

GENERAL CONDITIONS PUBLIC WORKS (FORM A)

GC-01 Glossary Of Terms

Terms used in this Contract, when capitalized, shall have the meanings set forth in this Article. Additional terms may be defined in other Contract Documents.

Term	Definition
*	Each Article marked with an asterisk (*) must be included in all Subcontracts.
Acceptance	Metro's acceptance of completion of the Work, or any element thereof, by the issuance of a Certificate of Substantial Completion.
Approve (or Approval)	The written action taken by Metro's Authorized Representative that authorizes Contractor to proceed with specific actions relating to the Work
Authorized Representative	Person or firm authorized or empowered by Metro or other Governmental Entity to act on its behalf, subject to limits expressly set forth in the Contract or in any written delegation by the Contracting Officer.
Beneficial Occupancy	The taking possession of a portion of the Work by Metro for its use and/or occupancy on other than a temporary or Emergency basis.
Certificate of Final Acceptance	Certificate from Metro that the Work has been Finally Accepted.
Certificate of Substantial Completion	Certificate from Metro that the Work, or an element thereof, has been Substantially Completed.
Change or Changed Work	Addition, deletion or other revision to the Work within the general scope of the Contract.
Change Notice (CN)	A document issued by Metro to Contractor describing a proposed Change and requesting submittal of a Cost and Schedule Proposal (CSP).
Change Order (CO)	A written order by Metro's Contracting Officer directing Changed Work.
Claim	A written demand by Contractor for (a) a time extension; (b) an adjustment or interpretation of Contract terms; (c) payment of money; or (d) other legal, equitable or contractual relief.
Commencement Date	The commencement date of all performance. All dates and Schedules, including Contract Time, are measured from the Commencement Date.
Compensable Delay	An Excusable Delay that is eligible for compensation.
Construction Documents	Shop Drawings, Working Drawings, Samples and other documents produced or provided by Contractor for construction of the Project.
Construction Equipment	Contractor-furnished equipment required and used by Contractor to perform the Work, but not affixed to or incorporated into the Work.
Construction Manager (CM)	Metro's Authorized Representative designated by Metro to monitor construction of the Project.
Contract Drawings	Plans, profiles, typical and general cross-sections, elevations, schedules and details/diagrams depicting the locations, dimensions, character, properties, requirements, and details of the Work.
Contract Price	The total compensation payable to Contractor under the Contract for the

Term	Definition
	completion of the Work.
Contract Time	The number of calendar days from Commencement Date to Scheduled Completion Date for completion of the Work and Final Acceptance, including all authorized time extensions.
Contracting Officer	The CEO of Metro, or Metro's primary Authorized Representative.
Contractor's Representative	Contractor's executive representative authorized to act and direct activities on behalf of Contractor, and to implement instructions from Metro.
Cure Notice	Written notice from Metro to Contractor to cure a Deficiency or Default.
Days	Unless otherwise stated, "days" shall mean calendar days.
Deficiency	Defect in Work or Goods, or deviation from or failure to meet Contract requirements, applicable codes or standards (in design, construction, materials, workmanship, functionality or performance).
Delay	Any delay to the Schedule.
Differing Site Condition (DSC)	Any substance, subsurface/latent condition, or other physical condition at the Worksite, which is of an unusual nature and whose presence differs materially from that which Contractor had considered or reasonably anticipated as being an inherent condition (or an element of) its Work, based on all the information made available to Contractor relating to the Project.
Dispute	A disagreement between the parties as to the merits, amount or remedy arising out of an issue in controversy, which arises out of the Contracting Officer's determination of a Claim and the Contractor's dispute of the determination.
Effective Date	The date the Contract becomes effective and enforceable. Note: This may not be the commencement date of Work (see "Commencement Date").
Emergency	A sudden, unforeseen occurrence (e.g. Force Majeure event) with the potential to adversely affect safety, the Work, or adjacent property; interrupt the provision of daily transit service; or cause catastrophic failure of revenue-producing equipment or facilities.
Environmental Laws	All Laws applicable to Metro or the Work, now or hereafter in effect relating to (a) the environment, (b) emissions, discharges, Releases or threatened Releases into the environment, including into the air, surface water or ground water or onto land, (c) manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances; (d) the reporting, licensing, generation, manufacture, storage, disposal, transportation or Investigation of Hazardous Substances or Releases, and (e) protection of public health, public welfare or the natural environment including those relating to industrial hygiene, safety or health. "Release" as used in this definition means any releasing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping into the environment any Hazardous Substance in violation of or resulting in a violation of any applicable Environmental Law. "Investigation" as used in this definition means any actions taken (including inquiry, examination, sampling, monitoring, analysis, exploration, research, inspection of the Worksite or any affected properties) to characterize or evaluate the nature, extent or impact of a Hazardous Substance or a Release.

Term	Definition
Equipment	Machinery, vehicles, systems, assemblies, products, and parts used or provided by Contractor (does not include Construction Equipment).
Excusable Delay	A Schedule delay incurred by Contractor that is eligible for an extension of time to complete the Work.
Final Acceptance	Acceptance by Metro of all Work under the Contract by the issuance of a Certificate of Final Acceptance.
Float	The amount of time a non-critical activity can be started late or completed late without impacting the critical path and project completion date.
Force Majeure	Any of the following events: <ol style="list-style-type: none"> 1. An earthquake exceeding 3.5 on the Richter scale epicentered within 25 miles of the location of damage on the Worksite; 2. An epidemic, quarantine restrictions, blockade, rebellion, war, riot, civil commotion, act of a public enemy, act of sabotage, act of terrorism, or any malicious or other acts intended to cause loss or damage; 3. Physical destruction or damage caused by fire, lighting, explosion, drought, rain, flood, hurricane, storm or action of the elements or other acts of God; 4. Strike, labor dispute, freight embargos, work slowdown, work stoppage, secondary boycott, walk-out or other similar occurrence.
Goods	Equipment, material and other products.
Government Entity	Federal, state, or local government, or judicial or administrative agency, authority, body or entity other than Metro, having subject matter jurisdiction by Law or consent of Metro.
Governmental Approval	Approval required by any Government Entity for performance of the Work or commencement of operations of the Project.
Hazardous Substances	Any substance, chemical, product, object, condition, waste or other material, or combination thereof, (a) identified as a hazardous substance in the Contract, (b) that is or becomes defined, listed or regulated as hazardous, or is defined as a "hazardous substance", "hazardous waste", "hazardous material," "toxic substance," "pollutant" or "contaminant", under any Environmental Law, (c) that is a petroleum, petroleum by-product, waste oil, crude oil or natural gas (notwithstanding Health and Safety Code §25317), (d) that is explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise toxic or (e) the presence of which requires investigation or remediation under any applicable Environmental Law or poses or threatens to pose a hazard to the health or safety of any person on or about the Worksite, or causes or threatens to cause damage to the environment or to adjacent properties.
Inspection or Inspect	Review, inspection, test of the Work, Construction Equipment and all other materials at and off the Worksite, and review of all documents on which the Work is based (including drawings, calculations, supporting materials, data, and all other information concerning the Work, including computer programs and printouts), which Metro determines are required to ensure Contractor's compliance with the Contract.
Inexcusable Delay	Delay, including Delay in starting the Work after the Commencement

Term	Definition
	Date, which is not an Excusable Delay.
Law	Any Federal, state or local statute, law, regulation, ordinance, rule, standard, judgment, order, executive order, decree, directive, guideline, or other governmental restriction, as amended, or any determination or interpretation by any court or Government Entity, applicable to the Contract or the Work.
Milestone	An established point, event or occurrence in the process of the Work that is associated with the Schedule.
Modification	Any alteration to the Contract, including a Change Order, task order, adjustment in quantities, extension of time, administrative change or other action or event that results in an alteration of an obligation of either Party.
Metro or MTA	Los Angeles County Metropolitan Transportation Authority, may also be referred to as Metro.
Notice of Completion	A document recorded with the Los Angeles County Recorder by Metro signifying completion of all Work.
Notice of Termination	Written notice from Metro to Contractor and its Surety terminating the Contract, or an element or a portion thereof, either for convenience of Metro or due to Contractor's default.
Notice to Proceed (NTP)	Direction to Contractor to commence Work on the Commencement Date and other directions.
Period of Performance	The total time in the Schedule to complete the Work. May be all or a defined portion of the Contract Time.
Punch List	The list of Work (limited to minor incidental items having no adverse effect on the safety, usability or operability of the Work) remaining to be completed after Substantial Completion.
Reference Documents	Documents, other than the Contract Documents, which are identified as such in the Contract. Reference Documents are not a part of the Contract and are to be used for reference only. Reference Documents include Documents Available to Contractor.
Request for Change (RFC)	A written request submitted by Contractor requesting a Change to the Work.
Request for Information (RFI)	A written request submitted by Contractor for clarification or information on a portion of the Work or the Contract.
Required Subcontract Provisions	Contract provisions that must flow down to all Subcontracts (regardless of tier). Marked by an asterisk (*)
Schedule	A time-phased, resource-loaded, Work execution plan Approved by Metro, identifying all activities necessary to complete the Work in a logical manner, including the start and completion date of each activity and its Milestones, for the entire Contract Time.
Scheduled Completion Date	The date all Work is to be completed, and the date that Contract Time ends.
Shop Drawings	Part of the Construction Documents, consisting of original drawings, plans, diagrams, schedules and other data prepared and submitted by Contractor.
Specifications	Contract Document (may be entitled "Specification", "Technical Specification", "Statement of Work", "Scope of Work" or be other narrative descriptions of the Work in the Contract) describing the locations, dimensions, character, properties, requirements, and details of

Term	Definition
	the Work.
Subcontract	Any contract, including contracts of any tier, to furnish Work, Goods or Equipment (Construction or otherwise) between Contractor and/or any Subcontractor or Supplier at any tier.
Subcontractor	Any firm that enters into an agreement with Contractor or any other Subcontractor to furnish Work, Goods or Construction Equipment.
Substantial Completion	Work or element thereof is sufficiently complete to be used for the purpose for which it was intended.
Supplier	A Subcontractor not performing Work except to supply Goods or Construction Equipment.
Unit	A single item or group of items constituting a single unit identified as a Unit or Unit Priced item.
Unit Price	The price of a single Unit.
Warranty	A representation, promise or affirmation given by Contractor to Metro regarding the nature, description, usefulness, suitability, lifecycle, condition, construction, materials, workmanship or any other aspect of the Work, or any portion thereof, whether contained in any provision in the Contract entitled WARRANTY, in the statement of Work, or in any other provision of the Contract, including documents incorporated by reference or provided by Contractor, any Subcontractor, Supplier, manufacturer or any other entity.
Work	When capitalized, signifies the work product described in the Contract and all Goods and services (the productive and operative efforts used to generate the results specified, indicated or implied in the Contract) to complete the work product. The term may also refer to Work in progress.
Working Drawings	Original drawings prepared by Contractor illustrating Work required for construction that will not become an integral part of the completed Work.

GC-02 Interpretation *

2.1 Contract Documents

The Contract Documents are complementary, indicating all aspects of the Work and Contractor shall interpret the Contract as a whole. The Contract Document order of precedence in the Form of Contract shall apply. In case of conflicts between (a) Contract Documents or provisions of equal precedence the more stringent requirement shall govern, (b) specifications and drawings, the specifications shall govern and (c) small and large-scale Contract Drawings the large-scale Contract Drawings shall govern. Contractor shall submit an RFI when it discovers a conflict before proceeding with the affected Work. Metro's response may include additions or corrections necessary to complete the Work in accordance with the intent and scope of the Contract.

2.2 Construction Documents

Contractor's Construction Documents shall comply with all applicable Contract Documents. Contractor shall submit Construction Documents and proposed changes to Construction Documents to Metro prior to implementing the Work. If

a conflict in the Construction Documents is discovered, the party discovering the conflict shall notify Contractor's Representative, and Contractor shall revise the conflicting Documents, as necessary, to remove the conflict and resubmit such Documents to Metro.

2.3 Omissions and Misdemeanors

Except where the Contracting Officer determines that a Change is necessary to implement a correction, correction of omissions or misdescriptions of Work necessary to complete the Work in accordance with the intent of the Contract shall not constitute Changed Work.

2.4 Information Supplied To Contractor:

2.4.1 Furnished by Metro - During the solicitation of this Contract Metro shared information with Bidders/Proposers, without warranty, described in the Bid/Proposal Documents as "Information Available to Bidders (or Proposers)" (herein "Information"). The Information is not a part of this Contract. Metro made reasonable efforts to ensure that the Information was reliable, accurate and complete. However, the Information is not a part of the Contract and does not meet Contract Document standards, and Metro makes no representations with respect to its reliability, accuracy, or completeness of the Information and shall not be responsible or liable to Contractor for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by Contractor. Contractor's use of the information will be at its own risk.

2.4.2 Furnished by Others - Metro will not be responsible or liable in any respect for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by Contractor by reason of its use of or reliance on any information furnished by others.

2.5 Word Construction

The word "includes" shall be deemed to be followed by the words "without limitation"; references to persons or entities include their successors and assigns and persons acting on their behalf; and all references to "notices", "requests", "directives" and other communications, by whatever term used, shall be deemed to be followed by the words "in writing" or preceded by the word "written".

2.6 Alternative Codes and Standards

Contractor shall use Codes and Standards specified in the Contract. If Contractor wishes to utilize any code or standard not specified in the Contract, Contractor shall submit an RFC for consideration by the Contracting Officer.

GC-03 Authority Of The Contracting Officer And Authorized Representatives

3.1 Authority and Responsibility of Metro's Contracting Officer and Authorized Representatives

- 3.1.1 Contracting Officer - Metro's Contracting Officer has the authority and responsibility to exercise all powers, rights, and privileges that have been lawfully delegated to the Contracting Officer by Metro in all matters relating to or affecting the Work and this Contract. Except as expressly specified in this Contract, the Contracting Officer may, and has sole authority to, delegate specifically described authority and responsibility to Authorized Representatives. The authority and responsibility of Authorized Representatives shall be described in a Contracting Officer's notice to Contractor. The Contracting Officer may from time to time change the authority and responsibilities of Authorized Representatives by further notice.
- 3.1.2 Unauthorized Acts - Nothing in this Contract shall be construed to bind Metro for acts of any Metro employee or any other person, or for the acts of the Contracting Officer or any other Authorized Representative, including its Construction Manager, that exceed the authority delegated to them herein or in any other written delegation.

GC-04 Contractor's Obligations

4.1 Contractor's Representations, Warranties and Covenants

Contractor represents, warrants and covenants:

- 4.1.1 It is duly organized, validly existing and in good standing under all applicable Laws, and has full power and authority to own and operate its business and properties and perform the Work within the State of California.
- 4.1.2 It and all of its Subcontractors (a) are and will remain throughout the term of this Contract fully experienced and properly qualified, equipped, organized and financed to perform the Work, and (b) shall perform the Work under the supervision of persons licensed to practice the applicable profession in the State of California and who shall assume professional responsibility for the accuracy and completeness of the Work prepared or checked by them.
- 4.1.3 It shall maintain complete control of its employees, and its Subcontractors and Suppliers of all tiers.
- 4.1.4 It has, in accordance with prudent and generally accepted engineering and construction practices reviewed all of the information provided in the Contract (including reports provided by Metro) in accordance with the Article herein entitled INTERPRETATION and has inspected and evaluated the Worksite and surrounding locations in accordance with the Article herein entitled CONDITIONS AFFECTING THE WORK.

- 4.1.5 There are no existing or threatened legal proceedings against Contractor that would have an adverse effect on (a) its ability to perform its obligations under the Contract, or (b) its financial condition or its operations.
- 4.1.6 Based upon its review of the Contract Documents, it will be able to obtain and keep in effect all Governmental Approvals it is obligated to obtain.
- 4.1.7 It has estimated the difficulty and cost of successfully performing the Work, and based upon that estimate has concluded that it can successfully perform the Work at the Contract Price.

4.2 Responsibilities and Obligations

Contractor shall furnish all employees, materials, facilities, Goods, Equipment and services to construct the Work in a good and workmanlike manner, using its own means, methods, sequences, and procedures, free from construction defects in accordance with (a) the Contract Documents, (b) the Schedule (including meeting all Milestones and mitigating all Delays), (c) all applicable Laws, and (d) all construction practices generally accepted as standards of the industry in the State of California; and shall cooperate with Metro's Authorized Representatives in their reviews and inspections of the Work.

4.3 Independent Contractor

Contractor, and its Subcontractors and Suppliers of any tier, are independent contractors, and nothing in this Contract shall be construed to create the relationship of agent, servant, employee, partnership, joint venture or other association as between Contractor and Metro. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

4.4 Compensation and Benefits

Contractor shall be solely liable and responsible for providing all compensation and benefits to all persons performing Work under this Contract. All persons performing Work pursuant to this Contract are for all purposes the sole employees of Contractor and its Subcontractors and not employees of Metro. Metro shall not be liable or responsible for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any employee or other person provided by Contractor. Contractor shall be solely liable and responsible for (a) furnishing all workers' compensation insurance pursuant to Section 3700 of the Labor Code, and (b) any benefits to any person as a result of any injuries arising from or connected with any Work performed by or on behalf of Contractor pursuant to this Contract.

4.5 Data Collection & Reporting

Contractor shall, contemporaneously with its performance of the Work, keep (and provide Metro with copies as requested) a Daily Log recording and summarizing, in a narrative form, all significant events, occurrences and conditions that arise during the Work. In addition Contractor shall keep each of the following Logs:

- Activity Log - a listing of each actively prosecuted activity depicted on the Schedule);
- Permit Issue Log - changes in permit status; permit problems; etc.;
- Delay Issue Log -- record of unusual inclement weather; asserted Force Majeure events; any other event or condition causing or threatening to cause any significant delay/disruption/interference with the progress of any of the Work;
- Safety Issue Log - record of significant injuries to persons or damage to property, or events/conditions that threaten significant injuries to persons or damage to property.

GC-05 Contractor's Representative, Organization And Personnel

5.1 Organization and Contractor's Representative

Prior to (a) Metro's issuance of a Notice to Proceed (NTP) or (b) any change or reassignment of Contractor's Representative(s) or other key personnel, Contractor shall submit to Metro, for its review and acceptance, the name, qualifications and experience of its proposed Contractor's Representative and the names, titles, and functions of all Contractor's key personnel. Contractor's Representative shall have full authority to represent and act for Contractor in all matters concerning the Work. Contractor shall not reassign key personnel to other projects until a satisfactory replacement has been approved by Metro.

5.2 Removal of Contractor Personnel

The Contracting Officer may require Contractor to remove any person assigned by Contractor, or by any Subcontractor or Supplier, to perform Work or furnish Goods under the Contract, if the Contracting Officer considers such removal in the best interest of Metro and the Work. Upon such direction, Contractor shall remove the person(s) and resolve all employment or contractual issues at no cost or expense to, and shall fully indemnify, Metro. Any person(s) removed for any reason shall not be re-employed on any other Metro project.

GC-06 Subcontractors And Suppliers

6.1 General

- 6.1.1 Contractor shall submit a copy of each executed Subcontract to Metro, and shall not assign or transfer Work from itself or any listed Subcontractor or Supplier to itself or any other Subcontractor or Supplier without the written consent of the Contracting Officer
- 6.1.2 Contractor shall coordinate the Work performed by its Subcontractors and Suppliers, and be fully responsible to Metro for all acts and omissions of Subcontractors, Suppliers and their employees.

6.1.3 Any provision of the Contract referring to entitlements, obligations, acts or omissions of Contractor shall be deemed to also include entitlements, obligations, acts and omissions of all Subcontractors and Suppliers.

6.1.4 If any portion of subcontracted Work is not performed in accordance with the Contract, or if a Subcontractor or Supplier commits or omits any act that would constitute a breach of the Contract, Contractor shall cure the breach, and at the direction of the Contracting Officer, shall replace the Subcontractor or Supplier. The Subcontractor or Supplier shall not be employed again on the Work.

6.2 Addition or Substitution of Subcontractors *

Contractor shall not make any addition or substitution of any Subcontractor subject to the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 et seq. except in accordance with the Act. The Contracting Officer's prior Approval shall be required for additions and substitutions of (a) all DBE and SBE Subcontractors, (b) Subcontractors subject to the Act, and (c) Subcontractors subject to Metro's Pre-Qualification requirements. Contractor shall submit a proposed bidding procedure for the Contracting Officer's review and approval prior to soliciting bids and awarding Subcontracts subject to this Section. Contractor shall promptly notify the Contracting Officer of the identity of each Subcontractor selected.

6.3 Debarred Subcontractor *

In accordance with Public Contracts Code §6109(a), Contractor shall not perform Work with any Subcontractor who is ineligible to perform work on a public works project pursuant to Labor Code §1777.1 or 1777.7. In accordance with Public Contract Code §6109(b) any contract on a public works project entered into between Contractor and a debarred Subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by Contractor on the project shall be returned to the awarding body. Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project. This Contract is subject to metro Debarment Ordinance which may be found at http://www.metro.net/EBB/dso_032703.pdf, or Contractor may request a copy from Metro's Authorized Representative

6.4 Flow-down Requirements *

Contractor shall incorporate into each Subcontract, and require insertion into all lower tier Subcontracts, all Required Subcontract Provisions, including, (a) all provisions noted by an asterisk ("*"), (b) all provisions required by Law or otherwise required in this Contract, and (c) the following provisions:

Contractor and Subcontractor acknowledge and agree:

- A. All Work being performed and Goods being furnished by the Subcontractor under this Subcontract shall comply with Contractor's Contract with Metro.
- B. The Subcontractor shall have the same duties and obligations to Contractor with respect to its performance of its own Work as Contractor has to Metro under its Contract. Metro is the third-party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit.
- C. The Subcontractor shall make such Schedule commitments, submit such Schedules and scheduling information, and submit any other required information to Contractor as is necessary for Contractor to comply with its Schedule and reporting commitments to Metro, under the Contract.
- D. All guarantees and warranties, express or implied, shall inure to the benefit of both Metro and Contractor during the performance of the Work; upon final completion of the Work, such guarantees and warranties shall inure to the benefit of Metro.
- E. Nothing contained in the Subcontract shall be deemed to create any privity of Contract between Metro and the Subcontractor, nor shall it create any duties, obligations, or liabilities on the part of Metro to the Subcontractor except those required by Law. In the event of any Claim or dispute arising under the Subcontract or the Contract with Metro, the Subcontractor shall look only to Contractor for any payment, redress, relief, or other satisfaction.
- F. This Article does not and shall not operate to relieve Contractor of any duty or liability under the Contract, nor does it create any duty or liability on the part of Metro. Contractor shall have sole responsibility for promptly settling any disputes between its Subcontractors and between the Subcontractors and any of their Subcontractors of any tier.

GC-07 Performance And Payment Bonds

Concurrently with the execution of the Contract, Contractor shall give Metro Performance and Payment Bonds in the form supplied by Metro, issued by a Surety with a A.M. Best and Company rating of A- or better, Class VIII or better, and authorized to issue such bonds in the State of California. The Payment Bond or alternative as otherwise approved by Metro shall meet all of the requirements of Civil Code Section 3247 et seq. Performance and Payments Bonds shall remain in effect for the entire Contract Time at one hundred percent (100%) of the Contract Price. Changes in the Work or Contract Time made pursuant to the Contract shall in no way relieve Contractor or Surety from its obligations. Surety shall waive Notice of such Changes.

GC-08 Notice To Proceed (NTP) And Commencement

The Notice to Proceed (NTP) will be issued only after Metro's receipt of Contractor's bonds and required insurance certificate(s), and Contractor's completion of all other requirements that are conditions precedent to the issuance of the NTP. The Contract Time shall commence on the Commencement Date stated in the NTP. Upon the Commencement Date, Contractor shall commence and diligently prosecute the Work to completion within the Contract Time. If Contractor delays Metro's issuance of the NTP,

the Contract Time shall be reduced on a day for day basis, for each day Contractor is delinquent in completing any of the obligations of this Section.

GC-09 Project Schedule

9.1 Preparation and Submittals

Contractor shall prepare and submit to Metro a detailed Schedule, along with a detailed plan of the Work, for acceptance by the Contracting Officer, and shall prepare and shall submit all updates to the Schedule and the plan, incorporating all Changes as they occur. Contractor shall indicate on the Schedule the anticipated dates for completing the various stages of construction and shall keep Metro informed of any Delays. The Schedule shall include projected delivery dates for all required Contract deliverables and dates for all required Metro inspections and Approvals, and shall include all activities to be performed by Subcontractors. Contractor shall provide such supplementary written information with its submittals as Metro may require to adequately evaluate the Schedule and the plan of the Work.

9.2 Impacted Schedule

If there are pending Modifications of any kind that may affect the Schedule, regardless of whether they have been accepted, Contractor shall also submit an adjusted Schedule, along with the Schedule as required by the Specifications] as impacted by all such pending Modifications representing its best estimate of actual performance ("Impacted Schedule").

9.3 Scheduling Method and Float

9.3.1 The Specifications shall detail the scheduling method to be used.

9.3.2 All Float in the Schedule is an expiring resource available to both parties on a nondiscriminatory basis, and is not for the exclusive use or benefit of either Metro or Contractor.

GC-10 Governmental Approvals

Contractor shall comply with all Laws, requirements for Governmental Approvals, changes to applicable Laws and Governmental Approvals, including changes prior to award, that occur at any time prior to Final Acceptance of the Work. Except for Metro furnished Governmental Approvals, prior to beginning any related Work, Contractor shall, at its sole expense identify, obtain and furnish Metro with executed copies of Governmental Approvals. Contractor and Metro shall assist each other in obtaining the Governmental Approvals to be obtained by the other Party including providing information requested by the other Party, and participating in related meetings. Contractor shall maintain all Governmental Approvals in full force and effect.

GC-11 Emergencies *

Contractor shall notify Metro immediately of any Emergency. In the absence of specific instructions from Metro as to the manner of dealing with the Emergency, Contractor shall take appropriate action at its own discretion. As Emergency Work proceeds, Metro may issue specific instructions, which Contractor shall follow. The amount of compensation to which Contractor is entitled, if any, because of Emergency Work, shall be determined in accordance with the Article entitled CHANGES herein.

GC-12 Goods And Risk Of Loss *

12.1 General

Except for Metro Furnished Goods, Contractor shall furnish all Goods required to complete the Work. Goods incorporated into the Work shall be new, of good quality, of the grade specified for the purpose intended, and shall have the specified capacity, functionality and features. Metro may reject non-conforming Goods. Unless otherwise specifically stated, reference to Goods or patented processes by trade name, make, or catalog number shall be only a means of establishing a standard of quality; and shall not be construed as limiting competition.

12.2 Inspection and Risk of Loss

Except as otherwise specified in this Article or in California Public Contract Code §7105, Contractor shall (a) be solely responsible for, and bear the risk of injury, loss, or damage to, any Goods and for Work performed from whatever cause, whether arising from the execution or from the non-execution of the Work until the Contracting Officer issues a Certificate of Substantial Completion, or Certificate of Final Acceptance (if no Certificate of Substantial Completion is issued) or otherwise explicitly accepts the risk of loss, and (b) at its expense, properly rebuild, repair, or restore the Goods and the portions of the Work and existing Metro facilities and equipment that have been damaged or destroyed. Contractor shall take all actions necessary to protect the Work from damage, and shall transport, handle, and store Goods in a manner that facilitates inspection and ensures the preservation of its quality, appearance, and fitness for the Work.

12.3 Metro Furnished Goods

Metro may furnish Goods, as described elsewhere in this Contract, to Contractor. Contractor shall (a) store, protect, handle and transport (including necessary loading and unloading) such Metro Furnished Goods at its expense, (b) pay all demurrage and storage charges incurred as a result of its failure to take delivery on the date the Goods are scheduled and available for delivery by Metro, and (c) pay the cost of replacing or repairing Metro Furnished Goods that are lost or damaged after receipt by Contractor or after Contractor has failed to take delivery on the scheduled delivery date. Metro may deduct expenditures by Metro from Progress Payments. Contractor shall include delivery dates of Metro furnished Goods in its Schedule.

GC-13Work *

13.1 Worksite Maintenance

Contractor shall (a) keep the Worksite clean and free from rubbish, graffiti, and debris, (b) abate dust, (c) prevent spillage and immediately remove and clean up spillage on haul routes, (d) and upon completion of the Work, remove rubbish, Goods belonging to Contractor and all other Contractor property from the Worksite, and leave the Worksite in a clean, neat, and orderly condition satisfactory to Metro.

13.2 Disposal of Waste

Unless otherwise specified in the Contract, Contractor shall make its own arrangements for disposing of waste and excess substances generated Contractor's performance of the Work at a legal disposal site outside the Worksite, and shall pay all associated costs and obtain necessary permits, if any.

13.3 Workmanship *

Contractor shall perform all Work in a skillful and workmanlike manner. All workers shall have sufficient skill and experience to perform the Work assigned to them. Metro may reject as defective all workmanship not conforming to the requirements of applicable Law, and/or the Contract.

13.4 Unauthorized Work *

Contractor shall not perform and Metro will not pay for Unauthorized Work and Metro may order its removal at Contractor's sole expense. The failure of Metro to order the removal of Unauthorized Work shall not constitute acceptance, nor shall it relieve Contractor from any liability. If Contractor does not comply with an order of Metro to remove Unauthorized Work, Contractor will be in Default and Metro may remove the Work at Contractor's sole expense.

13.5 Survey And Verifications

Contractor shall perform all surveys necessary to perform the Work, and as required by the Contract Documents. Contractor shall preserve all construction survey references and marks ("Survey References") for the duration of their usefulness. All Work upon completion shall conform to the lines and elevations shown in the Contract Documents. Contractor shall report any variation to Metro in writing, and may request approval of a variation from Metro. If Contractor fails to report or does not obtain approval of variations by Metro, Contractor shall correct the Work, and/or replace such Work to comply with the requirements of this Section, at its own expense.

13.6 Verification of Governing Dimensions

Before commencing the Work, Contractor shall verify all governing dimensions at the Worksite and shall examine all adjoining Work on which its Work is in any way dependent, according to the Contract Documents. Contractor shall notify Metro of any defective or non-conforming governing and adjoining dimensions that are observed before Contractor begins that part of the Work.

GC-14 Inspections *

14.1 Inspection and Testing During Contractor Performance

- 14.1.1 Metro shall, at all times, have access to and, upon reasonable notice, may inspect the Work. Such inspections will be in addition to those inspections and tests Contractor is required to perform.
- 14.1.2 Except to the extent specified in writing by Metro, no inspection shall constitute or imply acceptance, and Metro may reject or accept any Work, request changes, or identify additional Work which must be done at any time prior to final acceptance of the Work.
- 14.1.3 Metro is not obligated to make any inspections and neither its inspection of the Work, nor the lack thereof, shall relieve Contractor of its responsibility to complete the Work in accordance with the Contract.
- 14.1.4 Provided Metro has given Contractor reasonable time in its notice to prepare for any inspection, Metro may charge Contractor for any additional costs it incurs for the inspections, when Work is not ready at the time indicated in the notice or when an additional inspection is necessitated by prior rejection.

14.2 Metro's Remedies for Deficient Work

If any Work provided by Contractor is deficient, Metro, after written notice to Contractor of such deficiencies, may:

- A. Require Contractor to promptly segregate and remove rejected Work from the Worksite at its own expense and without any extension of Contract Time;
- B. Require Contractor re-perform such Work and repair or replace the Work, Goods or other material or items at Contractor's own expense;
- C. Withhold payments otherwise due to Contractor hereunder;
- D. Assess liquidated damages if provided for in the Contract;
- E. Have such Work performed and Goods provided by others at the sole expense of Contractor;
- F. Terminate the Contract in accordance with the Article entitled TERMINATION FOR DEFAULT.

14.3 Work Performed without Inspection

At all times before Final Acceptance, Metro may direct Contractor to remove or uncover any Work for Inspection. After Inspection by Metro, Contractor shall construct or restore the Work to the standard required by the Contract Documents. Contractor shall not be entitled to any time extension or recovery of any resulting cost either if: (a) the Inspected Work does not meet Contract requirements, or (b) the Inspected Work meets Contract requirements but Contractor did not provide Metro with adequate prior notice and opportunity for Inspection in accordance with Metro-Approved Quality Assurance & Quality Control Plans. If Contractor provided Metro with adequate prior notice and Metro did not make a timely Inspection, Contractor proceeded with the Work, and the Inspected Work meets Contract requirements, Contractor shall be entitled to a Change Order for the costs incurred to uncover the Work and any delay in the Schedule caused by Metro's late Inspection.

14.4 Work Performed Outside of Regular Work Day

When Work is to be performed during hours other than the Standard Work Day, Contractor shall notify Metro not less than twenty-four (24) hours in advance, unless such Work is to be performed on Saturdays, Sundays or legal holidays, in which case such notice shall not be less than seventy-two (72) hours in advance.

14.5 Inspection by Authorized Representatives

Contractor shall make the Work available to Authorized Representatives for the purpose of Inspecting the Work associated with their respective interests.

14.6 Inspection of Off-Site Facilities

Metro and other Government Entities may Inspect Contractor's production of Goods at off-site facilities, including any manufacturer's plant. Contractor shall provide adequate facilities and free access to all parts of the Work and facilities at all reasonable times as necessary for the Inspections.

14.7 Effect of Inspection on Acceptance

Inspections do not constitute acceptance of the Inspected Work, and Metro may reject or accept any Work, request changes and identify additional Work to be done at any time prior to Final Acceptance. Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by Inspections performed by Metro, or by any failure of Metro to take action.

GC-15 Substantial Completion *

15.1 Notice

Contractor shall provide Notice of Substantial Completion to the Contracting Officer when Contractor has (a) completed the Work in accordance with the requirements of the Contract, (b) corrected all Deficiencies in the Work, (c) has submitted a completed As Built Schedule (except for Punch List items and final

clean-up), and (d) has ensured that the Work is ready for operation and may be operated without damage to any other Work or property on or off the Site and without injury to any person.

15.2 Inspection

Within a reasonable time after Contractor provides the Contracting Officer with Notice of Substantial Completion of the Work, Contractor and Metro's Authorized Representative shall make an Inspection of the Work to determine its status of completion.

15.3 Requirements

Substantial Completion of the Work shall occur when: (a) the Contracting Officer determines that the Work has been completed in accordance with all requirements of the Contract, (b) except for Punch List items, Contractor has corrected all Deficiencies and deviations with respect to the Work, and the Contracting Officer has notified Contractor in writing of its Approval and acceptance of the correction of all Deficiencies, (c) the Contracting Officer has accepted the As Built Schedule, and (d) Metro and Contractor have agreed to a Punch List. Upon Substantial Completion, the Contracting Officer will issue a Certificate of Substantial Completion for the completed Work or element thereof.

15.4 Metro Acceptance

The Contracting Officer may either (a) reject Contractor's Notice of Substantial Completion for failure to meet the requirements, describing Deficiencies; or (b) Accept the Work by issuance of a Certificate of Substantial Completion and issue a Punch List, if any. If the Contracting Officer rejects the Notice of Substantial Completion, Contractor shall comply with all requirements for Substantial Completion, and give the Contracting Officer new Notice of Substantial Completion.

15.5 Partial Acceptance

Metro shall have the right to Accept completed portions of the Work. Any such partial Acceptance shall follow a procedure similar to that required for Substantial Completion, modified as specified by the Contracting Officer. The Contracting Officer will also determine the effect of such partial Acceptance on Contractor's responsibility for maintenance during construction and on its Warranty obligations.

15.6 Completion of the Punch List

Promptly after Substantial Completion of the Work, Contractor shall perform all Punch List Work and shall satisfy all of its other obligations under the Contract. Metro will allow Contractor reasonable access to the Worksite to complete the items on the Punch List, and Contractor shall complete all Work items on the Punch List prior to Final Acceptance and final payment.

15.7 Responsibility for Completion, Maintenance, Loss and Damage

Upon the contracting officer's issuance of a certificate of substantial completion, Metro shall be responsible for the maintenance, loss, or damage to the accepted portion of the work. However, it shall be contractor's continuing responsibility to complete and deliver every element, and the integrated whole, of the work.

GC-16 Final Inspection And Acceptance Of The Work *

16.1 Request for Final Acceptance

Within ten (10) Days after Contractor determines that all Work is fully completed, and all required submissions and deliveries to Metro have been made, it shall give the Contracting Officer a written Request for Final Acceptance stating:

- 16.1.1 The Work is completed;
- 16.1.2 The date of completion (including satisfactory completion of Inspections, tests, and documentation);
- 16.1.3 All Punch List and clean-up items are completed;
- 16.1.4 The Contracting Officer has received and accepted (a) the assignment of all Subcontractor's, manufacturer's and Supplier's Warranties, (b) all As-Built drawings and all other deliverables, (c) all Equipment, special tools, spare parts and other Goods free and clear of Liens;
- 16.1.5 All of Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities have been removed from the Worksite;
- 16.1.6 Contractor has complied with all requirements associated with closeout of the Contract.
- 16.1.7 Contractor has delivered to the Contracting Officer a Notice of Completion for the Work in recordable form and meeting all statutory requirements.

16.2 Metro Inspection and Acceptance

Metro will Inspect the Work and within sixty (60) Days thereafter will either (a) reject the Request for Final Acceptance, specifying the Deficiencies or uncompleted portions of the Work; or (b) issue an executed Certificate of Final Acceptance and record the Notice of Completion with the County Recorder. If the Contracting Officer rejects the Request for Final Acceptance, then the Contractor shall promptly remedy the Deficiencies to the satisfaction of the Contracting Officer.

16.3 No Implied Acceptance

Any failure by Metro to Inspect or reject the Work or to reject Contractor's Request for Final Acceptance as set forth above shall not constitute or imply Acceptance by Metro of the Work for any purpose, nor imply approval of Contractor's Request for Final Acceptance.

16.4 Survival of Obligations

Without limiting any other provision of the Contract relating to continuing obligations that extend beyond Final Acceptance, Contractor's responsibility for injury to persons and/or property arising from its duties and obligations under the Contract, including without limitation, the Articles entitled LIABILITY AND INDEMNIFICATION, GOODS, and WARRANTY herein, shall survive Final Acceptance.

16.5 Undisclosed Incomplete Work

Contractor will not be relieved of its obligations to complete any Work, the non-completion of which was not disclosed to Metro (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise) prior to Final Acceptance of the Contract.

16.6 Obligations Surviving Final Acceptance

Contractor shall remain obligated after Final Acceptance of the Contract, under this Article and all other provisions of the Contract that expressly or by their nature extend beyond and survive Final Acceptance, to correct all such undisclosed items.

GC-17Warranty *

17.1 Warranty

Contractor warrants that the Work shall be free of Deficiencies, shall be fit for its intended use, shall meet all of the requirements of the Contract, and the Goods furnished shall be new and of a quality that meets all of the requirements of the Contract. Contractor shall be liable for actual damages resulting from any breach of an express or implied Warranty or any Deficiency. This Warranty provision is not exclusive. All Contract provisions containing Warranties, including without limitation, documents incorporated by reference or relied upon in any Contract Document, shall apply in accordance with their terms. Nothing in this Contract shall be construed to constitute a waiver or disclaimer, or limit, negate, exclude or modify in any way any Warranty in this Contract.

17.2 Commencement and Duration

Warranties shall commence upon the Contracting Officer's issuance of a Certificate of Final Acceptance ("Warranty Commencement Date") and shall remain in effect until one (1) year after the Warranty Commencement Date or such longer period as may be specified in the Contract ("Warranty Period").

Subcontractor's, manufacturer's or Supplier's Warranty Periods shall be for the longer of the above stated Warranty Period or the Warranty Period specified in the particular Warranty.

17.3 Warranty Claims

If Metro determines that any of the Work contains Deficiencies any time within the Warranty Period, Metro will claim and Contractor shall correct, repair or replace such Work at its sole expense. Contractor shall respond to Metro's Warranty claim within three (3) working day(s), and shall repair or correct the Deficiency within ten (10) Days thereafter. If the Deficiency cannot be repaired or corrected within said ten (10) Days, Contractor, within that ten days, shall submit a schedule for completion of repairs, subject to the acceptance of the Contracting Officer, and shall diligently proceed to complete the repairs within the approved schedule. If any Deficiency affects operation of the Work, or any essential element thereof, Metro may, in its sole discretion, require Contractor to complete repairs in less than ten (10) Days.

17.4 Warranty on Repaired or Corrected Deficiencies

Contractor's Warranty shall continue, as to each repaired or corrected Deficiency, until the latter of the remainder of the Warranty Period; or One (1) year after Acceptance by Metro of any corrected Work.

17.5 Metro Right to Repair or Correct Deficiencies

If Contractor fails to repair or correct Deficiencies or otherwise comply with this Warranty or any other Warranty in this Contract, or fails to propose a timely and adequate remedy, after notice to Contractor Metro, or Third Parties retained by Metro, may repair or correct the Deficiencies, and the costs thereof shall be borne by Contractor.

17.6 Emergencies

In case of an Emergency or hazard to health or safety requiring immediate curative action, Metro will notify Contractor, and Contractor shall immediately take such action(s) as it deems necessary, notifying the Contracting Officer of the action(s) taken as soon as possible but no later than one (1) working day thereafter. If Contractor does not undertake immediate curative action, Metro may without prior notice undertake such action as is necessary to correct the hazard or deal with the Emergency, and the cost thereof shall be borne by Contractor.

17.7 Acceptance of Non-Conforming Work

If the Contracting Officer accepts any nonconforming Work without requiring it to be fully corrected, Contractor shall reimburse Metro a portion of the Contract Price in an amount equal to the greater of (a) the difference in the value of the Work, plus the present value of additional operating costs, if any, caused by such nonconforming Work; or (b) Contractor's cost savings in not correcting the Work. In either case, Contractor shall reimburse Metro's costs to make the

determination, including costs of staff, experts, tests and other actions. Such reimbursements shall be payable to Metro within ten (10) Days after Contractor's receipt of Metro's demand for payment.

17.8 Subcontractor's Warranties

Without in any way limiting Contractor's Warranties with respect to the Work, Contractor shall obtain from all Subcontractors, manufacturers and Suppliers, and assign and deliver to Metro all Warranties, including extended Warranties, provided by such Subcontractors, manufacturers and Suppliers. All such Warranties shall (a) survive Final Acceptance and all Metro and Contractor inspections, tests and acceptances, and (b) shall run directly to and be enforceable by Contractor and Metro. Contractor shall enforce or perform Subcontractor or Supplier Warranties as a part of Contractor's Warranty obligations hereunder. Metro's rights shall continue until the expiration of the later of Contractor's Warranties or Subcontractor's or Supplier's Warranties or extensions (including extensions arising from repaired or corrected Deficiencies).

17.9 Other Remedies

The Warranties herein are in addition to all rights and remedies available under the Contract or applicable Law, and shall not limit Contractor's liability or responsibility imposed by the Contract or applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud. To the extent that any Warranty from any person other than Contractor would be voided in whole or part by reason of any act or omission of Contractor, Contractor shall be fully liable to the extent of said Warranty.

17.10 Spare Parts

Contractor shall not use Metro's spare parts to repair or correct Deficiencies or damage caused by Contractor (including its Subcontractors and Suppliers). The security, control, shipping, and disposition of Contractor-owned parts (whether spare or otherwise) shall be the responsibility of Contractor.

17.11 Damage to Metro Property by Contractor

Damage to Metro's property caused by Contractor (including its Subcontractors and Suppliers of any tier) shall be the sole responsibility of Contractor and shall be repaired or corrected at Contractor's expense.

GC-18Title *

18.1 Transfer

Title to portions of the Work for which Progress Payments or other payments are made shall pass to Metro at the time of payment. If title has not been vested in Metro previously, title shall pass to Metro upon Final Acceptance.

18.2 Encumbrances after Transfer of Title

Contractor shall not pledge or otherwise encumber Work to which title has been transferred to Metro in any manner that would result in any lien, security interest, charge, and/or claim upon or against said Work.

18.3 Transfer of Title Not Acceptance

The transfer of title of Work to Metro shall not constitute or imply Metro's Acceptance of any Work. Notwithstanding the transfer of title, Contractor shall continue to be liable and responsible to Metro for any damage to or loss of Work until the Work is Accepted by the Contracting Officer.

GC-19 Conditions Affecting The Work *

19.1 Contractor's Representations

Contractor represents that it has inspected the Worksite and surrounding area, and has taken steps reasonably necessary to ascertain the nature and location of the Work to be constructed, and has investigated and satisfied itself as to the general and local conditions that could in any way affect the Work or its cost, including

- 19.1.1 Conditions bearing upon transportation, disposal, handling, and storage of materials, Goods, and Equipment;
- 19.1.2 The availability of labor, water, electric power, and roads;
- 19.1.3 Uncertainties of weather, or physical conditions at the site;
- 19.1.4 The conformation and conditions of the ground;
- 19.1.5 The character of Equipment and facilities needed preliminary to and during Work performance; and
- 19.1.6 Conditions affecting security and protection of material, Goods, Equipment and Work in progress.
- 19.1.7 As a result of its review of all the information, and its inspection and examination of the Worksite and other related and surrounding sites and conditions, it is familiar with and accepts the physical requirements of the Work and has determined based upon reasonable grounds that it is feasible and practicable to perform the Contract within the Contract Time and for the Contract Price. It has satisfied itself as to the character, quality, and quantity of surface and subsurface substances or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Worksite and a review of all documentation relating to the Worksite and the Work.
- 19.1.8 The inspection and review included, without limitation documents describing any exploratory Work performed by Metro, Reference

Documents, Contract Documents, and other information made available to Contractor.

19.2 Contractor's Responsibility

19.2.1 Contractor is solely responsible for any conclusions or interpretations it makes based on its investigation of conditions affecting the Work, including its interpretation of any Contract Documents and/or any Reference Documents made available by Metro.

19.2.2 Any failure of Contractor to take the actions described in this Article shall not relieve Contractor from responsibility for properly estimating the difficulty and cost of successfully performing the Work or for proceeding to successfully perform the Work without additional expense to Metro.

GC-20 Differing Site Conditions *

20.1 Notice of Discovery of Subsurface Conditions

Contractor shall provide Metro's Authorized Representative immediate oral and/or electronic mail notice of the discovery of the following subsurface conditions before disturbing such conditions, followed by written notice to the Contracting Officer of the discovery within twenty-four (24) hours thereafter:

20.1.1 Type 1 Condition: Subsurface or latent physical conditions at the Worksite differing materially from those indicated in the Contract, but specifically excluding any differing conditions relating to Utility facilities.

20.1.2 Type 2 Condition: Unknown physical conditions at the Worksite of any unusual nature that differ materially from those ordinarily encountered in and generally recognized as inherent in Work of the character provided for in the Contract.

20.1.3 Type 3 Condition: Unidentified substances that Contractor believes may be Hazardous Substances, which are required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Law. Hazardous Substances that are included in the Work, as identified in the Contract for Contractor to handle, mitigate, and remediate, shall not be construed to be a Type 3 Condition.

20.2 Contractor Discovery of a Suspected Type 1 or Type 2 Condition

If Contractor encounters substances or conditions during performance of the Work that it reasonably believes to be a Type 1 Condition or Type 2 Condition, Contractor shall not disturb the condition or interfere with Metro's right or ability to investigate, but may continue Work in the area.

20.3 Contractor Discovery of a Suspected Type 3 Condition

20.3.1 If Contractor encounters substances during performance of the Work that it reasonably believes to be a Hazardous Substance, a Type 3 Condition, Contractor shall not disturb the condition and shall suspend Work in the immediate area of the suspected Hazardous Substance(s) until Metro authorizes the Work in the area to resume.

20.3.2 Metro reserves the right to use other labor forces to investigate and to perform work to determine the nature and extent of any suspected Type 3 Condition, and to handle and/or remove the Hazardous Substance(s) from the area.

20.4 Metro's Responsibility and Determination

Metro will promptly investigate the conditions, and if it finds the conditions do materially differ, or do involve previously unknown Hazardous Substances, and cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, that condition shall constitute a Differing Site Condition and Metro will make an adjustment in Contract Time and/or Contract Price in accordance with the Article entitled CHANGES herein or in accordance with any other provision of the Contract providing for compensation to Contractor under these circumstances.

20.5 Claims

Contractor shall not be entitled to any remedy for an asserted Differing Site Condition if it does not give Metro both a timely notice of the asserted Differing Site Condition, as required in this Article and in the Article entitled CLAIMS herein; and an opportunity to investigate prior to the asserted Differing Site Condition being disturbed.

20.6 Proceed With Work

If a Dispute arises related to a Claim of a Differing Site Condition, Contractor shall proceed with all Work to be performed under the Contract and shall not be excused from any provision of the Contract, including without limitation, the Scheduled Completion Date.

GC-21 Extension Of Time

21.1 Schedule

All Work shall be performed in accordance with the requirements of the Contract and the Schedule approved by the Contracting Officer. The Schedule shall indicate planned Milestone dates for completing all Contract tasks and the Scheduled Completion Date for completion of all Work, and Contractor shall provide Metro notice of any Delay in the Schedule.

21.2 Inexcusable Delay

An Inexcusable Delay shall not be a cause for granting additional Contract Time or compensation, and shall be cause for termination of the Contract, if the Contracting Officer chooses to exercise this right, under the Article entitled TERMINATION FOR DEFAULT herein.

21.3 Excusable Delay

A delay to the critical path of the Schedule shall be an Excusable Delay if:

- A. Contractor provides notice to the Contracting Officer not more than five (5) Days after the day the act or event occurs;
- B. An analysis of the critical path of the Schedule shows the act or event has caused, or will result in, an identifiable and measurable disruption of the Work which has consumed all available Float and extended the Work required for Substantial Completion or Final Acceptance beyond the applicable completion deadline;
- C. The Delay could not reasonably have been avoided by Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work;
- D. The act or event, and its causes and effects, were beyond the control of, and were not due to the failure, fault or negligence of, Contractor; and
- E. No other provision of the Contract provides for the risk of such Delay to be borne by Contractor or provides a specific alternative remedy for the Delay.

Contractor will have the burden of proving (a) the Delay occurred, (b) the Delay was an Excusable Delay (as defined above), (c) the Delay could not be fully mitigated, (d) Contractor has taken reasonable precautions to prevent further Delays arising out of such event; and (e) the length of time of the Excusable Delay. Contractor will not receive compensation for an Excusable Delay unless it is also a Compensable Delay, as provided in the Section entitled Compensable Delay in this Article. Upon adequate proof of an Excusable Delay, Contractor will be granted an extension of time and will not be assessed liquidated damages for any days of Delay within the excused period.

21.4 Compensable Delay

An Excusable Delay shall be a Compensable Delay only to the extent that the performance of all or any part of the Work is delayed or interrupted by:

- A. Changes directed by Metro,
- B. Metro's failure to (a) make the Worksite available as provided in the Contract Documents, (b) obtain Governmental Approvals which are its responsibility hereunder, (c) provide responses to proposed schedules, plans, and other submittals and matters for which response is required within the time periods

indicated in the Contract Documents, or (d) deliver Metro Furnished Goods,
or

C. Suspension for convenience under the Article entitled SUSPENSION herein.

A Claim for a Compensable Delay shall not be allowed for any costs incurred more than five (5) Days before Contractor notified the Contracting Officer of the act or Event causing the Delay.

Contractor shall have the burden of proving that the Delay is both an Excusable Delay and a Compensable Delay. If an Excusable Delay is found to be a Compensable Delay, Metro will, by Modification, extend the Contract Time for the increase in the time of performance, and will adjust the Contract Price. The Modification shall be Contractor's sole remedy arising out of the Compensable Delay.

21.5 Concurrent Delay

If Contractor is delayed by any act or event that would otherwise be a Compensable Delay, but the Delay is concurrently caused by any Excusable (but not Compensable) Delay or any Inexcusable Delay, Contractor's sole remedy shall be the same as for an Excusable Delay, and Metro will, by Change Order or other Modification, extend the Contract Time. Contractor will not be entitled to any change in the Contract Price or any other compensation. Delays will not be Concurrent to the extent that one Delay affects the critical path within the Schedule and the other Delay does not. In that event, the sole Delay will be the one that affects the critical path in the Schedule.

21.6 Delay due to Shortage of Goods

Except for a Delay in delivery of Metro Furnished Goods as provided in this Article, a shortage of Goods shall not provide a basis for a Compensable Delay. Contractor may be entitled to an Excusable Delay if, in addition to meeting all other requirements for an Excusable Delay (a) it proves that it made every effort to obtain such Goods from every known source within reasonable distance of the Work; and (b) the inability to obtain such Goods caused a Delay in final completion of the Work that could not be fully mitigated. It shall not be a basis for a Claim that Goods could not be obtained at a reasonable or economical cost, unless it is shown conclusively that (a) the Goods could have been obtained only at exorbitant prices and (b) the facts could not have been known or anticipated at the time the Contract was executed.

21.7 Submittal of Information Regarding Delay

Contractor shall submit to the Contracting Officer at the earliest possible date after its notice of an asserted Delay (a) a detailed description of the events causing the Delay, (b) an analysis of the impact upon the then current Schedule, identifying the affected activities, actual impacts and number of days delayed, (c) proposals and measures to mitigate the claimed Delay and its effects, and (d) thereafter supplement the information as it becomes available.

21.8 No Metro Waiver

Metro's granting of an extension of Contract Time or the Acceptance of any part of the Work after the time specified shall not (a) constitute a waiver of any of its rights under the Contract other than those specifically waived in the extension or Acceptance, or (b) release Contractor's Surety from its obligations.

GC-22 Increased Or Decreased Quantities

22.1 Exclusions to this Article

The provisions of this Article shall apply only to increases or decreases in unit-priced items, other than for variations in quantity due to a Modification to the Contract, which will be governed by the Article entitled CHANGES herein and/or by the terms of the specific Modification.

22.2 General

Increases or decreases in the quantity of a Unit, as identified in the SCHEDULE OF QUANTITIES AND PRICES, will be determined by comparing, at the time the Contracting Officer issues the Certificate of Final Completion, the actual or measured quantity of the Unit used to complete the Work with the estimated quantity of that Unit shown in the SCHEDULE OF QUANTITIES & PRICES. If the actual or measured quantity of a Unit varies more than twenty-five percent (25%) above or below the estimated quantity of the Unit, an adjustment may be made upon demand of either party based upon any increase or decrease in costs due solely to the variation in quantity of the Unit as provided below. Contractor's actual price of the Units, supported by documentation of Supplier invoiced cost, shall be used to calculate the adjustment of the Unit Price of the Unit (not including overhead and profit). The adjustment shall be measured as follows:

22.2.1 When the actual or measured quantity of a Unit required to complete the Work is more than a twenty-five percent (25%) increase from the estimated quantity of the Unit, as shown in the SCHEDULE OF QUANTITIES & PRICES, an adjustment shall be made, upon demand of either party, to the price of those Units which are above one-hundred twenty-five percent (125%) of the estimated quantity. The actual or measured quantity of Units up to one-hundred twenty-five percent (125%) of the estimated quantity will be paid at the Unit Price shown in the SCHEDULE OF QUANTITIES & PRICES. If neither party makes a demand for an adjustment in Unit Price for quantities above one-hundred twenty-five percent (125%) of the estimated quantity, Metro will pay Contractor the Unit Price shown in the SCHEDULE OF QUANTITIES & PRICES for each such Unit.

22.2.2 When the actual or measured quantity of a Unit is less than seventy-five percent (75%) of the estimated quantity of the Unit, as shown in the SCHEDULE OF QUANTITIES & PRICES, an adjustment shall be made, upon demand of either party, to the price of those Units. Metro will pay the lesser of:

- A. The actual cost of the actual or measured quantity of the Units, including fixed costs; or
- B. The Unit Price of the Unit, as shown in the SCHEDULE OF QUANTITIES & PRICES, multiplied by seventy-five percent (75%) of the estimated quantity of the Unit.

22.3 No Damages or Anticipatory Profits

For unit-priced Work, the change in the Contract Price allowed under this Article shall constitute full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed Work, as well as for loss or damage arising from the nature of the Work, from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work. No compensation will be made in any case for loss of anticipated profits.

GC-23Changes

23.1 General

The Contracting Officer may direct Changes within the general scope of the Contract without notice to Sureties, and may in its discretion direct immediate implementation of Changed Work by a Change Order (CO). Upon receipt of such direction, Contractor shall promptly proceed with the Work in accordance with the applicable conditions of the Contract. Nothing in this Article shall be construed to bind Metro for acts of any person, including its Authorized Representatives who exceed their authority as set forth in the Article herein entitled AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORIZED REPRESENTATIVES.

23.2 Request for Information (RFI)

Contractor may submit a Request for Information (RFI) to Metro's Authorized Representative on any portion of the Work. Contractor shall submit the RFI as early as possible prior to the need date for the information. Metro will provide a timely response, but will not be responsible for Delay arising from late submittal of the RFI. If a Change or other Modification is required, Metro will initiate a CN, CO or other Modification.

23.3 Request for Change (RFC)

23.3.1 Contractor may submit a Request for Change (RFC) to Metro's Authorized Representative identifying the Contract Document it proposes to change and stating the reasons for the Change. If Contractor is requesting a Modification to the Contract Price or Time, it shall submit with its RFC:

- A. A description of the facts, including the date of the Event and justification for additional compensation or time;

- B. The name and title of each Metro Authorized Representative knowledgeable of the facts;
- C. Its recommended Contract Modifications, and
- D. An analysis of the merit and amount of any included Subcontractor RFC and how the critical path of the Schedule will be impacted.

The Contracting Officer may request such other information as may deem necessary to evaluate the RFC.

23.3.2 If the RFC arises out of an Event, Contractor shall submit the RFC within fifteen (15) Days after the Event. If Contractor intends to assert that the Event has caused a Change in the Contract Price or Contract Time, Contractor shall submit a Cost and Schedule Proposal (CSP) within thirty (30) Days after the Event. A submittal of an RFC after the above time limits will be untimely and will be rejected. Contractor shall provide notice to Metro of any Event that relates to a discovery covered by any other Article in this Contract in accordance the time limits for notice in that Article, and provide Metro the opportunity to inspect such discovery before it is disturbed. If Contractor does not provide such timely notice, Metro will reject any related RFC and any Claim to any increase in Contract Price or Contract Time, or other relief, arising out of the Event.

23.3.3 If Metro approves the RFC, it will issue a CN, CO or other Modification. If Metro does not either accept or reject an RFC within thirty (30) Days after Contractor's submittal thereof, the RFC shall be deemed rejected on the thirtieth (30th) Day.

23.3.4 Contractor shall not be relieved from performing the Work during the time Metro considers an RFC and will not receive any adjustment in Contract Price or Contract Time if Metro's Contracting Officer determines the subject matter of the RFC is not a Change or other Modification.

23.4 Contracting Officer's Directive (COD)

23.4.1 The Contracting Officer may issue a Contracting Officer's Directive (COD) with respect to any Work or provision of this Contract, including, if necessary, confirmation of direction to Contractor of any person who was not an Authorized Representative. Contractor shall immediately comply with the COD in accordance with its terms.

23.4.2 If Contractor agrees with Metro's determination that a COD does not constitute Changed Work, Contractor will not be required to maintain separate records for the Work related to the COD. If the Contracting Officer determines that a COD constitutes Changed Work, the sections of this Article related to Changed Work shall apply. If Contractor intends to submit a Notice of Intent to Claim (NOIC) and a Claim or has submitted a Claim pursuant to the Article entitled CLAIMS as the result of the Contracting Officer's determination, Contractor shall maintain the same

contemporaneous, separate records as are required for Change Orders and Claims.

23.5 Change Notice (CN)

The Contracting Officer may issue a Change Notice (CN) to Contractor, describing a proposed Change to the Contract and requesting Contractor to submit a CSP. A CN does not authorize Contractor to commence performance of the proposed Changed Work. Any Change implemented by Metro will be incorporated into a CO or other Modification.

23.6 Change Orders (CO) and Bilateral Modifications

23.6.1 Metro's Authorized Representative may issue a Change Order directing Contractor to proceed with a Change in the Work. The CO shall contain a CO value and a Schedule Impact, which may be revised as necessary. The CO value shall be the maximum limit of Metro's obligation under the CO.

23.6.2 As a condition to eligibility for any adjustment to the CO value or Schedule Impact stated in the CO, Contractor shall submit a CSP within the time set forth in the Section herein entitled CONTRACTOR'S COST AND SCHEDULE PROPOSAL (CSP). If the CSP is not delivered within said time, it will be rejected, and will not be the basis for any adjustment, and Contractor shall not have, and will be deemed to have waived, any Claim to any adjustment to the stated CO value or Schedule Impact, or to any other relief arising out of the CO.

23.6.3 Until the Parties execute a bilateral Modification or resolve any Dispute, Contractor shall maintain its records in accordance with, and payment for the Work shall be, pursuant to the Article entitled BASIS FOR ESTABLISHING COSTS ASSOCIATED WITH A CHANGE herein. Contractor shall submit reports of Work on forms and as prescribed by Metro, and retain all back-up records and reports and make them immediately available to Metro upon request. The Contractor's Representative by its signature shall certify all reports as to their truth and accuracy and the reports shall be acknowledged by Metro's Authorized Representative.

23.6.4 Any bilateral Modification executed by both Parties arising out of a CO shall (a) expressly state that the Work described therein is Changed Work, and (b) include all Changes to the Schedule and Contract Price and a Certificate of Current Cost or Pricing Data.

23.6.5 If the Parties are unable to agree to a bilateral Modification, the Contracting Officer may, at any time, make a Contracting Officer's determination. The determination of the Contracting Officer shall commence the period of time in which Contractor has to file an NOIC and a Claim under the Article entitled CLAIMS herein.

23.7 Basis For Establishing Costs Associated With A Change

23.7.1 General - The amount payable for a Modification is the sum of all eligible costs the Contracting Officer determines are allowable, allocable and reasonable to perform the Work, and a mark-up for overhead and reasonable profit as set forth herein.

23.7.2 Ineligible Costs - Ineligible Costs shall be any costs not eligible under this Contract, and shall specifically include (a) costs caused by the breach of contract or fault, negligence or other failure of Contractor, (b) costs which are unnecessary or could reasonably be avoided or prevented by Contractor (including resequencing, reallocating or redeploying its forces), and (c) costs for remediation of any nonconforming Work.

23.7.3 Eligible Costs - Eligible costs shall be only those costs identified as such as follows:

A. Construction Labor Costs shall (a) meet all requirements of Law (notwithstanding anything herein that may be to the contrary), and (b) include wages plus payroll taxes and fringe benefits. Payroll taxes shall be calculated on base wage only and not on fringe benefits. Fringe benefits shall be applied only to the straight-time component of cost and shall not apply to the premium-time component. Labor costs shall not include costs for management personnel above foreman, office personnel, timekeepers, and maintenance mechanics unless authorized by the Contracting Officer prior to the start of Changed Work. Construction Labor cost reports shall include names, hours worked, and rates of pay for all classifications that are engaged in the actual direct performance of the Changed Work.

B. Material Costs shall be the cost of all Goods purchased by Contractor and used in the Changed Work, including normal wastage allowance as per industry standards, and shall include freight, delivery, unloading, storage charges, taxes and all Supplier discounts. The prices shall be supported by valid invoices, or other agreements standard in the industry and shall be made available to Metro upon request. Metro reserves the right approve Goods and Suppliers, and to furnish Goods to Contractor.

C. Construction Equipment Costs shall be the cost of Construction Equipment and shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals. Costs will be paid as follows:

1. Metro will pay the rates listed in the latest edition of Cost Reference Guide for Construction Equipment (published by Dataquest of San Jose) for Contractor owned Equipment, and reasonable rental rates for rented Equipment.
2. Contractor shall submit supporting documentation of cost of (a) rental Equipment, and (b) Contractor owned Equipment if not listed in the Cost Reference Guide, and shall submit reports

describing size, type, identification number, rental rate (if applicable), and hours of operation.

3. Construction Equipment shall not include costs for (a) tools having a replacement value of two-hundred Dollars (\$200) or less, (b) Contractor plant or fixed costs items (such as buildings, trailers, office equipment, utilities, rail, piping, electrical distribution systems, processing plants, material handling facilities, work platforms, scaffolding, and concrete forms).
4. No additional compensation shall be allowed for Construction Equipment used to perform Changed Work if such Equipment is already on the Worksite and being used or will be used for any other Work.
5. Construction Equipment Operators shall be paid for as Construction Labor Costs.
6. After Construction Equipment is idle for sixteen hours (16-hr) in a twenty-four hour (24-hr) period it shall be deemed to be on standby, and Compensation shall be limited to the sum of the hourly overhead and depreciation rates for eight (8) hours per twenty-four (24) hour period.
7. Metro will not pay compensation for inoperative Construction Equipment.

D. Overhead and Profit

If prior to commencement of performance of Changed Work, the Parties agree on the amount of direct costs, mark-ups on the direct costs for overhead and profit shall be (a) 20% for Construction Labor, 15% for Material, and 15% for Construction Equipment. Where the Change includes a credit item Contractor shall apply the same mark-ups in computing the credit. The mark-ups include, and are full compensation for, all indirect costs of any nature, including without limitation home and field office overhead, taxes, fringe benefits, Performance and Payment Bond premium adjustments, small tools, incidental job burdens, Incidental Engineering, and all other indirect costs of the Changed Work and profit. Metro will not pay a mark-up for Units with Unit Prices established in the Contract or for Goods furnished by Metro. "Incidental Engineering" means all time spent by engineers on (a) preparation, review, planning, coordination, and/or any other administration relating to Construction Documents, reports/logs, inspections scheduling, RFIs, RFCs, schedule/cost estimates, Modifications, Claims, and mix & shoring design, (b) attendance at any meeting required by the Contract; and (c) all other tasks normally performed to support construction work under similar contracts.

- E. Subcontractor Costs - When a Subcontractor performs Changed Work the mark-ups set forth above shall be applied only to, and Metro will pay an additional Subcontractor mark-up of 5% only on, the first tier Subcontractor's and Supplier's direct costs. Metro will not pay a mark-up on Subcontractor's or Supplier's (a) overhead or for profit, (b) on any lower tier Subcontractor's or Supplier's costs, or (c) the costs of any Contractor Affiliate.

23.8 Contractor's Cost and Schedule Proposal (CSP)

Contractor shall submit a Contractor's Cost and Schedule Proposal (CSP) to Metro's Authorized Representative within the time limits provided in this Article and if not otherwise provided, within Fifteen (15) Working Days after receipt of a CN or CO from Metro. In preparing the CSP, Contractor shall:

- A. Use the forms provided by Metro, and comply with the Section entitled Basis For Establishing Costs Associated With A Change.
- B. Identify the impacts of the Change and integrate them in to the Schedule.
- C. Follow Construction Specifications Institute's (CSI) Master Format classification system.
- D. Use Contractor's actual, expected construction productivity rates (including appropriate support); not published or trade association composite rates.
- E. Identify any prices or other elements of the CSP that are conditional, such as time-sensitive orders or events.
- F. Certify the CSP upon submittal.
- G. Include a Certificate of Current Cost or Pricing Data.
- H. If the CSP totals two hundred thousand US dollars (\$200,000) or more, include a CERTIFICATION OF CAMPAIGN CONTRIBUTIONS on the form provided by Metro.

23.9 Work After Scheduled Completion Date, or During Suspension or Delay

To avoid any duplicate payment of overhead or profit, if Contractor performs any Work under a CO or other Modification after the Scheduled Completion Date, or during a period of Suspension or Delay which results in a time extension, the mark ups for overhead and profit paid under this Article for the CO or other Modification for that period shall be deducted from any extended overhead or profit that may be otherwise payable to Contractor under this Contract for the Suspension or Delay.

23.10 Interest

Except as provided in Public Contract Code Section 20104, no interest shall be payable on any amounts until the later of thirty (30) Days after (a) execution to

the Modification by both Parties; or (b) the amounts become due and payable under the terms of the Modification.

23.11 Accord and Satisfaction

The execution of a bilateral modification by the contracting officer and contractor's representative shall constitute a full accord and satisfaction of all amounts payable, all time extensions allowable and all other claims arising out of the event or work that is the subject matter of the bilateral modification. If there is any reservation of rights by either party, the modification shall contain an exact description of the rights reserved. There shall be a conclusive presumption that there is no reservation of rights if there is no such exact description. Claims

23.12 Notice of Intent to Claim (NOIC)

23.12.1 Contractor shall, as a condition precedent to the submission of a Claim, submit a written Notice of Intent To Claim (NOIC) to the Contracting Officer within ten (10) Days after Contractor first becomes aware of any event, decision, action, order or position ("Event") upon which it intends to Claim. In no event shall a NOIC be submitted later than the date of Contractor's delivery of the Request for Final Acceptance. Failure to submit a timely NOIC shall constitute a waiver by Contractor of any right, equitable or otherwise, to bring any Claim against Metro. The Parties may agree in writing, to extend the time limit for submission of an NOIC.

23.12.2 The NOIC shall identify the Event upon which the NOIC is based, set forth the reasons Contractor believes additional compensation and or time is or will be due, the basis of the costs or Delay involved, and insofar as possible, the amount of the potential Claim.

23.13 Submittal and Review of Claims

23.13.1 Submittal and Review – Subject to having filed a timely NOIC, Contractor shall file its Claim in writing within sixty (60) Days after the Event in sufficient detail for Metro to ascertain its basis and amount. Contractor shall furnish such further information and details as Metro may request to evaluate the Claim. Upon Contractor's filing of a Claim, Metro's Authorized Representative shall have access to Contractor', and its Subcontractors', Records and other materials relating to the Claim. In no event shall a Claim be submitted later than the date of Contractor's delivery of the Request for Final Acceptance. Contractor's Request for Final Acceptance of the Work and the Contracting Officer's issuance of a Certificate of Final Acceptance shall constitute a full accord and satisfaction with respect to all Claims, actual or potential, known or unknown.

23.13.2 Delay Claims – Contractor shall submit to the Contracting Officer a proposed revision to the Schedule with each Claim incorporating the effects of the claimed Delay. The Claim shall also contain reasonable proposals to minimize the Delay and its effects. If the Schedule prior to the claimed Delay did not describe prior conditions affected by the Delay,

Contractor shall prepare a portion of the Schedule reflecting these conditions as a baseline and submit it with the Claim. Contractor shall also submit an Impacted Schedule showing the proposed revision. The Impacted Schedule shall also contain all other pending Modifications, Change Orders, Delays or Claims of Delay that are not yet included in the current Schedule.

23.13.3 Claim Certifications – All Claim submittals shall include a Claim Certification as follows:

“This is to certify that, the Claim, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the Contracting Officer or Metro’s Authorized Representative in support of the Claim amount are accurate, complete and current as of the date (Claim submittal date)”.

Certifications shall accompany both the initial Claim submittal and the cost or pricing data submitted in support of the price agreement.

23.13.4 Ethics Declaration – For a Claim submittal of one-hundred thousand US Dollars (\$100,000) or more, Contractor shall submit an Ethics Declaration on the form provided by Metro.

23.14 Response to Claims and Contractor Disputes

The Contracting Officer will respond to Claims and the Contractor may Dispute all Claims in accordance with California Public Contract Code (CPCC) 20104 et. seq.

23.15 Performance During Claim or Dispute

Contractor shall proceed diligently with performance of the Contract pending resolution of any Claim, Dispute, appeal or action ensuing under the Contract, except for any performance the Contracting Officer determines in writing should be delayed, suspended or terminated as a result of such Claim or Dispute.

23.16 Accord and Satisfaction

A Claim resolved by a bilateral Contract Modification shall constitute a full accord and satisfaction unless the resolution specifically provides otherwise, and contains a description of those elements of the Claim that are not resolved.

GC-24Suspension *

24.1 Order of Suspension

The Contracting Officer may at any time and for any reason within its sole discretion issue a written order to Contractor suspending, delaying, or interrupting all or any part of the Work for a specified period of time (“Order of Suspension”). Any order from any person other than the Contracting Officer shall

not be a valid or enforceable Order of Suspension, and the provisions of this Article shall not apply to such order.

24.2 Contractor Compliance

Contractor shall comply immediately with an Order of Suspension, and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of Work stoppage. Contractor shall continue the Work that is not included in the Order of Suspension at normal full strength and shall continue ancillary activities, as reasonably required to preserve property or as otherwise required by the Contracting Officer. Contractor shall resume performance of the suspended Work upon expiration of the Order of Suspension or upon its earlier termination by the Contracting Officer.

24.3 Price and Time Adjustments

Contractor may submit an RFC to the extent that it can show that cost or Delays are directly attributable to the Order of Suspension. The RFC shall be filed within twenty (20) Days after the expiration or earlier termination of the Order of Suspension. No adjustment shall be made under this Article for any Order of Suspension to the extent that Contractor's performance would have been so suspended, Delayed or interrupted by any other cause, including the fault or negligence of Contractor, or for which a Modification is provided for, or excluded under any other term or condition of the Contract.

24.4 Work During Suspension

If during the suspension, the Contracting Officer authorizes Contractor to incur any costs or perform any Work related to the suspended Work, such authorization shall identify the authorized Work, the not to exceed amount of the authorization and any payment terms.

GC-25 Termination For Convenience Of Metro*

25.1 Notice of Termination

Metro may in its sole discretion terminate Contractor's performance of the Work, without cause, from time to time at any time, in whole or in part by delivery of a Notice of Termination to Contractor, specifying the extent to which performance of the Work under the Contract shall be terminated and the date upon which such termination shall become effective.

25.2 Contractor's Obligations Upon Termination

Contractor shall comply with the Contracting Officer's directions in the Notice of Termination.

25.3 Submittal and Review of Invoice

Within forty-five (45) Days after Metro's delivery of a Notice of Termination for Convenience, Contractor shall submit a final invoice based on the percentage of

the Work completed prior to the effective date of termination and other costs reasonably incurred by Contractor to implement the termination.

25.4 Partial Payments and Settlements

Contractor and the Contracting Officer may finally agree upon partial amounts to be paid to Contractor due to termination of Work. As to amounts not finally agreed upon, Metro may make partial payments, but if the total of such payments is in excess of the amount finally agreed-upon, or determined to be due under this Article, such excess shall be payable by Contractor to Metro upon demand. Metro may retain the amount of any Claim that Metro may have against Contractor in connection with the Contract and the agreed upon price for and/or proceeds from the sale of Goods or other items acquired or sold by Contractor that have not been otherwise recovered by or credited to Metro.

However, if Contractor would have sustained a loss on the entire Contract had it been completed, Contractor shall not be entitled to a profit and the settlement will be reduced to reflect the indicated rate of loss. Such payment shall constitute payment in full for the Work performed under the Contract.

25.5 Payment Upon Failure to Submit Invoice or to Agree

If Contractor fails to submit its termination invoice within the time specified, or if Contractor and the Contracting Officer fail to agree on the total amount to be paid to Contractor, the Contracting Officer will determine the amount due Contractor, if any, on the basis of information available, and will pay Contractor the amount so determined. Profit will be included in the amount determined above.

25.6 No Damages or Anticipatory Profits

Contractor shall not be entitled to any damages or any anticipatory profits on Work not yet performed as a result of termination under this Article. Payment under this Article shall constitute Contractor's exclusive remedy for termination hereunder.

25.7 No Waiver

Notwithstanding anything contained in the Contract to the contrary, Metro's termination under this Article shall not waive any right Metro may have to claim damages, and Metro may pursue any cause of action that it may have by Law or under the Contract.

GC-26 Termination For Default *

26.1 Grounds for Termination for Default

Metro may terminate this Contract, in whole or in part, for default if Contractor:

26.1.1 Fails or refuses to:

- A. Perform any obligation or Work, provide any Goods or comply with any other provision of this Contract;

- B. Perform within the Schedule or make progress so as to endanger performance of this Contract in accordance with its terms;
- C. Comply with, or violates, any Law or order of a Government Entity, applicable to Contractor, the Work or the Contract;
- D. Indemnify any Party that Contractor is obligated to indemnify under the Article entitled LIABILITY AND INDEMNIFICATION herein, and elsewhere under the Contract;
- E. Promptly repair or correct any Deficiency, or to re-perform or replace rejected Work or Goods that do not meet Contract requirements; or
- F. Comply with, or violates, an order or requirement of the Contracting Officer authorized by or within the scope of the Contract.

26.1.2 Abandons the Contract (Contracting Officer may determine Contractor abandoned if without authorization it ceased to perform substantial Work, not otherwise excused, for three (3) Days).

26.1.3 Assigns the Contract, or any portion thereof, or subcontracts any Work without prior written acceptance by the Contracting Officer.

26.1.4 Submits or pursues any false claim or any other act in violation of any Law relating to false claims, including the filing of a False Claim under the California or Federal False Claim Acts.

26.1.5 Makes any fraudulent representation or material misrepresentation related to the Pre-qualification Application and process, or with respect to any other representation or warranty under the Contract.

26.1.6 Offers or gives any improper consideration, in any form, either directly or through an intermediary, to any Metro member, officer, employee or Authorized Representative, with the intent of securing the Contract or the making of any determinations with respect to Contractor's performance of the Work.

26.1.7 Is placed on the California State Labor Commissioner's list of debarred contractors pursuant to Labor Code §1771.1 or §1771.7.

26.1.8 Fails to pay any amount owing to any person performing Work or to pay its debts incurred on the Contract as they become due (providing that such failure continues for a period of ten (10) working days after written notice to Contractor by the Contracting Officer).

26.1.9 Suffers any or the following: (a) (i) insolvency (deemed to be insolvent if has ceased to pay its debts for at least sixty (60) Days in the ordinary course of business or cannot pay its debts as they become due), (ii) bankruptcy (deemed to be bankrupt upon the filing of a voluntary or involuntary petition regarding Contractor under the United States

Bankruptcy Code, which involuntary petition is not dismissed within sixty Days), (iii) reorganization or the filing of a related or similar proceeding, (b) the appointment of a receiver or trustee for Contractor (c) Contractor's execution of a general assignment for the benefit of creditors, (d) the attachment, levy, execution or other judicial seizure of any portion of Contractor's property or substantial portion of the other assets of Contractor (providing the assets are not released, expunged, or discharged within a period of ten (10) working days).

26.1.10 Conviction of Contractor or any of its officers, partners, principals, employees or any Contractor's Representative, for a violation of any Law related to Contractor's obligations under the Contract, including without limitation, in connection with the Work to be performed, Goods supplied, payments to be made or Claims submitted under the Contract.

26.2 Cure Notice

26.2.1 General - If the Contracting Officer determines Contractor is in default of the Contract, the Contracting Officer may either terminate the Contract or will issue a Cure Notice to Contractor describing the default.

26.2.2 Failure to Cure and Notice to Surety - If Contractor fails to cure the default within five (5) Days after receipt of such Cure Notice, or if the default cannot be cured within five (5) Days, Contractor fails to commence to cure within five (5) Days or fails to diligently proceed to cure or to cure the default within the time the Contracting Officer reasonably determines to be necessary, the Contracting Officer shall provide notice to the Surety of Contractor's failure to cure or commence a cure, attaching a copy of the Cure Notice. The Contracting Officer may in its sole discretion demand that the Surety cure the default. Whether or not the Contracting Officer demands that the Surety cure the default, it may take any other actions it deems appropriate to cause the completion of the Work and to mitigate its damages. The Surety on the Performance Bond under the Contract shall not be entitled to take over Contractor's performance of Work in case of termination under this Article, except with the consent of the Contracting Officer.

26.2.3 Failure of Surety to Cure and Notice of Termination - If the Contracting Officer demands that the Surety cure the default, and the Surety fails to cure the default within fifteen (15) Days after receipt of the Cure Notice, or if the default cannot be cured within fifteen (15) Days, and the Surety fails to commence to cure within fifteen (15) Days and diligently proceed to cure within the time the Contracting Officer determines to be necessary, the Contracting Officer may, by written notice, terminate the Contract or such part of the Contract as the Contracting Officer in its sole discretion deems to be in Metro's best interest.

26.2.4 Contractor's Continuing Liability - Whether or not the Contract or any part thereof is terminated, Contractor shall be liable for any damages to Metro resulting from Contractor's default.

26.3 Contractor Obligations on Receipt of Notice

Contractor shall comply with the Contracting Officer's directions in the Notice of Termination and subsequent updates as they occur, which will contain directions related to (a) stopping of Work, (b) ceasing placement and termination of orders or Subcontracts, (c) communicating the Notice of Termination to affected Subcontractors, Suppliers and any other affected parties, (d) settlement of liabilities and claims, (e) assignment to Metro of outstanding orders and Subcontracts, (f) transfer of title and delivery to Metro of tools, Equipment, Work and Goods, (g) completed or partially completed designs, plans, drawings and other information, (h) sale of Goods, (i) protection and preservation of property in Contractor's possession, and (j) compliance with other requirements.

26.4 Metro Completion of Work

Upon termination for default, Metro will have the right to complete the Work by whatever means and methods it deems advisable, and

- A. May take over the Work and complete it by contract or otherwise;
- B. Will not be required to obtain the lowest prices for completing the Work, but shall make such expenditures that, in Metro's sole judgment, best accomplish such completion.
- C. May take possession of and use any or all Contractor's Goods, plant, tools, Construction Equipment, and property of any kind, provided by or on behalf of Contractor for the purpose of completing the Work, or any portion thereof, and shall not be responsible to Contractor for fair wear and tear. Contractor shall have no rights in such property during its use by Metro.
- D. May procure, upon such terms as Metro deems appropriate, all Goods and services necessary to complete the Work, and Contractor shall be liable for any and all excess costs incurred by Metro.
- E. Charge to Contractor the expense of completing the Work together with a reasonable charge for engineering, managerial, and administrative services, as certified by Metro. Metro will deduct said amount out of such monies that may be due or may at any time thereafter become due Contractor.
- F. Charge all other excess costs to Contractor and deduct these costs from payments otherwise due at that time or thereafter.

If any costs and/or expenses incurred by Metro are in excess of the sum which otherwise would have been payable to Contractor, then Contractor shall promptly pay the amount of such excess to Metro upon notice of the excess so due.

26.5 Remedies

26.5.1 If, after the Notice of Termination for Default, it is determined that Contractor was not in default, the termination shall be deemed to have been effected for the convenience of Metro in accordance with the Article

entitled TERMINATION FOR CONVENIENCE OF Metro herein, and adjustment shall be made as provided in that Article.

26.5.2 Contractor shall not be entitled to any damages or any anticipatory profits on Work not yet performed as a result of termination under this Article. Payment, if any, under this Article shall constitute Contractor's exclusive remedy for termination hereunder.

26.5.3 The rights and remedies of Metro provided in this Article are in addition to any other rights and remedies provided by Law or under the Contract.

GC-27 Cooperation In Event Of Termination

27.1 General

In the event of any termination of all or any part of this Contract for any reason, Contractor shall fully cooperate with Metro in the transition of the Work to Metro or to a new contractor or provider of Goods and services. Contractor shall have no right to withhold or limit any of the Work or any transition services on the basis of any alleged breach of this Contract by Metro, other than a failure by Metro to timely pay the amounts due for transition services under this Article based upon an invoice meeting the requirements of this Contract. Compliance with this Article by either Party shall not constitute a waiver or estoppel with regard to any rights or remedies available to the Parties.

27.2 Termination Transition Plan

Upon the written direction from Contracting Officer included in the Notice of Termination, Contractor shall develop a Termination Transition Plan, to be completed within ten (10) Days after such Notice. The Termination Transition Plan shall be subject to Metro's Acceptance. If Contractor has not submitted, or Metro has not accepted, a Termination Transition Plan by the effective date of the termination, the Contracting Officer may direct Contractor to continue to perform Work in accordance with Contract requirements to the extent directed. This Section shall survive the termination of the Contract.

27.3 Acts Upon Termination

Contractor shall use its best efforts to assist Metro in effecting a transition of the Work in accordance with and as defined in the Termination Transition Plan and industry best practices. The transition services shall include, at a minimum, providing such services as shall be necessary or appropriate to facilitate the orderly transition of Work to Metro or its new contractor, including maintaining current data and records, in accordance with industry best practices. Contractor shall, at the direction of the Contracting Officer, assign designated Subcontracts to Metro.

GC-28 Liability And Indemnification *

28.1 Definitions

Unless explicitly identified as otherwise, the following terms shall have the following meanings:

- A. "Indemnitor" means Contractor, Contractor's Representative, its employees, agents, officers, Subcontractors, Suppliers or any other Persons performing any of the Work for whom Contractor may be contractually or legally responsible.
- B. "Indemnitee" means Metro, its Authorized Representatives, and subsidiaries, and their respective members, employees, agents, officers, directors, contractors (other than Indemnitors), successors and assigns.
- C. "Indemnify" means defend, indemnify and hold harmless.
- D. "Liability" means any and all claims, actions, judgments, causes of action, suits, legal or administrative proceedings, costs, damages, losses, liabilities and response costs, including attorneys' and expert witness fees and costs incurred in connection with the enforcement of this indemnity.
- E. "Environmental Impairment Losses" means Liability incurred by Metro under an Environmental Law as a result of the activities conducted by Contractor.

28.2 Indemnification

Indemnitors shall Indemnify Indemnitees from and against any and all Liabilities arising out of or resulting from any act, omission, fault or negligence of any Indemnitor in connection with or relating to, or claimed to be in connection with or relating to, (a) the Contract, Work, Goods or property, including Indemnitee's reliance upon the use of Intellectual Property or other information furnished or delivered by the Contractor, or (b) personal injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property (including property of Indemnitees).

28.3 Environmental Indemnity

28.3.1 Compliance With Laws - Contractor shall transport, store, remediate and dispose of Hazardous Substances in full compliance with all Laws.

28.3.2 Environmental Indemnity – In addition to any other indemnification provisions of the Contract, Indemnitors shall Indemnify Indemnitees from and against any and all present and future Liabilities and Environmental Impairment Losses (including all related fees from contractors, attorneys, and experts) that arise out of the negligent performance of their activities or Work, including from and against any negligent or reckless act or omission (including failure to recognize or report the existence or location of Hazardous Substances) of any Indemnitor resulting in Liability for (a) releases of Hazardous Substances or (b) remedial work required under any Environmental Law.

28.4 Employee and Third Party Claims

Indemnitor's Liabilities shall not be limited by Claims against any Indemnitee or Indemnitor by any employee of any Indemnitor, including claims under any workers' compensation act, disability benefit act or other employee benefit act or insurance. Nothing contained in the Contract is intended to, nor shall have the effect of, creating any rights in any third party against metro.

28.5 Limitation of Liability

Except as permitted by California Civil Code §2782.1, 2782.2 and 2782.5, the indemnities in this Article shall not inure to the benefit of an Indemnitee so as to impose liability on the Contractor for the active negligence of the Indemnitees, or to relieve the Indemnitees of liability for such active negligence.

28.6 Survival

The Indemnification specified in this Article shall survive termination or closeout of the Contract, and is in addition to any other rights or remedies that the Indemnitees may have under the Law or Contract. In the event of any Claim or demand made against any Indemnitee, metro may at its sole discretion reserve, retain, or apply any monies due the Contractor under the Contract for the purpose of resolving such Claims.

GC-29 General Provisions *

29.1 Contractor Notices to Metro

All Notices to Metro under this Contract shall be in writing to Metro's Authorized Representative for the subject matter of the Notice, with a copy to the Contracting Officer. No Notice shall be effective unless it was delivered to the designated Authorized Representative and to the Contracting Officer as provided in this Contract.

29.2 No Waiver Of Conditions

Metro's failure or delay, at any time, (a) to enforce any provision of the Contract, or (b) to require strict performance of any term or condition of the Contract, or (c) to exercise any right or remedy provided herein or by Law, shall not constitute a waiver of that provision or performance, or of any other, right or remedy. Metro's explicit waiver of any breach or default of any provision of the Contract shall not constitute a waiver of any other breach or default of such provision or any other provision.

29.3 Contractor's Interaction With The Media And The Public

Approval of Copy - Prior to publication, Contractor shall submit to Metro for its review and approval all Metro related copy it proposes to use for advertising or public relations purposes. Contractor shall not allow Metro related copy to be published in its advertisements and public relations programs prior to receiving such approval. Contractor shall ensure that all published information is factual and that it does not in any way imply that Metro endorses Contractor's firm, services or products.

Contact With News Media - Contractor shall refer all inquiries from the news media relating to the Contract or the Work to Metro, and shall comply with the direction of Metro's Authorized Representative for Media Relations regarding statements to the media.

Coordinating With the Public - Contractor shall designate a staff person acceptable to Metro to keep Metro informed of all impacts on the community resulting from the Work.

Complaints - If Contractor receives a complaint from a member of the community, Contractor shall inform Metro promptly and comply with the direction of Metro.

29.4 Assignment

Consent - Contractor or its Surety shall not assign, transfer, convey, delegate or otherwise dispose of the Contract or the right, title, or interest in it or any part of it (collectively "Assign" or "Assignment") without the prior written consent of the Contracting Officer. Contractor shall give written notice to Metro of Assignment at least ten (10) Days before any payment is due. Any attempted Assignment without prior written consent of the Contracting Officer shall be null and void, and no right under the Contract shall be asserted against Metro by reason of the Assignment. Any Assignment of proceeds of the Contract shall be subject to all provisions of the contract relating to retentions, Liquidated Damages, setoffs and other withholdings, and Metro may use amounts withheld, whether assigned or not, for completion of the Work.

Continuing Responsibility - Contractor's Assignment or delegation of any of its Work under the Contract shall not relieve Contractor of its responsibility for the Work assigned or delegated, unless the Contracting Officer, in its sole discretion, has approved such relief from responsibility.

Assignment of Certain Legal Rights - Contractor hereby agrees that the provisions of Public Contract Code §7103.5(b) are applicable to the Contract, and which provides as follows:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This Assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgment by the parties."

29.5 Protection Of Existing Structures, Equipment & Vegetation

Contractor shall protect existing structures, equipment and vegetation (collectively "**Existing Improvements**") within and adjacent to the Worksite and

shall exercise due caution to avoid damage to such Existing Improvements. Unless otherwise provided, Contractor shall repair or replace at its sole expense all Existing Improvements damaged or removed by Contractor. Repairs and replacements shall be at least equal to Existing Improvements and shall match them in finish and dimension. If Contractor fails or refuses to make timely repairs, Metro may make the repairs at Contractor's expense. Contractor shall repay the expenses upon demand or, without limitation of any of Metro's rights and remedies under Law or this Contract, Metro may deduct the expense from any amount due under this Contract.

29.6 Historical, Archaeological, Paleontological and Scientific Discoveries

All things of historical, archaeological, paleontological, or scientific interest encountered by Contractor during progress of the Work shall be reported immediately to Metro. Construction in the vicinity of the discovery shall be halted in order to preserve and protect it until its significance can be determined by Metro. Metro will issue instructions to Contractor with respect to the disposition of the discovery.

29.7 Severability

If any Article, Section, Paragraph, Subparagraph, sentence, clause, phrase or any other provision ("Provision") contained in the Contract is determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable ("Determined Unenforceable"), this shall not affect the other Provisions of the Contract, which shall remain in full force and effect as if the Provision Determined Unenforceable was not originally contained in the Contract.

29.8 Governing Law

The Contract shall be governed by and interpreted in accordance with the laws of the State of California, and to the extent applicable, by the laws of the United States. By entering into the Contract, Contractor consents and submits to the jurisdiction of the Courts of the State of California over any action at Law, suit in equity, or other proceeding that may arise out of the Contract.

29.9 Agent To Accept Service

Contractor shall maintain within Los Angeles County a duly authorized Agent to accept service of legal process ("Authorized Agent") on its behalf, and shall keep Metro advised of such Authorized Agent's name and address during the entire Contract Time and for three (3) years thereafter, or as long as Contractor has warranty obligations under the Contract, whichever period terminates later. The Authorized Agent on the Effective Date of the Contract is identified in the Article entitled NOTICE AND SERVICE THEREOF in Contract Document SPECIAL PROVISIONS. If at any time Contractor does not meet the above requirement to maintain and identify to Metro its Authorized Agent, Contractor agrees that the Secretary of State of the State of California shall be Contractor's Authorized Agent for service of legal process.

GC-30 Safety And Loss Prevention *

This Article is to be construed in its broadest sense for the protection of persons and property by the Contractor and no action or omission by Metro, the Contracting Officer, any Authorized Representative or any other person shall relieve the Contractor of any of its obligations and duties hereunder.

A. Metro's Safety Principles

1. Safety is a 24/7 priority
2. Safety is everyone's responsibility
3. Accidents and injuries are preventable
4. Working safely is a condition of employment
5. Training is essential for good safety performance
6. Management is accountable for safety

B. Contractor Responsibilities

The Contractor is responsible for:

1. Complying with all applicable safety Laws
2. Enforcing Worksite safety practices; and
3. The discovery, determination and correction of any unsafe conditions related to the Contractor's performance of the Work or Goods supplied by the Contractor on Metro property.
4. The Contractor shall cooperate and coordinate with Metro and with other Metro Contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by Metro.

C. Safety Practices

1. The Contractor shall inform its personnel of Metro safety practices and the requirements of Metro's safety program identified in Metro Safety Manual For Other Than Major Construction.
2. If any of the Contractor's personnel are required to visit any Worksites, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel. The Contractor shall cooperate and coordinate with Metro and with other Metro Contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by Metro.

GC-31 English Requirements *

At all times, all Contractor personnel on site must have sufficient knowledge of the English language to comprehend safety related directions and requirements. At all times the Contractor shall have a lead representative on site who has

sufficient comprehension of the English language to read, write, speak and understand all job related directions and discussions.

END OF GENERAL CONDITIONS PUBLIC WORKS (FORM A)

