, are held and firmly bound unto Obligee in the amount of \$_____ [*insert 100% of the Total Amount*] (the “Bonded Sum”), for payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall fail to pay any of the persons named in Civil Code section 3181, or any amounts due under the Unemployment Insurance Code, or any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of Principal and subcontractors pursuant to the Unemployment Insurance Code section 13020, with respect to the Work, then Co-Sureties shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void.

The Contract Documents (as defined in the Contract) are incorporated by reference herein.

No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Co-Sureties under this bond and Co-Sureties hereby waives notice thereof.

The Co-Sureties agree to empower a single representative with responsibility for coordinating among all of the Co-Sureties with respect to this bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail with return receipt requested) to Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____, and the initial agent for service of process shall be _____.

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

IN WITNESS WHEREOF, Principal and Co-Sureties have caused this bond to be executed and delivered as of _____, 2011.

Principal: _____

By: _____

Its: _____

(Seal)

Co-Surety: _____

By: _____

Its: _____

(Seal)

Co-Surety: _____

By: _____

Its: _____

(Seal)

[ADD APPROPRIATE CO-SURETY ACKNOWLEDGMENTS]

ADDITIONAL OBLIGEE RIDER

TO BE ATTACHED TO AND FORM PART OF

Payment Bond No. _____ dated _____, 2000, issued by

_____ ("Principal"), and _____ and

_____ (the "Co-Sureties"), in favor of the LOS ANGELES TO PASADENA METRO BLUE LINE CONSTRUCTION AUTHORITY, also known as the METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY, a public entity of the State of California (the "Obligee").

IT IS HEREBY UNDERSTOOD AND AGREED THAT the Los Angeles to Pasadena Metro Blue Line Construction Authority, as trustee under that certain Los Angeles - Pasadena Metro Blue Line Governmental Purpose Property Trust Agreement dated as of August 19, 1999; the Los Angeles County Metropolitan Transportation Authority, as settlor under that certain Los Angeles - Pasadena Metro Blue Line Governmental Purpose Property Trust Agreement dated as of August 19, 1999; and the California Department of Transportation (Caltrans) are hereby added as Additional Obligees under the above-described bond.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the above-described bond is hereby amended to include the following Additional Obligee clause:

"In no event shall Co-Surety be liable to the Obligees in the aggregate for more than the Bonded Sum as a result of the Additional Obligee Rider, nor shall it be liable except for a single payment for each single breach or default. At Co-Surety's election, any payment due to any Obligee may be made by its check issued jointly to all."

IT IS FURTHER UNDERSTOOD AND AGREED that nothing herein contained shall be held to change, alter or vary the terms of the above-described bond except as hereinbefore set forth.

SIGNED, SEALED AND DATED this ____ day of _____, 2011.

"CO-SURETY" _____

By: _____

Its: _____

"CO-SURETY"

By: _____

Its: _____

"PRINCIPAL"

By: _____

Its: _____

"OBLIGEE"

METRO GOLD LINE FOOTHILL EXTENSION
CONSTRUCTION AUTHORITY

By: _____

Its: _____

[include co-surety powers of attorney and notary acknowledgments for co-surety signatures]

APPENDIX 4-3

GUARANTEE

*[EXECUTED COPY OF GUARANTEE TO BE ATTACHED TO EXECUTED
CONTRACT AS APPENDIX 4-3]*

APPENDIX 5
SUBCONTRACT SCHEDULE

NAME, ADDRESS, TELEPHONE NO. SUBCONTRACTOR	DESCRIPTION OF SUBCONTRACT WORK	DOLLAR AMOUNT OF SUBCONTRACT	EST. TIME OF PERFORMANCE

DESIGN-BUILDER: _____

DATE: _____

APPENDIX 6
SBE PROGRAM

**S M A L L B U S I N E S S
E N T E R P R I S E
(S B E) P R O G R A M**

*METRO GOLD LINE FOOTHILL EXTENSION
CONSTRUCTION AUTHORITY*

October 27, 2010

Statement of Objectives/Policy

The Metro Gold Line Foothill Extension Construction Authority (“Authority”) shall provide an equal opportunity for all small business firms to participate on its non-federally funded or assisted (i.e. state and locally funded) design-build contracts (“Eligible Contracts”) by support, commitment, and implementation of its Small Business Enterprise (“SBE”) Program.

The objectives of the SBE Program include:

1. To ensure nondiscrimination in the award and administration of Eligible Contracts;
2. To encourage greater availability, capacity development, and contract participation by Small Business Enterprises in Authority contracts;
3. To create a more level playing field on which SBEs can compete fairly for Eligible Contracts;
4. To ensure that only firms that fully meet SBE certification eligibility standards are permitted to participate as SBEs;
5. To help remove barriers to the participation of SBEs in Eligible Contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the SBE Program.

This policy is, in part, intended to further the Authority’s compelling interest to ensure that it is neither an active nor passive participant in marketplace discrimination; promote equal opportunity for all segments of the contracting community; and further the public interest to foster effective broad-based competition from all segments of the contractor, consultant and vendor community, including, but not limited to, disadvantaged business enterprises, emerging business enterprises, minority business enterprises, woman business enterprises, small business enterprises, microbusiness enterprises, disabled veteran business enterprises and local business enterprises.

The Chief Executive Officer of the Authority will delegate this responsibility to an SBE Compliance Auditor. In that capacity, the SBE Compliance Auditor is responsible for implementing all aspects of the SBE program.

The Authority will disseminate this policy statement to all components of the organization. In addition, the Authority will distribute this statement to SBE and non-SBE communities and business organizations. Distribution will be accomplished through posting on the Authority website, and publication in vendor and small business newsletters as Authority determines is necessary or advisable.

Date

Habib Balian
Chief Executive Officer

TABLE OF CONTENTS

Statement of Objectives/Policy

I. GENERAL REQUIREMENTS

A. Objectives	1
B. Applicability	1
C. Non-Discrimination Requirements	1
D. Record Keeping Requirements	1
E. Contract Assurance.....	1

II. RESPONSIBILITY FOR SBE PROGRAM IMPLEMENTATION

A. SBE Compliance Auditor.....	2
B. Other Support Personnel	2

III. ADMINISTRATIVE AND PERFORMANCE REQUIREMENTS

A. SBE Program Updates.....	4
B. Policy Statement	4
C. Prompt Payment Mechanisms and Enforcement	4
D. Directory.....	4
E. Monitoring and Enforcement Mechanisms	4
F. Good Faith Efforts when Replacing SBEs	6

IV. GOALS, GOOD FAITH EFFORTS, PROPOSALS AND COUNTING

A. No Set-Asides or Quotas	7
B. Contract Goals	7
C. Proposer Subcontractor Listing and SBE Subcontractor Documentation Requirements	7
D. Good Faith Efforts Procedures.....	9
E. Administrative Reconsideration.....	10
F. Counting SBE Participation	10

V. CERTIFICATION STANDARDS AND PROCEDURES

A. Certification Standards	13
B. Updates and Changes	14

I.

GENERAL REQUIREMENTS

A. Objectives

The objectives are found in the policy statement on the first page of this Program.

B. Applicability

The Authority is the recipient of funds from a variety of sources, including non-federal funds from state, county, and local sources.

This Program sets forth the policies and procedures to be implemented by the Authority to ensure that small businesses shall have the opportunity to participate in the Authority's Eligible Contracts.

C. Non-discrimination Requirements

The Authority shall not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin.

In administering its SBE Program, the Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the SBE Program with respect to individuals of a particular race, color, sex, or national origin.

D. Record Keeping Requirements

Each Prime Contractor under an Eligible Contract ("Design-Builder") will generate reports on SBE participation to Authority executive management in the manner and at the times called for by this Program and the Contract. These reports and other available information germane to the Program will be maintained by the Compliance Auditor.

E. Contract Assurance

The Authority, and Design-Builders, will ensure that language designed to effectuate the Program and ensure compliance therewith shall be placed in Eligible Contracts and their subcontracts.

II.

RESPONSIBILITY FOR SBE PROGRAM IMPLEMENTATION

A. SBE Compliance Auditor (“Compliance Auditor”)

The Chief Executive Officer shall designate an individual as SBE Compliance Auditor:

The Compliance Auditor is responsible for developing, implementing and monitoring the SBE program, in coordination with other appropriate officials. The duties and responsibilities of the Compliance Auditor may include as directed the following:

1. Develops, implements and monitors, with participation by legal counsel, the SBE Program document, keeping it up-to-date with the current business environment and the latest revisions to the applicable governmental law and regulations;
2. Gathers and reports statistical data and other information for Authority Board;
3. Reviews Eligible Contracts for compliance with this Program;
4. Ensures that bid notices and requests for proposals for Eligible Contracts are available to SBEs in a timely manner;
5. Analyzes the Authority’s progress toward attainment and identifies ways to improve progress;
6. Participates in any pre-bid meetings for Eligible Contracts;
7. Advises the CEO and the Authority Board of Directors on SBE matters and achievement;
8. Monitors that SBEs benefited by the program are certified according to the criteria set by the Authority;
9. Provides outreach to SBEs and community organizations to advise them of opportunities.

B. Other Support Personnel

The Chief Executive Officer (“CEO”), and as he may designate, the General Counsel, chief contracting officer, chief financial officer and other support personnel shall assist the Compliance Auditor in implementing the program. The CEO in any particular set of procurement documents may make changes to this Program language,

consistent with its intent, where he deems it reasonably necessary to facilitate the Program and the procurement.

III.

ADMINISTRATIVE AND PERFORMANCE REQUIREMENTS

A. SBE Program Updates

The Authority will update the SBE Program when substantial changes are warranted to comply with governmental law and regulation or the Authority Board of Directors directives. Any updates or changes of any nature made by the Authority to this Program from time-to-time shall be deemed contemporaneously incorporated by reference into any existing Eligible Contracts which are subject to this Program.

B. Policy Statement

The Policy Statement is elaborated on the first page of this program.

C. Prompt Payment Mechanisms and Enforcement

Authority Contracts subject to this Program shall include provisions for prompt payment mechanisms and monitoring and enforcement mechanisms related thereto.

D. Directory

While the Authority does not itself certify SBEs, the Compliance Auditor will endeavor to maintain a record that can be provided to prospective bidders of contact information for the designated entities set forth in sec. V.A. hereto that do perform SBE certifications.

E. Monitoring and Enforcement Mechanisms

The Authority monitoring and enforcement mechanisms to ensure compliance with SBE requirements may include:

1. Taking action with respect to any false, fraudulent, or dishonest conduct in connection with the Program under its own legal authority, including responsibility determinations in future contracts, or by referral to other governmental bodies.
2. Applying the full range of contract remedies available to the Authority in the event of breach or default to acts of non-compliance with the SBE program.
3. The Authority, in conjunction with the Prime Contractor on design-build procurements (also referred to herein as "Design-Builder") will also provide a monitoring and enforcement mechanism to verify that work committed to SBEs at contract award and subsequently

are actually performed by the SBEs. This will be accomplished by the following:

a) Pre-Construction (Kick-off) Meeting

Both the Design-Builder and any identified SBE Subcontractor(s) or a representative of each firm shall attend any 'kick-off' meeting as designated by the Compliance Auditor concerning SBE requirements and other matters, prior to or soon after Notice to Proceed is issued.

b) Monthly Expenditure Plan

The Design-Builder shall submit to Authority a monthly expenditure plan in calendar form for each of its approved SBE Subcontractors (which term includes suppliers) within 30 days of Notice to Proceed. As the work proceeds and new or additional SBEs are anticipated to commence performance of work in a succeeding month, those SBEs shall be reflected in the prior month's plan. The plan shall be updated to incorporate any schedule changes, change notices and other authorized changes to the Design-Build contract affecting each SBE's work. A revised plan shall be submitted within 30 days from the incorporation of the change. The plan shall include the identification of the particular SBE, its general work assignment, and the planned expenditures over the life of the particular subcontract (which should equal the dollars committed to each SBE Subcontractor) and shall be developed according to the approved project schedule.

c) Executed SBE Subcontract Agreements

The Design-Builder shall submit to the Authority copies of all executed SBE subcontract agreements and/or SBE purchase orders (PO) within ten (10) days after full execution of the subcontract or purchase order. The Design-Builder shall be responsible for informing the Subcontractors of all relevant SBE Program requirements and as specified by the Authority.

4. So that the Authority will be timely apprised of actual payments to SBE firms for work committed to them at the time of contract award, Design-Builder shall submit on a monthly basis the Summary of Subcontractors Paid Report in a form approved by Authority.

Failure to timely submit the reports may result in, among other things, the imposition of a penalty of \$100 per day for each report overdue.

The SUMMARY OF SUBCONTRACTORS PAID REPORT, includes the following information:

- a. Name of each SBE Subcontractor.
- b. General work assignment of each SBE Subcontractor.
- c. The specific portion of work executed by each SBE Subcontractor during the reporting period.
- d. The dollars committed to each SBE Subcontractor.
- e. The dollars paid to each SBE Subcontractor during the reporting period.
- f. The dollars paid to date for each SBE Subcontractor.
- g. The dollars paid to the SBE Subcontractor because of a change order or other cost modification.
- h. The dollars paid to date as a percentage of the total commitment to each SBE Subcontractor.
- i. Date of last progress payment.
- j. Invoice amount & Invoice Date.
- k. Invoice number corresponding to last payment to subcontractor.

F. Good Faith Efforts when Replacing SBEs

The Authority will require a Design-Builder to make good faith efforts to replace a SBE Subcontractor that is terminated or has otherwise failed to complete its work on a subcontract with another certified SBE.

In such a situation, prior approval by the Authority is required of any contractor proposed to replace the SBE. The Design-Builder is required to provide copies of the proposed new or amended subcontracts. If the proposed replacement contractor is not a SBE, the Authority also requires the Design-Builder to submit documentation of their good faith efforts to have obtained an SBE replacement.

IV.

GOALS, GOOD FAITH EFFORTS, PROPOSALS AND COUNTING

A. No Set-Asides or Quotas

The Authority does not use set-asides, quotas or local preference, in any way in the administration of this SBE program.

B. Contract Goals

The Authority may establish contract goals only on those Eligible Contracts that have subcontracting possibilities. The contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of SBEs to perform the particular type of work.)

The Authority will express the Authority's contract goals as a percentage of the total amount of an Eligible Contract.

Compliance Auditor will review all Eligible Contracts to determine the extent of subcontracting opportunities and SBE availability for determining reasonable SBE contract goals.

C. Proposer Subcontractor Listing and SBE Subcontractor Documentation Requirements

For design-build project procurements, primarily because the contractor selection process occurs prior to completion of the design, it is impractical to require proposers ("Proposers") to list all SBE Subcontractors for the entirety of the Work at the time of the proposal, when the contractors are unable to assess the true cost of the work and risks inherent in the Project due to the incomplete design. Proposers will not be required to list all Subcontractors prior to the award of the contract except as otherwise provided by a Request for Proposal.

In design-build projects, in addition to listing any identified major Subcontractors as may be required by the RFP, each Proposal shall include the comprehensive SBE Subcontracting Plan, in accordance with the requirements set forth below.

SBE Subcontracting Plan Requirements

Among the purposes of the SBE Subcontracting Plan are to set forth Proposer's plan for achievement of the anticipated participation levels set forth in the Requests for Proposals, to ensure an effective method to achieve those levels and for reporting to Authority regarding SBE participation.

1. Participation Levels

The SBE Subcontracting Plan shall include:

- a. The estimated percentage participation levels of SBE subcontracts, to be awarded during each fiscal year of the contract;
- b. The areas of Work, with reference to discrete items if feasible, anticipated to be subcontracted to SBE firms during each fiscal year;
- c. In narrative form, the efforts made by the Proposer, and efforts it would undertake if awarded the Contract, to break down contract opportunities into economically feasible units, where appropriate, to facilitate SBE participation;
- d. A commitment to negotiate in good faith with interested SBEs, and not rejecting SBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

2. Other SBE Subcontracting Plan Elements

The SBE Subcontracting Plan shall:

- a. Describe the competitive procedures and methods planned to procure SBE subcontracts for services, materials and products not yet listed in the proposals;
- b. Indicate the basis of proposal evaluation and selection of said unlisted subcontractors and suppliers;
- c. Describe any other affirmative steps taken or to be taken to ensure nondiscriminatory results and practices in the letting of subcontracts;
- d. Describe contemplated efforts to advertise in various media potential SBE subcontracting opportunities;
- e. Describe contemplated means of notifying potential SBEs to determine their interest in subcontract opportunities and plans for follow-up on initial solicitations of interest;
- f. Describe plans for effectively using the services of available business enterprise and SBE organizations; contractors groups; local, state and federal business assistance offices;

or other organizations that provide assistance in the recruitment and placement of SBE subcontractors;

- g. Describe the procedures anticipated to make available to prospective SBEs adequate information about the plans, specifications and requirements of the contract;
- h. Identify efforts the Proposer would make to assist interested SBEs in obtaining bonding, lines of credit, or insurance required by the Authority or Proposer;
- i. Describe how major Subcontractors will participate in a successful Proposer's efforts to achieve the contract SBE goal, and how the Proposer will monitor their effective participation;
- j. Set forth specific corrective steps to be taken if actual SBE utilization were to lag behind Proposer's SBE commitment;
- k. Describe any efforts for reporting to Authority as to SBE solicitation and participation, beyond those reporting requirements called for by the Contract and this Program;
- l. A Proposer may, to the extent known, identify specific SBE subcontractors it will commit to utilize (written documentation thereof to be provided if requested by Authority).

The successful Proposer may be required by the Authority to update the Plan from time to time, to reflect changed circumstances and new information or otherwise as directed by Authority.

D. Good Faith Efforts Procedures

As an element of responsiveness, the obligation of the Proposer is to make good faith efforts with respect to SBE participation and the Authority's contract goal. The Proposer can demonstrate that it has done so (i) by committing to meet or exceed the contract goal, or (ii) if its proposed SBE participation level is below the goal, by documenting good faith efforts it has made and would make to reach the goal.

The Compliance Auditor and any contract compliance officers are responsible for determining whether a Proposer who has not met the contract goal has documented sufficient good faith efforts, whether in its SBE Subcontracting Plan or otherwise, to be regarded as responsive.

Failure to satisfy the documentation requirements described in this Subpart shall render a Proposal non-responsive.

E. Administrative Reconsideration

Within three (3) working days of being informed by Authority that it is not responsive because it has not documented sufficient good faith efforts, a Proposer may in writing request administrative reconsideration, following a process to be set by the CEO that is similar to reconsideration with respect to other responsiveness criteria.

As part of this reconsideration, the Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Proposer will have the opportunity to meet in person with the Authority's designated reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Authority will send the Proposer a written decision on reconsideration, explaining the basis for finding that the Proposer did or did not meet the goal or make adequate good faith efforts to do so.

F. Counting SBE Participation

The Authority will count the SBE participation in a proposal and on the contract, expressed as an estimated dollar value of the SBE work, and will require the Design-Builder to provide reporting information to allow Authority to verify its achieved participation levels.

SBE participation levels shall be calculated as follows:

a) Eligible SBE

Once a firm is determined to be an eligible SBE, the total dollar value of the contract awarded to the SBE is counted toward the applicable participation level.

b) SBE as a Joint Venture Participant

When an SBE is a participant in a joint venture that proposes for or is awarded a contract, the portion of the total dollar value of the contract equal to the percentage of the ownership and control of the SBE partner in the joint venture is counted toward SBE participation levels

c) Performing Commercially Useful Function

(1) Only expenditures to SBEs that perform a commercially useful function in the work of a contract will count toward SBE participation levels. An SBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing,

managing, and supervising the work involved. To determine whether an SBE is performing a commercially useful function, the Authority shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

- (2) Consistent with normal industry practices, an SBE may enter into subcontracts. If an SBE subcontracts a significantly greater portion of the work of the contract than would be expected based on normal industry practices, the SBE shall be presumed not to be performing a commercially useful function. The Prime Contractor may present evidence to rebut this presumption to the Authority, such evidence may include information presented by the SBE.

d) Expenditures for Materials and Supplies

- (1) 60% of the expenditures for materials and supplies required under a contract and obtained from an SBE regular dealer, and 100% of such expenditures to an SBE manufacturer will count toward SBE participation levels.
- (2) For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment obtained by the contractor.
- (3) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone or petroleum products need not keep such products in stock, if it both owns and operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

e) Eligible Expenditures

The following expenditures to SBE firms that are not manufacturers or regular dealers will count toward SBE participation levels:

- (1) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services.

V.

CERTIFICATION STANDARDS AND PROCEDURES

A. Certification Standards

Eligible firms for participation under this program as an SBE must be a firm that is certified as an SBE i) by the State of California Departments of Transportation (“CALTRANS”) or General Services (“DGS”), or the Los Angeles County Metropolitan Transportation Authority (“MTA”), or the City of Los Angeles; or ii) by another recognized body acceptable to the Authority whose certification processes generally provide for the following:

An SBE is a for-profit business that has demonstrated, by a preponderance of the evidence, that it satisfies the following SBE program certification standards:

1. Business Size

- A. An SBE is a small business as defined using the Small Business Administration size standards at 13 CFR Part 121.
- B. Other elements of business size of a technical nature may be relevant and will be taken into account, as needed, on a case-by-case basis.

2. Quality of Ownership

- A. The ownership enjoyed by each of these individuals must be real, substantial and continuing, going beyond pro forma ownership, as represented in merely the ownership documents.
- B. Owner(s) contributions of capital or expense must be real and substantial.
- C. Other elements of quality of ownership of a technical nature may be relevant and will be taken into account, as needed, on a case-by-case basis.

3. Ownership Discretion and Control

- A. The business must be independent. Its viability must not depend on a relationship with another firm or firms.
- B. The business must not be subject to any formal or informal restrictions that limit the customary discretion of the owner(s).

- C. The owner(s) must possess the power to direct or change the direction of the management and policies of the firm, and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
- D. The owner(s) may delegate authority, but such delegations must be revocable and the owners must retain a managerial role and the power to hire and fire the person to whom they delegate.
- E. The owner(s) must have an overall understanding of (and managerial, technical competence & experience directly related to) the type of work in which the business is engaged and the firm's operations.
- F. Owners must possess all state or locally required licenses or credentials.
- G. Differences in remuneration between the owner(s) and other participants in the firm may be considered in determining the owner(s)' level of control.
- H. Owner(s) must work in the business in order to be considered as controlling the firm. They cannot engage in outside employment or other business interests that conflict with managing the firm, unless the firm is itself a part-time business.
- I. Other elements of ownership discretion and control of a technical nature may be relevant and will be taken into account, as needed, on a case-by-case basis.

B. Updates and Changes

SBEs whose participation on the work of the contract is counted toward the SBE participation goals shall inform the Authority promptly upon any change in its certification status. Any Design-Builder who becomes aware of such a change in certification status must promptly notify the Authority. The Authority may require periodic updates via affidavits, copies of certification letters or other evidence of the continuing status of contractors and subcontractors as certified SBEs.

APPENDIX 7

[Not Used]

APPENDIX 8

[NOT USED]

APPENDIX 9

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 200_, among the Los Angeles to Pasadena Metro Blue Line Construction Authority, also known as the Metro Gold Line Foothill Extension Construction Authority, a public entity of the State of California ("Authority"), _____ a _____ ("Design-Builder"), and _____ (collectively, the "Board Members"), with reference to the following facts:

A. Authority and Design-Builder have entered into a contract pursuant to Authority's Project, Design-Build Contract (the "Design-Build Contract"). Pursuant to the Design-Build Contract, Design-Builder agreed to furnish the design for and to construct the Project.

B. The Design-Build Contract provides for the establishment and operation of a Disputes Board (the "Board") to assist in resolving disputes and claims among Authority, Design-Builder and others in respect to the Project.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, the parties hereto agree as follows:

1. ESTABLISHMENT OF BOARD

1.1 The Board shall begin operation upon execution of this Agreement by Authority, Design-Builder and the first two Board Members, and shall terminate upon completion of all work required to be performed by the Board hereunder unless sooner terminated in accordance with this Agreement or applicable law. The Board shall initially consist of two members, one selected by Authority and one selected by Design-Builder. The first duty of the Board shall be to select its third member as provided in Section 16 of the Design-Build Contract. A copy of Section 16 is attached hereto as Exhibit A and is incorporated by reference herein.

1.2 Each member of the Board represents, warrants and covenants on his/her behalf that he/she:

(a) Is not an Affiliate or otherwise have a financial interest in the Design-Build Contract, the Project or the Foothill Extension in the outcome of any dispute decided hereunder, except for payment for serving on the Board;

(b) Has not been previously employed by Authority, Metro, Design-Builder or any Affiliate (including any work for such entity through an arrangement with his or her direct employer), within two years prior to the Proposal Date, except for fee-

based consulting services on other projects which are disclosed to all parties, and has not otherwise had financial ties to any party to the Contract during such period;

(c) Has not had substantial prior involvement in the Project or the Foothill Extension or relationship with any party, Metro or Affiliate of a nature which could affect his/her ability to impartially resolve disputes and does not know of any reason why he/she cannot be impartial in rendering decisions;

(d) Shall not accept employment by Authority, Metro or Design-Builder or any Affiliate during the term hereof and for as long thereafter as any obligations remain outstanding under the Contract Documents, except as a member of other disputes boards; and

(e) Shall not discuss employment, nor make any agreement regarding employment with Authority, Metro, Design-Builder or any Affiliate during the term hereof and for as long thereafter as any obligations remain outstanding under the Contract Documents.

1.3 Prior to hearing the first Dispute, and thereafter upon request of Authority or Design-Builder from time to time, and at least annually, each Board Member shall provide Authority and Design-Builder a declaration under penalty of perjury affirming that such member meets the qualifications set forth in section 1.2 hereof, and agrees to be bound by the terms of the Contract Documents. Each Board Member shall promptly notify Authority and Design-Builder if any circumstances are likely to prevent a prompt and fair hearing and decision or if the member fails to meet such qualifications. Any Board Member failing at any time to meet such qualifications shall be removed from the Board.

2. BOARD ORGANIZATION AND RESPONSIBILITIES

2.1 The Board is organized in accordance with Section 16 of the Design-Build Contract, for the purposes described therein. The Board is intended to fairly and impartially consider the Disputes under the Design-Build Contract, Subcontracts thereunder and other contracts relating to the Project placed before it and to provide written decisions for resolution of such Disputes. The Board Members shall perform the services necessary to participate in the Board's actions in accordance with this Agreement.

2.2 The Board Members shall visit the Site prior to commencement of construction, and after commencement of construction shall visit the Site periodically to keep abreast of construction activities and to develop a familiarity with the work in progress, or as may be deemed desirable or necessary in the consideration of any claim or dispute. A special Site visit shall be scheduled at the request of either party or any Board Member; provided that all reasonable efforts shall be made to allow issues to be raised at the regularly scheduled Site visits except where a special visit is warranted due to special circumstances such as the need to observe Site conditions before they

are disturbed. Representatives of Authority and Design-Builder shall have the right to accompany the Board on any such visit.

2.3 All Board Members are to act independently in the consideration of facts and conditions surrounding any Dispute. Seeking the Board Members' advice or consultation, ex parte, is expressly prohibited; provided, however, that either party may seek such advice or consultation from the entire Board, at a Board meeting, after first giving notice to all parties who might thereafter be parties before the Board in a Dispute involving that problem. A Board Member who has ex parte contact with a party or party representative shall be subject to removal from the Disputes Board for cause.

2.4 Board Members may withdraw from the Board upon delivery of written notice of withdrawal to Authority, Design-Builder and the other Board Members, which notice shall specify a withdrawal date at least 28 days following the date of delivery of the notice. Should the need arise to appoint a replacement Board Member, the replacement member shall be appointed in the same manner as provided by the Design-Build Contract for appointment of the original member. The selection of a replacement Board Member shall begin promptly upon notification of the necessity for a replacement and shall be completed within 28 days thereafter. The change in Board membership shall be evidenced by the new member's signature on this Agreement.

2.5 The Board Members acknowledge that Authority and Design-Builder have the right to require appointment of a new disputes review board to resolve future Disputes, which right may be exercised at any time by delivery of notice to such effect to the other party and to the Board Members. In such event a new agreement in the same form as this agreement will be executed establishing the new board, and except as otherwise mutually agreed by Authority and Design-Builder, the work to be performed by the Board established under this Agreement shall be limited to Disputes submitted to the Board before delivery of the notice requiring appointment of a new Board.

2.6 The personal services of the Board Member are a condition to receiving payment hereunder. No Board Member shall assign any of his or her work pursuant to this Agreement without the prior written consent of both Authority and Design-Builder.

2.7 Each Board Member, in the performance of his or her duties on the Board, is acting as an independent contractor and not as an employee of either Authority or Design-Builder. No Board Member will be entitled to any employee benefits.

3. HEARINGS AND DECISIONS

3.1 Each Dispute under the Design-Build Contract involving \$375,000 or less shall be heard by the Board or, subject to approval of both parties, the third Board Member, acting in their/his/her capacity as arbitrator(s) under the State Arbitration Act and the Regulations, as they may be amended from time to time. Authority and Design-Builder shall stipulate that the Board members (or third member, as appropriate) be appointed as such arbitrator(s). The Board (or third member, as appropriate) has

jurisdiction to determine whether the requirements of the Design-Build Contract, the State Arbitration Act and the Regulations have been met. For the convenience of the Board Members, current pertinent provisions of the State Arbitration Act and statutes referenced therein and of the Regulations are attached hereto as Exhibits B and C. If the third member is appointed as the sole arbitrator, he or she shall consult with both of the other Board Members in making his or her decision.

3.2 Each Dispute involving more than \$375,000 shall be heard by the Board as provided in Section 16 of the Design-Build Contract.

3.3 In general, the Board shall have the right to establish its own procedures and time limits, including the right to establish or to waive evidentiary rules and procedures, except for evidentiary rules pertaining to privilege. Each party shall retain the right to discovery as provided in the Design-Build Contract and to present its witnesses and evidence in its own discretion, within the parameters established by the Board.

3.4 Upon receipt by the Board of a notice of appeal, either from Design-Builder or Authority, the Board (or Board Member acting as arbitrator) shall convene a hearing to review and consider the matter as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Both Authority and Design-Builder are encouraged to provide exhibits, calculations, and any other pertinent material to the Board for review prior to the hearing. All such material shall concurrently be given to the other party.

3.5 The Board shall convene to consider questions presented to it and shall at the conclusion of each hearing either provide the Dispute Board Decision or advise the parties when the Dispute Board Decision will be forthcoming.

4. PROVISION OF DOCUMENTS TO BOARD

4.1 Design-Builder, with assistance of Authority, shall furnish to each Board Member one copy of all documents it might have, other than those furnished by Authority, which are pertinent to the performance of the Design-Build Contract and necessary to the Board's work.

4.2 Authority shall furnish each Board Member one copy of all Contract Documents, all Design Documents (following preparation thereof by Design-Builder and approval thereof by Authority) and other documents pertinent to the performance of the Design-Build Contract and necessary to the Board's work.

4.3 Each Board Member agrees to execute and deliver a confidentiality agreement as described in Section 19.1.1 of the Design-Build Contract with respect to copies of Escrowed Proposal Documents (EPDs) delivered to the Board.

5. EXPENSES

5.1 Except as otherwise provided in article 6, payment for services rendered by each Board Member and for their direct, non-salary expenses shall be calculated in accordance with the payment schedule for such Board Member agreed to among Authority, Design-Builder and the Board Member and shall be paid in accordance with Section 16.7 of the Design-Build Contract.

5.2 Invoices for payment for work completed shall be submitted no more often than once per month. Such invoices shall be in a format approved by Authority and accompanied by a general description of activities performed during this period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Board Member together with direct, non-salary expenses. Billings for expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data.

5.3 Each Board Member shall keep available for inspection, for a period of five years after final payment, the cost records and accounts pertaining to this Agreement.

6. DISPUTES INVOLVING OTHER PARTIES

6.1 The parties acknowledge that various third parties (including Subcontractors and the contractors for the Iconic Freeway Structure and Parking Facility Project) have agreed or will agree that the jurisdiction of the Disputes Board shall extend to disputes affecting such third parties. In general, such disputes shall be heard by the three Board Members, appointed as described above, in accordance with the terms of the Design-Build Contract, this Agreement and the contract between Authority and such third parties ("Such Other Design-Builders"). However, to the extent that the following rights are provided to Such Other Design-Builders by Authority, the parties agree that the membership of the Board may be modified with respect to disputes involving Such Other Design-Builders, as follows:

(a) Such Other Design-Builder may agree to use the existing Board with respect to the dispute. (This option shall be deemed selected (i) unless Such Other Design-Builder delivers written notice to the Board that it intends to select a qualified consultant/Board Member with respect to such dispute, which notice is delivered to the Board within seven days after delivery of written notice to Such Other Design-Builder describing the dispute and stating that Such Other Design-Builder is a necessary party to the dispute resolution procedure, or (ii) if Such Other Design-Builder fails to select a qualified consultant/Board Member, as described below, within seven days after delivery of notice of intent to select such person, or after notification of Authority's or Design-Builder's disapproval of the Board Member.)

(b) If Such Other Design-Builder elects not to use the existing Board as provided above, then:

(i) Such Other Design-Builder may select an advisor who shall act as a non-voting consultant to the Board with respect to the dispute; or

(ii) Such Other Design-Builder may select a fourth Board Member who shall have the right to participate in the selection of a fifth Board Member and to participate in the decision-making process hereunder with respect to such dispute; or

(iii) With respect to disputes which do not involve the Design-Builder, Such Other Design-Builder shall have the right to appoint a Board Member who shall replace the Board Member appointed by the Design-Builder.

In selecting a non-voting consultant/Board Member, Such Other Design-Builder is encouraged to appoint the same individual for all disputes, so that such individual will have the opportunity to develop expertise and familiarity regarding the Project.

6.2 Any non-voting consultant or Board Member selected by Such Other Design-Builder shall be required to meet the qualifications for Board Members set forth herein and shall execute and agree to be bound by the terms of this Agreement as to disputes involving Such Other Design-Builder. In the event that option (ii) is selected, Such Other Design-Builder's selection of the fourth Board Member shall be subject to Authority's and Design-Builder's approval, and the fifth Board Member shall be selected by a majority vote of the four Board Members. Disputes regarding appointment of such fifth Member shall be subject to the dispute resolution procedures set forth in Section 16.6 of the Design-Build Contract, and shall be decided by the original three Board Members.

6.3 Expenses of the Disputes Board payable by Such Other Design-Builder shall be as follows:

(a) In the event that option 6.1(a) is selected, Such Other Design-Builder shall share equally the costs and expenses for the Disputes Board determined in accordance with Section 16.7 of the Design-Build Contract, in which case Design-Builder will be responsible for paying amounts invoiced by the Disputes Board members and invoicing the other participants for their share of the invoiced amounts; or

(b) In the event that option 6.1(b)(i), (ii) or (iii) is selected, Such Other Design-Builder shall be responsible for paying the costs and expenses for the consultant or for the Board Member which it appointed, as well as a proportionate share of the costs and expenses of the third and fifth members (subject to the right to be reimbursed for such costs and expenses as the prevailing party, as may be awarded in accordance with Section 16.7 of the Design-Build Contract) together with a proportionate share of any common costs allocable to the parties to a dispute under Section 16.7 of the Design-Build Contract. In determining the amount of any such payment or reimbursement of costs and expenses, the Board Members are specifically directed to consider the benefit accruing to Such Other Design-Builder resulting from the Board's expertise and familiarity with the Project and the expenditures previously incurred by Authority and Design-Builder to develop such expertise and familiarity. In such case Design-Builder will be responsible for paying amounts invoiced by the

Disputes Board members for the common costs and invoicing the other participants for their share of such amounts.

6.4 The provisions set forth in this Section 6 shall supersede any provisions to the contrary contained in Section 16 of the Design-Build Contract.

7. MISCELLANEOUS

7.1 Capitalized terms used but not defined herein shall have the meanings set forth in the Design-Build Contract.

7.2 (a) The parties intend for Section 16 and the other terms of this Agreement to be complementary. Except as otherwise specifically provided herein, in the event of any conflict between this Agreement and said Section 16, Section 16 shall control.

(b) With respect to Claims and disputes up to \$375,000 under the Design-Build Contract, the parties intend for this Agreement and Section 16 of the Design-Build Contract to be complementary with the terms of the Arbitration Act and Regulations. With respect to Disputes up to \$375,000, in the event of any conflict between this Agreement and the terms of the Arbitration Act and Regulations, this Agreement shall control to the extent that the requirements of the Arbitration Act and Regulations are waivable; otherwise the Arbitration Act and Regulations shall control.

7.3 Notices hereunder shall be sent as provided in Section 20.12 of the Design-Build Contract. The addresses for the Board Members are set forth on the signature pages hereof.

7.4 This Agreement shall be governed by and construed in accordance with the law of the State of California.

7.5 No Board member shall release any material or data prepared or received by the Board under this Agreement to any other person or agency. All press releases or information to be published in newspapers, magazines, or electronic media, shall be distributed only after first being authorized by Authority and Design-Builder.

7.6 The parties hereto mutually understand and agree that all Board Members, in the performance of their duties on the Board, are acting in the capacity of independent contractors and not as employees of Authority or Design-Builder. The Board Members shall have no personal or professional liability arising from the services provided under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BOARD MEMBERS

Address: _____

Address: _____

Address: _____

DESIGN-BUILDER

By: _____

Title: _____

By: _____

Title: _____

AUTHORITY

LOS ANGELES TO PASADENA METRO
BLUE LINE CONSTRUCTION AUTHORITY,
also known as METRO GOLD LINE FOOTHILL
EXTENSION CONSTRUCTION AUTHORITY

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____
General Counsel

[Exhibits to be Provided Prior to Execution]

APPENDIX 10

DESIGNATION OF INITIAL REPRESENTATIVES

Authority Representatives:

- Chief Executive Officer (currently Habib Balian)
- Additional representatives designated in writing by the Chief Executive Officer for specific matters

Design-Builder Representatives:

- Principal On-Site (currently _____ [*to include name in execution version*])
- Additional representatives designated in writing by the Principal On-Site for specific matters

APPENDIX 11

MTA TRUST AGREEMENT PROVISIONS

The following terms are pass-through provisions required by the Trust Agreement. As used in this Appendix 11, "Contract," "Design-Builder" and "Indemnified Parties" shall have the meanings set forth in Contract Appendix 1. All other capitalized terms contained in this Appendix 11 shall have the meanings set forth in the Trust Agreement.

1. Design-Builder acknowledges and agrees:

(a) that any Liens encumbering any of the Project Assets arising out of or in connection with the Contract shall be extinguished and of no further force and effect as to Phase I Project Assets upon the Phase I Project Assets Distribution Date and as to Phase II Project Assets upon the Phase II Project Assets Distribution Date;

(b) that the Payment and Performance Bonds shall name Trustee and Settlor as third party beneficiaries thereof;

(c) that the Trustee shall have the right to promptly discharge (or cause to be discharged) any mechanic's or materialman's liens or claims of such lien, if any, filed or otherwise asserted against any of the Project Assets and all stop notices;

(d) that the Trustee and the Settlor as third-party beneficiaries of the Contract, shall have the right to enforce, and shall have the benefit of, any and all guaranties, warranties, bonds and the like contained or otherwise applicable to the Contract and any work undertaken or materials purchased pursuant thereto;

(e) that any occurrence or transaction which gives rise to a claim under the Contract shall also be deemed an occurrence or transaction for purposes of filing a claim pursuant to Section 900 *et seq.* of the California Government Code; and

(f) that no provision of the Contract shall toll, waive or modify the provisions of California Government Code Section 900 *et seq.*

2. Design-Builder acknowledges and agrees that the following provision required by Section 5.3.3 of the Trust Agreement shall be a part of the Contract and binding on Design-Builder:

"At the request of the Authority, the MTA has previously provided to the Authority copies of certain preliminary design documents for the Project ("Existing Preliminary Design Documents") prepared by the MTA's design engineer, Engineer Management Consultants ("EMC"), which were not completed or signed by EMC and in all respects are preliminary in nature and should not be relied upon for any purpose whatsoever (including, the design and construction of the Project). Copies of some or all of the Existing Preliminary

Design Documents may have been or may be provided to you in connection with this Contract. Design-Builder shall have no right to rely upon the Existing Preliminary Design Documents in any manner whatsoever (including, the design and construction of the Project) and the Design-Builder represents, warrants and covenants that the Design-Builder will not rely upon the Existing Preliminary Design Documents in any manner whatsoever (including, the design and construction of the Project) and will do its own independent investigation of all matters related to this Contract and the Existing Preliminary Design Documents. The Design-Builder waives and releases the MTA and EMC (and each of their respective officers, directors, agents, contractors and employees) from any and all claims, liabilities, losses, damages, costs and expenses arising out of or in connection with the Existing Preliminary Design Documents. In connection with the release and waiver set forth in the preceding sentence:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The MTA and EMC are each third party beneficiaries of the provisions of this paragraph and shall have the right to enforce the waiver and release contained in this paragraph against the Design-Builder.

