

SPECIAL PROVISIONS (DESIGN/BUILD)

SP-01 GLOSSARY OF TERMS

- A. Abbreviations, Symbols and Definitions

The following abbreviations are used in this document:

- * **Marks Required Subcontract Provisions that must flow down to all subcontracts as defined in the Article entitled SUBCONTRACTORS AND SUPPLIERS provided in Contract Document GENERAL CONDITIONS.**

Unless explicitly identified as otherwise herein, capitalized terms, abbreviations and symbols used in this Contract shall have the meanings as set forth in the Article entitled GLOSSARY OF TERMS in Contract Document GENERAL CONDITIONS.

SP-02 DALP PARTICIPATION

- A. The Contractor is encouraged to achieve it's Disadvantaged Business Enterprise Anticipated Level of Participation (DALP) of _____ percent (_____%) of the **??Firm Fixed Price ??Total Estimated Cost ??Not to Exceed (NTE) Amount.**

A DALP may be assigned for each Task Order.

- B. Achievement of the DALP will be measured by the total amount paid for the work completed by the DBE.

Or if DALP is not recommended use the following

A DALP for this procurement was not recommended for participation of DBE firms because of insufficient DBE availability or lack of identified subcontract opportunities. However, pursuant to the DBE Program, if the Contractor utilizes the services of subcontractors, the Contractor is encouraged to afford maximum opportunities to DBE firms in available subcontract and supply service areas.

SP-03 MBE/WBE PARTICIPATION

- A. The Contractor is encouraged to meet the Voluntary Minority and Women Business Enterprise (M/WBE) Anticipated Levels of Participation (VALP) specified in the Contract documents, and acknowledges the VALP commitment by Contractor of ____ percent MBE and ____ percent WBE of the Total Contract Price. A firm which is both a MBE and a WBE may be credited toward either the MBE or WBE VALP, but not both.

Or if goal is waived use the following

- B. MBE/WBE VALP was not recommended for participation of MBE/WBE firms because of insufficient MBE/WBE availability or lack of identified subcontract opportunities. However, pursuant to the MBE/WBE Program, if the Contractor utilizes the services of subcontractors, the Contractor is expected to afford maximum opportunities to MBE/WBE firms in all subcontract and supply service areas. When requested by the Metro, the Contractor shall submit documentation to satisfy the Metro that Good Faith Efforts were made to utilize MBE/WBE firms throughout the life of the Contract.

SP-04 PERCENTAGE OF WORK PERFORMED BY THE CONTRACTOR

Contractor shall perform with its own organization Work amounting to at least **TBD percent (TBD%)** of the Total Contract Price.

SP-05 BROWZ REQUIREMENTS

- A. In order to enable Metro to track and monitor certain documentation necessary for the administration of this contract, including but not limited to Certificates of Insurance, etc., Contractor shall register with The Browz Group, LC, by completing and submitting the required registration form and associated documents specified therein.

(When contract is conformed delete bullets B - E below, if the successful bidder/proposer is a Metro certified Small Business, as they are exempt from paying the registration fee through April 30, 2006 - even if they awarded a multi-year contract)

- B. Contractor shall bear the cost and be responsible for paying the following fees to remain registered with The Browz Group, LC, through the term of the Contract. The initial (1st year) \$595 registration fee is due to Browz within ten (10) days of receipt of Award Notice.
- C. For multi-year contracts, the 2nd year fee of \$536 is due to Browz within ten (10) calendar days of the start of the 2nd year of the contract. For the 3rd year of a multi-year contract a \$476 fee is due to Browz within ten (10) calendar days of the start of the 3rd year of the contract.
- D. For task order contracts the \$595 fee is due within ten (10) calendar days of award of the first task order. Subsequent years shall follow the fee schedule set forth in C above.
- E. Should the Contractor fail to register with Browz and pay the applicable fee, Metro reserves the right to terminate the contract and or withhold any unpaid fee from any outstanding payment due Contractor. Contractor will not be allowed to proceed with the Work and will not be granted any additional time to complete the Work.

SP-06 PROSECUTION AND COMPLETION OF WORK

Contractor shall commence performance of the Work on the date specified in the formal Notice to Proceed (NTP) issued to the Contractor. Contractor shall furnish sufficient labor (including extra crews) and facilities and shall work such hours (including extra shifts and overtime operations) so as to prosecute the Work to completion in accordance with the WORK COMPLETION SCHEDULE, attached hereto as **Appendix A** to Contract Document SPECIAL PROVISIONS and incorporated herein.

SP-07 NOTICE AND SERVICE THEREOF

A. General

Any notice (e.g., Stop Notice, Preliminary Notice, etc.) legally or otherwise required to be given by one Party to another under the Contract shall be in writing and dated, and in accordance with the Contract requirements applicable for the Notice in question. The Notice shall be signed by the Party giving such notice, or by a duly authorized representative of such Party.

B. Notice Transmittals from Contractor

All notices shall not be effective for any purpose whatsoever unless enclosed in a sealed envelope and transmitted by registered mail addressed to Metro's offices as follows:

Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, California 90012-2952

Attention:
Insert

C. Notice Transmittals to Contractor

THE REQUIRED INFORMATION WILL BE INCORPORATED AT THE TIME OF AWARD.

All notices to Contractor will be enclosed in a sealed envelope and transmitted to Contractor's Representative by personal delivery at the Worksite, or by registered mail (or any certifiable delivery service) addressed to Contractor as follows:

Contractor Name
Contractors Address
Contractor City, State, Zip#

or such alternate address as Contractor may designate by Written Notice.

Attention: Contractor Contact Person
Contractor Project Manager
Contract Title

Contract No.: **Insert**

D. Notice Transmittals to Surety and Others

All notices to the Surety, and/or any other entity and/or person, shall be enclosed in a sealed envelope and transmitted by personal delivery or by registered mail addressed as follows:

THE REQUIRED INFORMATION WILL BE INCORPORATED AT THE TIME OF AWARD.

Surety Name
Surety Address
Surety City, State, Zip #

Attention: Surety Contact Person
Surety Contact Title
Contract No.: **Insert**

E. Change of Address Notices

Any notice of changes of address shall be given according to the provisions of this Article.

SP-08 CONTRACTOR CONTROLLED INSURANCE PROGRAM REQUIREMENTS (RESERVED)

SP-09 DOCUMENTS FURNISHED BY METRO

Metro will provide the following documents to the Contractor at no expense. Contractor shall be responsible for supplying all Subcontractors and/or itself with additional copies of these documents at Contractor's own expense.

DOCUMENT	QUANTITY
Conformed Project Definition Documents	3
Diversity & Economic Opportunity Programs Compliance Manual (Federal)	3
Construction Safety and Health Manual Revision 3	3
Construction Insurance Specifications	3
Metro Lobbying Ordinance No. 99-01	3
Federal Lobbying Restrictions	3
Alcohol and Drug-Free Workplace Manual	3
Labor Compliance Manual Revision 1	3
Change Notice/Change Order Documents	3
Code of Conduct	3

SP-10 SUBCONTRACTORS AND SUPPLIERS*

The following table lists the Subcontractors and Suppliers as listed in the Contractors bid. Subcontractor and Suppliers added as a result of a

Subcontractor Substitution approved by metro's Board of Directors will be added to this list by Change Order.

FOLLOWING INFORMATION TO BE INCORPORATED WHEN CONTRACT IS CONFORMED

Sub-Contractor	Type of Work	License Type and No.	DBE/MBE/WBE
Name: Address: Phone:			

Supplier	Material Supplied	DBE/MBE/WBE
Name: Address: Phone:		

SP-11 ESCROW OF BID DOCUMENTS

A. Contractor Representation

Contractor represents, as a condition of award of the Contract, that:

1. Contractor submitted to Metro's Contract Administrator, within seventy-two (72) hours after the time designated by metro for receipt of Bids/Proposals, **one (1) copy** of all documentary information generated in preparation of its Bid/Proposal prices for this Contract, and included the same information from all Subcontractors named in its Bid/Proposal. This material is hereinafter referred to as "**Proprietary Bid Documents**", and is further defined in the Section entitled FORMAT AND CONTENTS herein.
2. Contractor submitted its Proprietary Bid Documents in sealed containers, clearly marked on the outside with:
 - a) Label "Proprietary Bid Documents";
 - b) Contractor's full legal name and date of its submittal;
 - c) Metro's project name; and
 - d) Metro's Contract number and title.
3. Contractor's Proprietary Bid Documents are in the sole custody of metro, who will hold the documents in escrow for the duration of the Contract. The Proprietary Bid Documents are not public records but are, and shall always remain, the property of the Contractor, subject to review by metro and the Contractor, and any local, state or Federal law enforcement or regulatory agencies requesting access to these documents. The Proprietary Bid Documents will be returned to the Contractor when metro determines the Contract has been completed,

4. The Proprietary Bid Documents constitute all the information used in the preparation of Contractor's Bid/Proposal, and that no other Bid/Proposal preparation information shall be considered in resolving changes or claims.
5. **Nothing in the Proprietary Bid Documents shall change or modify the terms or conditions of the Contract. Further, the Proprietary Bid Documents are not part of the Contract Documents.**
6. If needed, Proprietary Bid Documents will be used by metro and Contractor to assist in the negotiation of Claims, and in the settlement of Claims, Disputes and other contractual matters. They will not be used for evaluation or Approval of Contractor's anticipated methods of construction or, except for Claims and Disputes, for other matters related to the implementation of the Work.

B. Format and Contents

1. Contractor submitted its Proprietary Bid Documents in its usual cost-estimating format. Preparation and submittal of the Proprietary Bid Documents are at the sole expense of the Contractor.
2. Proprietary Bid Documents are in the English language. All dimensions and measurements are in the English Imperial (lb./foot/sec.) system. All costs have been identified.
3. The Proprietary Bid Documents include:
 - a) All quantity takeoffs;
 - b) Calculations or rates of production and progress;
 - c) Copies of quotes from Subcontractors and Suppliers;
 - d) Memoranda, narratives, and subcontractor scope letters;
 - e) All add/deduct sheets;
 - f) Copies of all computer diskettes or computer data files containing electronic schedules, cut/add sheets, material takeoff sheets, bid estimate sheets, bid proposals, recap sheets, vendor quotations, as-planned schedules, preliminary schedules, subcontractor scope letters, and computer printouts of the electronic schedule; and
 - g) All other information used by Contractor to arrive at the prices contained in its Bid/Proposal.

C. Incorporation of Certification

The Certification submitted by Contractor (with the Proprietary Bid Documents) is incorporated herein as though fully set forth. This Certification shall state the following:

"I certify under penalty of perjury and pursuant to the laws of the State of California that all the Proprietary Bid Documents submitted in accordance with the instructions contained in the Instructions to Bidders constitute all the information used in the preparation of the Bid and I further certify I have personally examined the contents of the Proprietary Bid Documents and found that the documents herewith submitted are complete that no other Bid preparation information exists."

D. Storage and Access

1. Metro has placed Contractor's Proprietary Bid Documents in a secure location.
2. Access to the Proprietary Bid Documents shall be limited to metro, the Contractor's Representative(s), and any local, state, or Federal law enforcement or regulatory agencies requesting access to these documents.

E. Examination After Award of Contract

1. The Proprietary Bid Documents may be examined at any time deemed necessary after award of the Contract:
 - a) By metro and/or the Contractor, to assist in settlement of any Claims, Alternative Dispute Resolution (ADR) process (in accordance with the Article entitled DISPUTES in Contract Document GENERAL CONDITIONS), or other contractual matters; or
 - b) By any local, state, or Federal law enforcement or regulatory agency, to assist in any agency investigation.

F. Examination of the Proprietary Bid Documents, after award of the Contract, is subject to the following conditions:

1. Metro and Contractor shall each designate, in writing to the other, and a minimum of three (3) working days prior to examination, representative(s) who are authorized to examine the Proprietary Bid Documents.
2. Access to the Proprietary Bid Documents will take place only by duly designated authorized representatives of either metro and Contractor, or both.
3. Metro will not reproduce any of the Proprietary Bid Documents without the mutual agreement of the Contractor.

SP-12 LIQUIDATED DAMAGES

A. Time is of the Essence

1. TIME IS OF THE ESSENCE IN THIS CONTRACT. If Contractor does not complete the Work, or Elements or portions of the Work, in a condition to be Accepted by metro by the Milestone or other designated dates set forth in the WORK COMPLETION SCHEDULE, attached hereto as **Appendix A** and incorporated herein, damages will be sustained by metro. It is and will be impracticable or extremely difficult to ascertain the actual damages that metro will sustain in the event of and by the reason of such Delays.
2. Damages arising out of Delays and failures to meet Milestones in the WORK COMPLETION SCHEDULE may arise from or include:
 - a) Cost increases in the completion and subsequent operation of metro's Transit System;
 - b) Failure to implement and monitor environmental mitigation requirements;
 - c) Unreasonable inconvenience to the public and impacts to private property resulting in claims against metro;
 - d) Loss of revenue;
 - e) Increased costs for Contract administration;
 - f) Failure to meet Contract Milestones; and
 - g) Delays and increased costs to other Contractors, resulting in claims against metro.

B. Description of LDs

1. Pursuant to Government Code Section 53069.85, if Contractor fails to complete the Work, or any Element or portion thereof, by the Milestone date in the WORK COMPLETION SCHEDULE, or is responsible for any other Delay giving rise to damages to metro, Contractor shall pay metro Liquidated Damages (LDs) as provided herein for each day of Delay (or fraction thereof) in completing the Work (or specified portions or Elements thereof) in excess of the number of days specified in the Contract.
2. The amount of LDs for the Contract is set forth in the WORK COMPLETION SCHEDULE.
3. Metro may deduct the sum of LDs from any Progress Payments due or that may become due the Contractor, as well as from the Retention at the time it is payable to the Contractor; or if such Progress Payments and the Retention are insufficient, Contractor or its Surety shall pay to metro any deficiency.
4. The accrual of LDs on an element of the work will terminate upon the contracting officer's issuance of a certificate of substantial completion for the element.
5. The LDs specified in the contract do not include any, and shall not be construed as, penalties.

6. The amount of LDs set forth in the work completion schedule represents a good faith estimate as to the actual potential damages Metro would incur as a result of the delay in completion of the work or elements thereof.
7. It is understood and agreed by contractor that any LDs payable under this article are not manifestly unreasonable under the circumstances existing as of the date of execution and delivery of this contract.

C. Remedies Not Exclusive

The fact that Metro has agreed to accept LDs as compensation for its damages associated with a Delay in Contractor's meeting a Milestone, or Contractor's completion of any element(s) of the Work, shall not preclude Metro from exercising its other rights and remedies respecting the Delay set forth elsewhere in the Contract, other than the right to collect other damages due to the Delay, except that Metro agrees not to exercise such other rights and remedies respecting the Delay so long as:

1. The Schedule demonstrates that Contractor is capable of meeting such Milestone within **one-hundred eighty (180) Days** after the Milestone; and
2. Contractor diligently performs the Work in accordance with said Schedule.

D. Safety-Related Delays

LDs for Delays related to safety violations will be assessed upon final determination of the Contractor's liability for the Delay.

E. Delay Compensation

1. Basis for Delay Compensation – Contractor shall be paid for Compensable Delays as provided in the Section entitled COMPENSABLE DELAYS (under the Article entitled EXTENSION OF TIME) in Contract Document GENERAL CONDITIONS, at the daily rate set forth in the Article entitled COMPENSATION in Contract Document FORM OF CONTRACT. The daily rate of Delay Compensation is the rate bid by the Contractor in the SCHEDULE OF QUANTITIES & PRICES in the Bid Forms submitted by the Contractor.
2. Estimated Number of Days of Delay Compensation – The estimated quantity for Delay Compensation in the SCHEDULE OF QUANTITIES & PRICES is for bidding purposes only, solely to establish a basis of award, and is not intended as an actual estimate. The actual number of days of Compensable Delay may be greater or lesser than the estimated quantity. Contractor will be paid Delay Compensation only for actual Compensable Delays, without respect to the estimated quantity.

3. Contractor expressly agrees to be limited solely to the Delay Compensation provided in this Section for all Delays.

SP-13 STANDARD WORK DAY

A. General

1. Any provisions applicable to a **Standard Work Day** set forth in Contract Document SUPPLEMENTAL CONDITIONS will apply to this Article, and is hereby incorporated by reference.
2. Unless explicitly specified otherwise herein, a **Standard Work Day** will be pursuant to the provisions set forth in Contract Document GENERAL CONDITIONS.

B. Definition – Standard Work Day and Shifts

1. Standard Work Day is defined as an eight (8) hour work period determined by the contractor and approved by metro, commencing no earlier than 7:00 a.m. and ending no later than 7:00 p.m.

SP-14 STANDARD WORK WEEK

A. General

1. Any provisions applicable to a Standard Work Week set forth in Contract Document SUPPLEMENTAL CONDITIONS will apply to this Article, and is hereby incorporated by reference.
2. Unless explicitly specified otherwise herein, a Standard Work Week will be pursuant to the provisions set forth in Contract Document GENERAL CONDITIONS.

B. Definition – Standard Work Week

1. A Standard Work Week is defined as a **five (5) work day** period, commencing on Monday and ending on Friday.

SP-15 USE AND LIMITATIONS OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

A. Contractor Requirements

Contractor shall comply with the requirements of the Contract, including, but not limited to, the Articles entitled CHANGES, DISPUTES, and CLAIMS in Contract Document GENERAL CONDITIONS.

B. Claim/Dispute Categories that are excluded from ADR

In addition to those issues identified throughout Contract Document GENERAL CONDITIONS, the following categories of Claims/Disputes are excluded from consideration by an Alternative Dispute Resolution (ADR) process:

1. Interest (monetary) on Progress Payments or Final Payment.
2. Wage and hour Disputes.
3. Claims under the jurisdiction of the Owner's Controlled Insurance Program (OCIP) or Contractor's Automobile Insurance.
4. Delegated signature authority of Metro's Authorized Representatives.
5. Disputes regarding matters governed by Environmental Law or any Grant Agreement from any Governmental Entity.
6. Disputes on issues covered by policies of metro Board of Directors.
7. Deleted.
8. Assessments made as a result of enforcement of the provisions set forth in the Article entitled ASSESSMENTS FOR SPECIAL CIRCUMSTANCES herein.
9. Disputes regarding safety issues and/or matters under the jurisdiction of Cal-OSHA.
10. The right of metro to issue unilateral changes (i.e., Change Orders).
11. Issues related to subcontractor substitutions governed by California Public Contracts Code §4100 et seq.
12. Stated dollar value of Liquidated Damages as shown on **Appendix A** attached hereto.

SP-16 PAYMENT OF PREVAILING WAGES

This contract is subject to the provisions of California law regarding Public Works, including, but not limited to California Labor Code Sections 227, 1021, and 1720 through and including 1861, together with all applicable regulations (e.g. Title 8 California Code of Regulations, Section 16001 et. seq.). Copies of the prevailing wages are available at metro for review. Similarly, this contract is also subject to federal law, including, but not limited to the Davis Bacon Act. Contractors shall be bound by California and Federal law regarding definitions, the work subject to prevailing wages, the duties, responsibilities and rights of the parties; the wage determinations, the petitions to review prevailing wage determinations, the certification of payroll records, including requests, content and cost; the withholding of funds from contractor and the hearing procedure. All pertinent federal and state statutes and regulations, including but not limited to those referred to above are hereby incorporated by reference into this document as though set forth in their entirety.

This contract is subject to payment of prevailing wages under federal law by the Davis Bacon Act, as determined by the US Department of Labor. In the event of a conflict between the prevailing wage under state law as determined by California authorities and the prevailing wage under federal law as determined by the U.S Department of Labor, the contractor shall pay at least the higher of the two (2) wages.

SP-17 WEATHER DELAYS CAUSED BY RAIN

For purposes of granting time extensions pursuant to the Article entitled EXTENSION OF TIME in Contract Document GENERAL CONDITIONS, resulting from rain more severe than normal which was not foreseeable, the impact of normal rainfall for which Contractor is not entitled to a time extension is defined by the number of expected work days of delay (based on a five (5) day **Standard Work Week**) caused by normal rainfall by month as follows:

Month	Number of Work Days
January	5
February	5
March	5
April	2
May	1
June	0
July	0
August	0
September	1
October	1
November	2
December	3

In scheduling the Work, Contractor shall account for the above number of work days by month for which the effects of normal rainfall are expected to prevent work. In the event the Contractor works a regularly scheduled workweek other than five (5) days per week, the above numbers shall be multiplied by the ratio of the actual average number of work days per week divided by five (5) work days.

The number of workdays identified on the table above shall be utilized only for the associated month and may not be added to or carried over to any subsequent month.

SP-18 IDENTIFICATION OF CONSULTANTS

The Construction Manager (CM) that has been retained by metro for this Project will be identified by Notice to Proceed. Delegation of authority to the Construction Manager shall be provided in the Article entitled AUTHORITY OF THE CONTRACTING OFFICER AND THE CONSTRUCTION MANAGER in the General Conditions.

SP-19 ASSESSMENTS FOR SPECIAL CIRCUMSTANCES

A. General

There are certain requirements that metro has identified as significant concerns, and for which metro will suffer damages that cannot be calculated. Therefore, Contractor shall pay Liquidated Damages (LDs) as defined in the Article entitled LIQUIDATED DAMAGES herein, and in accordance with that Article, metro will assess LDs for Contractor's failure to meet these requirements, as described in the Sections below.

B. LD Schedule – Quality Assurance

1. Contractor's failure to comply with the requirements described in the Paragraphs entitled QUALITY ASSURANCE below, will result in Contractor's payment of LDs in accordance with the following schedule:

- a) For the first violation: **\$1,000**
- b) For the second violation: **\$5,000**
- c) For each additional violation: **\$10,000**

2. Quality Assurance

- a) Contractor is required to provide personnel, whether a direct employee of the Contractor or personnel employed by a Subcontractor, for performing and controlling in-process Work, and to certify that these personnel are properly trained, qualified and certified to perform the specified tasks.

The personnel covered by this requirement are those cited in the Contract Documents by the following terms:

- 1. Registered Surveyor
- 2. Registered Geotech
- 3. Certified Gas Tester
- 4. Safety Representatives (all positions)
- 5. Acoustical Engineer
- 6. Traffic Control Personnel
- 7. Qualified Welder
- 8. Certified NACE Corrosion Engineer
- 9. Qualified Shotcrete Nozzleman
- 10. HDPE Welder

11. NDE Inspector

Any occasion when Contractor supplies inadequately trained, improperly certified, uncertified or unqualified personnel, in the judgment of metro, shall constitute a violation of this provision.

b) Nonconforming conditions that in the judgment of metro indicate a breakdown or potential breakdown in the Contractor's Quality Program shall constitute a violation of this provision. The following guidelines are used to determine a breakdown or potential breakdown in the Contractor's Quality Program:

1. Nonconformance's which require extensive investigation, analysis or corrective action.
2. Failure to comply with the requirements specified in metro approved Project Quality Program Manual.
3. Repetitive nonconformances.
4. Failure to take corrective action required by Metro.

c) Contractor is required to complete the Work in conformance with Metro approved instructions, procedures and drawings based on the Project Definition Documents – Technical and Quality Manual Requirements. At such time metro in its judgment determines that a breakdown or potential breakdown in the Contractor's Quality Program exists, metro shall document the condition on a Corrective Action Request (CAR) addressed to the Contractor's management. Contractor shall provide a response to the nonconformance within the time designated, which shall include the following:

1. A description of the investigative actions taken to resolve the nonconformance;
2. A description of the cause of the nonconformance;
3. The actions taken or planned to correct the nonconformance; and;
4. The actions taken to prevent recurrence of the nonconformance.

C. LD Schedule – Safety, Environmental, Construction Noise & Vibration Control, and Air Pollution Control

1. Contractor's failure to comply with the requirements described in the Paragraphs entitled SAFETY, ENVIRONMENTAL, CONSTRUCTION NOISE & VIBRATION CONTROL, and AIR POLLUTION CONTROL below, will result in Contractor's payment of LDs in accordance with the following schedule:

- a) For the first violation: \$5,000
- b) For the second violation: \$10,000
- c) For each additional violation: \$15,000

2. Safety

- a) Contractor is required to comply with all requirements of a written or verbal Stop Work Notice immediately upon presentation by metro.

Failure to comply with the requirements of an Stop Work Notice is a violation of this provision.

- b) Contractor is required to comply with the requirements of the **Alternate Safety Coverage Policy**, as described in Contract Document CONSTRUCTION SAFETY & HEALTH MANUAL.

Failure to comply with this Policy is a violation of this provision.

- c) Contractor shall remove from service and prevent the use of equipment tagged by metro in compliance with the **Red Tag Policy**, as described in Contract Document CONSTRUCTION SAFETY & HEALTH MANUAL.

Failure to remove "red tagged" equipment from service and prevent its use is a violation of this provision.

- d) Contractor shall comply with all requirements regarding **Fall Protection** as described in Contract Document CONSTRUCTION SAFETY & HEALTH MANUAL.

Failure to comply with these requirements is a violation of this provision.

- e) Contractor shall disclose and provide copies of any citation, enforcement or appeal correspondence from or to Cal/OSHA or any other regulatory agent to metro, within **twenty-four (24) hours** of receipt or mailing by the Subcontractor.

Failure to disclose and provide copies within these requirements is a violation of this provision.

3. Environmental

Contractor is required to complete the Work in an environmentally prudent manner, in full compliance with the requirements of the Contract Documents, and Contractor acknowledges that adherence to environmental regulations is required to protect the public's health and safety.

- a) Contractor is prohibited from discharging wastes, either water or otherwise, that are not in compliance with any Contractor-obtained permit(s) for the sanitary sewer system, as specified in General Requirements Section 01566-DB.3.2.C.1, or the storm drain

system as specified in Appendix to the General Requirements Section 01566-DB.3.2.B.

Any noncompliant discharge shall constitute a violation of this provision.

- b) If Contractor elects to obtain a Discharge Permit from the City of Los Angeles Bureau of Sanitation for wastewater discharges, Contractor is required to sample and test wastewater for those parameters and at those frequencies stated on the permit, as specified in General Requirements Section 01566-DB.3.2.C.12.

Failure to sample, record and maintain the required documentation shall constitute a violation of this provision.

- c) Contractor is required to utilize the personal protective equipment as described in General Requirements Sections 01568-DB.2.1 and 3.2.B.

Contractor or Subcontractor (at any tier) employees working without use of the required protective equipment shall constitute a violation of this provision.

4. Construction Noise & Vibration Control

- a) Contractor is required to keep work activity noise levels beneath allowable levels as described in General Requirements Sections 01565-DB.3.1.

Each occurrence of exceeding the allowable level shall constitute a violation of this provision.

- b) While performing Work at the surface, Contractor is prohibited from utilizing Construction Equipment which does not meet the appropriate **daytime noise emission limits**, as described in General Requirements Sections 01565-DB.3.1 and Table 1.

Each occurrence of exceeding the allowable level shall constitute a violation of this provision.

- c) While performing Work at the surface, Contractor is prohibited from utilizing Construction Equipment which does not meet the appropriate **nighttime noise emission limits**, as described in General Requirements Sections 01565-DB.3.1.A and Table 1.

Each occurrence of exceeding the allowable level shall constitute a violation of this provision.

- d) Contractor is required to keep **work activity vibration levels** beneath allowable levels as described in General Requirements Sections 01565-DB.3.5.A through D.

Each occurrence of vibration that is not below the allowable level shall constitute a violation of this provision.

- e) Contractor is required to measure noise and vibration levels as described in General Requirements Sections 01565-DB.1.3.C.2 and 01565-DB.3.5.D.5.D.

Failure to test, record and maintain the required documentation shall constitute a violation of this provision.

- f) Contractor is required to provide and certify that workers are adequately trained for work involving implementation of measurement activities, as described in General Requirements Sections 01565-DB.3.2.A.2.

Each instance of supplying inadequately trained and uncertified personnel is a violation of this provision.

5. Air Pollution Control

Contractor is required to comply with Rule 403, **Limitation on Fugitive Dust Emissions**, of the South Coast Air Quality Management District (SCAQMD) to minimize the generation of fugitive dust by using Best Available Control Measures, prevent it from remaining visible in the atmosphere beyond the property line of the emission source, and prevent or immediately remove the track out of bulk material onto public paved roadways, as a result of its operations.

For the purpose of enforcement the detailed language of SCAQMD Rule 403 prevails over the summarized requirements below:

- a) Contractor is prohibited from causing or allowing emissions of fugitive dust from any transport, handling, construction, or storage activity to remain visible in atmosphere beyond the property line of the emission source.

Each occurrence of causing or allowing emissions of fugitive dust to remain visible in the atmosphere beyond the property line shall constitute a violation of this provision.

- b) Contractor is required to use at least one **Best Available Control Measures (BACM)** for each source of fugitive dust to minimize the emissions, from construction operations, of fugitive dust.

Failure to use at least one BACM for each source of fugitive dust shall constitute a violation of this provision.

- c) Contractor is required to prevent or remove within one (1) hour the track-out bulk material onto public paved roadways that results from its operations.

Each occurrence of tracked-out bulk material that remains on the public paved roadways for more than one (1) hour shall constitute a violation of this provision unless Contractor has taken at least one of the actions listed in Table 3 of SCAQMD Rule 403, and removed such material anytime track-out extends for **fifty (50) feet**, and removed all visible roadway dust tracked-out as a result of active operations at the end of each **Standard Work Day** when active operations cease.

- d) If Contractor has taken at least one of the actions listed in Table 3 of SCAQMD Rule 403, it must remove tracked-out bulk material anytime it extends for a cumulative distance of more than **fifty (50) feet** onto any paved public road during active operations; and remove all visible roadway dust tracked-out upon public paved roadways as a result of active operations at the conclusion of each **Standard Work Day** when active operations cease.

Each occurrence of tracked-out bulk material that extends onto public paved roadways for a cumulative distance of more than fifty (50) feet shall constitute a violation of this provision. Each failure to remove all visible roadway dust tracked-out onto public paved roadways at the conclusion of each Standard Work Day, when active operations cease, shall constitute a violation of this provision.

D. LD Schedule – Contract Document CODE OF CONDUCT, Article SANCTIONS

- 1. Contractor’s failure to comply with the requirements of Contract Document CODE OF CONDUCT FOR Metro CONTRACTORS AND CONSULTANTS, will result in assessments of the Contractor’s payment in accordance with the following schedule:

- a) For the first violation: **\$1,000**
- b) For the second violation: **\$5,000**
- c) For each additional violation: **One percent (1%) of the Contract Value**

SP-20 SITE ACCESS DATES

SEE PHASING OF THE WORK

The portions of the Right-of-Way site identified in the table below may be available at NTP, but will be made available to Contractor no later than the date specified in the table below. All other portions of the Right-of-Way sites will be available at Notice to Proceed.

SP-21 TRACK ALLOCATION MEETINGS

A. General

1. If Contractor is performing Work requiring access to metro subway system, a Contractor's Representative (or its fully-empowered delegate) is required to attend Track Allocation Meetings.
2. Metro will initiate, on an approximately weekly basis, Track Allocation Meetings to coordinate use of track for construction and testing purposes so that these activities can be accomplished safely and efficiently. "Red Tag Areas" will be defined at the Track Allocation Meetings.
3. Contractors wanting to work or perform tests in the "Red Tag Areas" must submit tracking occupancy and access requirements as specified in manual RULES AND PROCEDURES FOR CONDUCTING TEST OPERATIONS.

B. Cooperation and Coordination with other Contractors and/or Metro Operations

Contractors shall make every effort to schedule Work requirements around occasions when track is not available because of testing or Work requirements of other contractors.

C. Contractor Compliance & Training – Metro Manual "Rules & Procedures for Conducting Test Operations"

1. Requirements – All Work performed in "Red Tag Areas" must comply with the requirements specified in manual RULES AND PROCEDURES FOR CONDUCTING TEST OPERATIONS.
2. Training – Contractor's personnel performing Work under the Contract must complete training on the manual reference above in this Section. Depending on the assignment of Contractor's personnel, training will require one (1) to five (5) hours.

COOPERATION WITH METRO DURING METRO RAIL OPERATIONS

A. Contractor Interface with Operational Metro Rail Segments

1. It is expected that metro will cooperate with Contractor to the extent that the Work may be handled in an efficient manner, but Contractor shall have no claim for damage or extra compensation in the event its Work is delayed by Metro Operations.
2. Contractor shall perform its Work in such manner and at such times as to not endanger or interfere with the safe operation of the tracks and property of metro and the traffic moving on such tracks, as well as wires, signals and other property of metro, their tenants or licensees, at or in the vicinity of the Work.
3. Any proposed plan by Contractor that may cause infringement on the above clearances due to Contractor's operations shall be submitted to the Construction Manager (CM) in writing and such Work shall not begin until notified by the CM that such a plan has been Approved by metro. No damage or extra compensation will be allowed in the event the Contractor's Work is delayed pending metro Approval.
4. Contractor shall give forty-eight (48) hours written notice to the CM before commencing any Work in connection with construction upon or over the Right-of-Way. Metro shall have the right to order Contractor to temporarily cease operations in the event of an emergency. Contractor shall comply with the rules and regulations of metro in relation to the proper manner of protecting the tracks, property and personnel of metro and the traffic moving on such track, as well as, wires, signals and other property of metro.
5. If Contractor desires to move its equipment or materials across Metro tracks at locations other than public crossings, it shall obtain prior permission from metro through the CM. Contractor shall furnish flagmen and/or watchmen to control equipment within the Worksite at the discretion of the CM.
6. Contractor shall, upon completion of the Work to be performed by the Contractor upon the premises or over the tracks of metro, promptly remove from metro Right-of-Way, all of Contractor's tools, implements, materials and equipment (Construction Equipment and otherwise), whether brought upon the Right-of-Way or other property by the Contractor or any Subcontractor, employee or agent of the Contractor or any Subcontractor, and leave the Right-of-Way or other property in a clean and presentable condition.

B. Contractor Interface with Operational Subway (3rd Rail) Segments

Metro's third rails are normally energized with seven hundred fifty volts (750 V) of electricity. Contractor's operation shall not infringe on a

clearance of ten feet (10'-0") in any direction from Metro's third rail while the third rails are energized, unless authorized by metro in writing.

SP-23 CLASSIFICATION OF CONTRACTOR'S LICENSE

- A. Contractor's Capabilities, Licenses and Registrations
1. General – For the duration of the Work, Contractor and its Subcontractors shall possess and maintain the following:
 - a) Experience and professional capability to perform the Work; and
 - b) All required State of California Contractors license(s), Professional license(s) and registrations needed for the Work.
 2. Contract-Specific – At a minimum, Contractor shall possess and maintain the licenses and registrations listed in the Article entitled LICENSES in Contract Document FORM OF CONTRACT.
 3. Evidence of Valid Licenses/Registrations – Proof of validity of all licenses and registrations required in this Article shall be provided to Metro's Contracting Officer on an **annual basis**.
- B. Requirements for Handling of Hazardous Substances

If an Element of the Work requires Contractor to handle Hazardous Substances, Contractor and/or Subcontractor must possess and maintain, throughout the duration of the Work, any and all licenses, registrations and certifications required by existing law to perform the Work within the scope of the Contract.

SP-24 HAZARDOUS MATERIAL IDENTIFICATION & SAFETY DATA*

- A. Definitions

For the purposes of this Article, the following terms, when capitalized, shall have the meanings set forth below:

1. **Hazardous Waste** – Any waste or combination of wastes as defined in 40 CFR 261.3 et seq., or regulated as hazardous waste in California pursuant to California Health and Safety Code, Chapter 6.5, Division 20, or defined as hazardous waste in 40 CFR 171.8, or listed by the U.S. Department of Transportation and regulated as hazardous under 49 CFR 172.101 and appendices (as amended, modified or replaced from time to time).
2. **Disposal Facilities** – Includes, but is not limited to, Metro or Contractor contracted disposal facility, recycling facility, or treatment facility.

B. Hazardous Waste Operations

1. Contractor may encounter Hazardous Substances, Asbestos, Gas Casings or USTs, lead or lead-based paint surfaces in structures, demolition materials and soils requiring Hazardous Waste Operations as defined by CAL/OSHA. **All Hazardous Waste Operations, are expressly excluded from the Work except those Hazardous Waste Operations identified or included in the Project Definition Documents – Technical to be performed by Contractor.** Metro will furnish a specialty contractor to perform all Hazardous Waste Operations not identified.
2. Notwithstanding the provisions set forth in the Article entitled DIFFERING SITE CONDITIONS (DSC) in Contract Document GENERAL CONDITIONS, in the event of a discovery of a condition requiring Hazardous Waste Operations, except those Hazardous Waste Operations identified or included in the **Project Definition Documents – Technical to be performed by Contractor**, Contractor shall cease demolition operations and continue Work in unaffected areas until metro has remedied the hazard. Measurement of delay time will be defined in a Change Order issued by metro, in accordance with the Article entitled CHANGES in Contract Document GENERAL CONDITIONS.

C. Contractor Submittal of Material Safety Data Sheets

Contractor shall submit a MATERIAL SAFETY DATA SHEET (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all Hazardous Substances as defined in the Article entitled GLOSSARY OF TERMS in Contract Documents GENERAL CONDITIONS, five (5) Days before delivery of the substance, whether or not listed in Appendix A of the Standard. This obligation applies to all substances delivered under the Contract that involves possible exposure to Hazardous Substances, or items containing these substances.

D. Metro's Rights in Hazardous Substance Data

1. Metro shall have the right to use, duplicate, and disclose data furnished under the Contract to:
 - a) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of any Hazardous Substance;
 - b) Obtain medical treatment for those affected by the substance; and
 - c) Have others use, duplicate, and disclose the data on behalf of metro for these same purposes.
2. Metro shall not be precluded from using similar or identical data acquired from other sources.

3. The data shall not be duplicated, disclosed, or released outside metro, in whole or in part for any acquisition or manufacturing purpose.
4. **Metro may use, duplicate, and disclose data furnished under this Article, in accordance with this Section, in precedence over any other Article of the Contract providing for rights in data.**

E. Contractor Liability

Neither the requirements of this Article, nor any act or failure to act by metro, shall relieve Contractor of any responsibility or liability for the safety of the personnel and/or property of metro, Metro's Authorized Representatives, Contractor, Contractor's Subcontractors, and other contractors at the Worksite.

F. Compliance with Laws

Nothing contained in this Article shall relieve Contractor from complying with all applicable Laws (including Environmental Laws and the obtaining of licenses and permits) in connection with Hazardous Substances.

G. Remedies Not Exclusive

The rights and remedies of metro specified in this Article are not exclusive, and are in addition to any other rights and remedies contained elsewhere in this Contract and by Law.

H. Flowdown

Contractor shall insert this entire Article, with appropriate changes in the designation of the Parties, in Subcontracts at all tiers (including purchase designations or purchase orders).

SP-25 AVAILABILITY OF FUNDS - DELETED

SP-26 TECHNICAL BID SUBMITTALS

Upon award the following information included with the technical bid shall be considered the initial Contractor submittals for these items, subject to Metro's review and comment. The Contractor's complete submittal, due after award, shall not substantially differ from the information provided in these documents submitted by the Contractor and evaluated by metro as part of the Technical Bid.

Technical Bid Documents	Contract Submittal Documents
Key Personnel	GC-5 CONTRACTOR'S REPRESENTATIVE, ORGANIZATION AND PERSONNEL, 5.1.3 Names, titles, and functions of all the Contractor's key personnel

Technical Bid Documents	Contract Submittal Documents
Project Quality Program Manual	Specification Section 01460A-DB, Project Quality Program Requirements
Project Quality Assurance Procedures Manual	Specification Section 01460B-DB, Quality Assurance Procedures
Contractor Illness and Injury Plan	Specification Section 01545-DB, Worksite Safety Requirements

END OF SPECIAL PROVISIONS

APPENDIX A - WORK COMPLETION SCHEDULE (SAMPLE)

Contractor shall commence performance of the Work upon the date specified in the formal Notice to Proceed issued to the Contractor hereunder and shall furnish sufficient forces, facilities and construction plant, and shall work such hours, including extra shifts and overtime operations, so as to prosecute the Work to completion in accordance with the following major Contract dates:

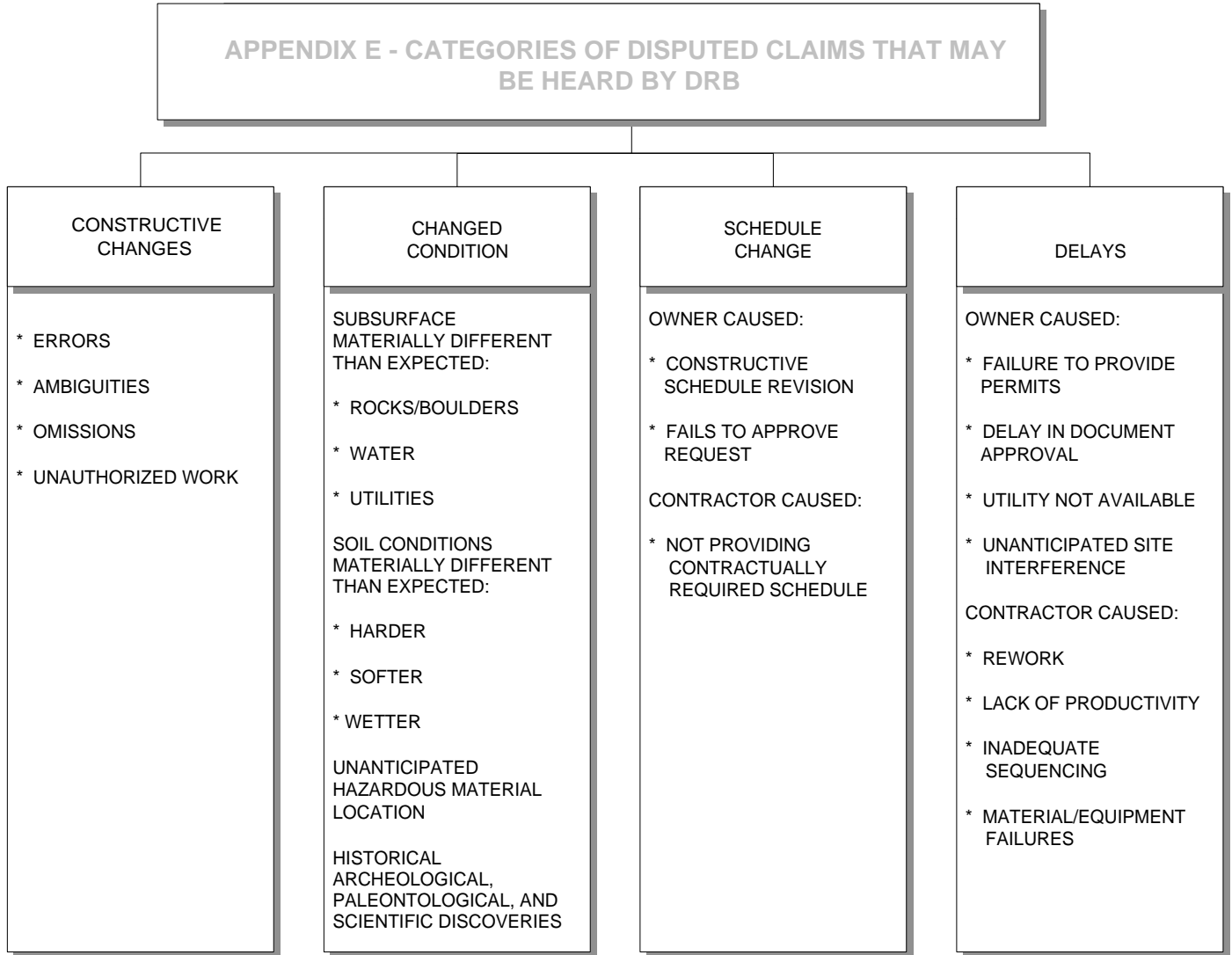
Milestone	Description	Schedule
No. 1		_____ calendar days effective date of Notice To Proceed.
No. 2		_____ calendar days effective date of Notice To Proceed.
No. 3		_____ calendar days effective date of Notice To Proceed.
No. 4		_____ calendar days effective date of Notice To Proceed.
No. 5		_____ calendar days effective date of Notice To Proceed.
No. 6		_____ calendar days effective date of Notice To Proceed.
No. 7		_____ calendar days effective date of Notice To Proceed.
No. 8		_____ calendar days effective date of Notice To Proceed.
No. 9		_____ calendar days effective date of Notice To Proceed.
No. 10		_____ calendar days effective date of Notice To Proceed.

* The maximum liquidated damages for which the Contractor shall be liable shall be \$?? _____ per day for failure to meet any or all Milestones.

SPECIAL PROVISIONS
APPENDIX B - AVAILABILITY SCHEDULE

SPECIAL PROVISIONS
APPENDIX D - METRO-FURNISHED GOODS

APPENDIX E – CATEGORIES OF DISPUTED CLAIMS THAT MAY BE HEARD BY THE DRB



APPENDIX E - PERFORMANCE BOND

**TBD (IFB/RFP No.)
TBD (Solicitation Title)**

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to _____ ("Principal"), Contract No **TBD (IFB/RFP No.), TBD (Solicitation Title)** and

WHEREAS Principal is required under the terms of the Contract to furnish a Bond for the faithful performance of the Contract;

NOW, THEREFORE, we _____, as Principal, and _____, ("Surety"), as Surety, are held and firmly bound unto the Metro in the sum of _____ Dollars (\$ _____), this amount being not less than the Total Contract Price in lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by these presents. In case suit is brought upon this Bond, Surety shall pay reasonable attorneys' fees to the Metro in an amount to be fixed by the court.

The condition of this obligation is such that, if the hereby-bonded Principal or its heirs, executors, administrators, successors, assigns, or Subcontractors shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions, and agreements in the Contract and any alteration thereof, made as therein provided, all within the time and in the manner therein designated and in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Further, Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of the Work to be performed there under, shall in any way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or modification of the contract documents or of the Work to be performed there under.

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the _____ day of _____ 200__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: _____
(Principal)

By: _____
(Surety)

By: _____

APPENDIX E - PAYMENT (MATERIAL AND LABOR) BOND

**TBD (IFB/RFP No.)
TBD (Solicitation Title)**

PAYMENT (MATERIAL AND LABOR) BOND

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to _____ ("Principal"), **TBD (IFB/RFP No.)**, **TBD (Solicitation Title)** and

WHEREAS Principal is required under the terms of the Contract to furnish a Bond to secure the payment of claims of laborers, mechanics, material men, and other persons as provided by law;

NOW, THEREFORE, we _____, as Principal, and _____, ("Surety"), as Surety, are held and firmly bound unto the Metro in the sum of _____ Dollars (\$ _____), this amount being not less than the Total Contract Price in lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by these presents. In case suit is brought upon this Bond, Surety will pay reasonable attorneys' fees to the Metro and the plaintiff(s) in an amount to be fixed by the court.

The condition of this obligation is such that, if the hereby-bonded Principal, or its heirs, executors, administrators, successors, or assigns, or Subcontractors shall fail to pay any of the persons named in Civil Code § 3181 or to pay amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or amounts due under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Principal or its Subcontractors pursuant to § 13020 of the Unemployment Insurance Code with respect to Work or labor performed under the Contract, then the Surety herein named shall pay for the same in an amount not exceeding the sum specified in this Bond; otherwise the above obligation shall be void.

This Bond shall inure to the benefit of any of the persons named in Civil Code § 3181 as to give a right of action to such persons or their heirs, executor's, administrators, successors, or assigns in any suit brought upon this Bond.

Further, Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of the Work to be performed there under, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such change, extension of time, alteration, or modification of the contract documents, or of the Work to be performed there under.

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the _____ day of _____, 200____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: _____
(Principal)

By: _____
(Surety)

By: _____

