

GENERAL CONDITIONS - CONSTRUCTION UNDER \$25,000

GC-01 Definitions

"Metro" or "MTA" means the Los Angeles County Metropolitan Transportation Authority. "Contractor" means the person, firm or corporation supplying the Work under the Contract, and includes all of its employees, representatives, subcontractors, and suppliers. "Work" means goods, equipment and materials, and all productive and operative efforts and services provided to generate the results specified, indicated or implied in the Contract to complete the project described in the Statement of Work; may also refer to Work in progress. "Modification" means 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. "Differing Site Condition" means any condition, which differs materially from that which Contractor could have reasonably anticipated as being an inherent condition of the Site. "Law" means 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. "Deficiency" means any 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). Additional terms may be defined elsewhere in the Contract.

GC-02 Representatives

A. Metro's Authorized Representative

Only Metro's Authorized Representative or Contracting Officer may bind Metro in giving Contract direction. The Authorized Representative or Contracting Officer will be identified in the Notice to Proceed and may be changed from time to time by written notice.

B. Contractor's Representative

The Contractor shall identify the Contractor's representative at the time of Contract execution. The Contractor's Representative shall have full authority to represent and act for Contractor in all matters concerning the Work.

GC-03 Contractor's License

Contractor and all subcontractors shall possess the required State Contractor's license(s) for the type of work performed, for the term of the Contract.

GC-04 Permits, Laws And Regulations

The Contractor shall be responsible for acquiring all necessary permits, inspections and inspection certificates. Contractor shall comply with all laws, ordinances and regulations applicable to the Work.

GC-05 Assignment Consent

No assignment of the Contract may be made without the prior approval of Metro.

GC-06 Liability And Indemnification

A. Metro Indemnification

Contractor shall defend, indemnify and hold harmless Metro from and against all liabilities, claims, actions and damages arising out of or resulting from any act, omission, fault or negligence of Contractor in connection with or relating to, or claimed to be in connection with or relating to the Contract, Work, goods or property, or personal injury to or death of any person or damage to or loss of use of property.

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 Metro so as to impose liability on the Contractor for the active negligence of Metro, or to relieve Metro of liability for such active negligence.

B. Environmental Indemnity

Contractor warrants that:

It is aware of and understands the hazards presented to persons, property and the environment in performance of transportation, storage, remediation or disposal of Hazardous Substances related to the Project. To the extent that such Work is included in the Contract, Contractor shall transport, store, remediate and dispose of Hazardous Substances in full compliance with all Laws.

"Hazardous Substance" means 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.

If the Contract requires off-site storage or disposal, the selected storage and disposal facilities described in the Contractor's work plan shall be licensed and permitted to store and dispose of the Hazardous Substances detailed within the work plan.

C. Employee and Third Party Claims

Claims against Metro by any employee of any Contractor or any subcontractor, including claims under any workers' compensation act, disability benefit act or other employee benefit act or insurance shall not in any way limit Contractor's liability to Metro. Nothing contained in the Contract is intended to, nor shall have the effect of, creating any rights in any third party against Metro.

D. 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 Metro may have under the Law or Contract. In the event of any Claim or demand made against Metro, 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-07 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 Contracts.
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-08 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.

GC-09 Termination for Convenience

Metro may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in Metro's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit, if any, on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Metro. If the Contractor has any property in its possession belonging to Metro, the Contractor will account for property, and dispose of it according to Metro direction.

GC-10 Termination for Default

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

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.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations

of the parties will be the same as if the termination had been issued for the convenience of Metro pursuant to the article entitled Termination for Convenience.

GC-11 Modifications

- A. The Contracting Officer may, at any time, make changes in the Work within the general scope of the contract (hereinafter Change Orders). All Change Orders shall be in writing.
- B. If the Contractor is requesting a Modification to the Contract Price or Time as a result of a Change Order, it shall submit a Request for Change (RFC) which shall include the following:
 - 1. The reasons the Contractor believes additional compensation or time may be due and the date of the causal event.
 - 2. All information the Contracting Officer will need to evaluate the RFC.
 - 3. A Cost and Schedule proposal in the format provided by METRO.
- C. If the Contractor receives direction, instruction, interpretation or determination from any person, other than an Authorized Representative, to perform Work that would constitute changed Work, it shall within 10 days of the event submit an RFC. The Contractor shall not proceed with any such Work until directed in writing by the Authorized Representative.

GC-12 Delays

The Contractor shall be entitled to an extension in the Contract term if the delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, or for a Change Order as described in the article entitled Modifications. Examples of such causes include: acts of God, acts of another Contractor in the performance of a contract with Metro, epidemics, quarantine restrictions, strikes, freight embargoes, or Differing Site Conditions.

As a condition to such entitlement, Contractor shall, within ten [10] days from the beginning of any delay, notify Metro in writing of the causes of delay. If in the judgment of Metro, the delay is excusable, the time for completing the Work shall be extended. The judgment of Metro shall be final and conclusive on the parties, subject to Contractor's rights under the article entitled CLAIMS.

GC-13 Claims

A. Notice of Intent to Claim (NOIC)

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. 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. 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.

B. Submittal and Review of Claims

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 shall have access to Contractor's, 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.

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.

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.

C. 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.

D. 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.

E. 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-14 Warranty

The contractor warrants that the Work shall be free of Deficiencies, shall be fit for its intended use, and shall meet all requirements of the Contract. Goods furnished shall be new and of a quality that meets all requirements of the Contract. Warranties shall commence upon Metro's acceptance of the work and shall remain in effect for one year from the acceptance date unless otherwise noted elsewhere in the documents.

GC-15 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.

GC-16 Protection of Existing Improvements

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.

GC-17 Final Inspection And Acceptance Of The Work

- A. The Contractor shall notify Metro in writing that the Work has been completed (Request for Final Acceptance). Metro will make a final inspection to ascertain that the Work has been fully completed in accordance with the requirements of the Contract.
- B. When Metro has made the final inspection and determined that the Work has been completed in accordance with the Contract, including all required submittals, Metro will issue a certificate of final acceptance. Thereafter, the Contractor will be relieved of the duty of maintaining and protecting the Work as a whole except as required under Sections "Liability and Indemnification", "Safety" and "Warranty".
- C. After Final Acceptance, no further performance of Work shall be required except as regards latent defects, fraud or such gross mistakes as may amount to fraud, or as regards Metro's rights under any warranty or guarantee.

