IFB # 2016-1354
AC TRANSIT EAST BAY BUS RAPID TRANSIT PROJECT
INFRASTRUCTURE AND STATION PLATFORMS

VOLUME I
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## DIVISION 00 – PROCUREMENT AND CONTRACTING REQUIREMENTS

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NOTICE IS HEREBY GIVEN THAT the Alameda-Contra Costa Transit District ("AC TRANSIT" or "District") is requesting sealed firm fixed price bids from qualified, responsive and responsible firms for the AC Transit East Bay Bus Rapid Transit Project Infrastructure and Station Platforms. The work shall include furnishing all permits, all supervision, labor, materials, tools, equipment, and services as defined in this Invitation for Bid (IFB) and the accompanying bid package. Sealed Firm Fixed Price bids will be received by AC TRANSIT at 1600 Franklin Street, Oakland, California 94612, until 2:00 P.M. local time on January 6, 2016, at which time bids will be publicly opened and read aloud at the following location:

AC Transit
Purchasing Office
1600 Franklin Street
8th Floor
Oakland, CA 94612

The Alameda-Contra Costa Transit District (AC Transit) plans to construct stations, infrastructure and components necessary to improve traffic operations, minimize congestion for the East Bay Bus Rapid Transit (BRT) Project, BRT line along an approximately 9.5-mile arterial corridor through the cities of Oakland and San Leandro in Alameda County, California. The proposed route starts in downtown Oakland, generally following Broadway, 12th and 11th streets in downtown Oakland, International Boulevard and a portion of East 12th street in East Oakland, and East 14th Street and Davis Street in San Leandro, terminating at the San Leandro Bay Area Rapid Transit (BART) station. Refer to Division 01 Section 01 11 13 for a more detailed description. The estimated cost of construction based upon the scope for the project is $90 to $95 million.

Bids shall be submitted on AC TRANSIT's Bid Form (Section 004113) and all procurement forms included in Section 004000 of the Contract Documents. Each Bid must be submitted in hard copy only, with one (1) Original and (1) copy as part of the bid submission package. Bid Forms shall be securely sealed in a suitable envelope marked with the name and address of the Bidder, and marked on the front and back of the envelope, as follows:

AC Transit
Attn: Kai Moore
Purchasing Department
8th Floor
1600 Franklin Street
Oakland, CA 94612
IFB # 2016-1354
(Name and Address of Bidder)

Whether mailed or personally delivered, all bids shall be addressed to:

AC Transit
Attn: Kai Moore
Purchasing Department
1600 Franklin Street
8th Floor
Oakland, CA 94612
Each bid must be accompanied by a Bid Guaranty in the form of a Certified or Cashier’s Check or Bidder’s Bond, in an amount equal to ten percent (10%) of the Bidder’s Grand Total Bid Price. The Bid Guaranty will be retained by AC TRANSIT and applied to any and all damages sustained by AC TRANSIT in the event that the successful Bidder fails or refuses to enter into the Contract awarded to it and to furnish all required bonds and Certificates of Insurance.

AC TRANSIT intends to award a Firm Fixed Price Contract to the lowest responsive, responsible Bidder based on the Grand Total Bid Price. AC TRANSIT reserves the right to reject any and all bids and/or to waive any irregularities or informalities in any bid or in the bidding procedure. AC TRANSIT specifically reserves the right to not award the Contract after the opening of bids.

Bids will be examined and reported to the Board of Directors of AC TRANSIT within ninety (90) days of the bid opening. Except as permitted by applicable law, no Bidder may withdraw its bid for a period of ninety (90) days after the date of bid opening. Each Bidder will be notified of award of the Contract by AC TRANSIT.

A Pre-bid Meeting will be held prior to the date of bid opening. The conference will take place on December 1, 2015 at 10:00 a.m. in the AC TRANSIT General Office Board Room located at 1600 Franklin Street, Oakland, CA 94612. Attention is directed to Section 002513, “Pre-bid Meeting,” of the Contract Documents for further information concerning the conference.

In connection with the performance of this Contract, full compliance with all applicable safety and health standards and with all applicable laws and regulations concerning Equal Employment Opportunity and Disadvantaged Business Enterprises will be required.

AC TRANSIT hereby notifies all Bidders that it is the policy of AC TRANSIT to ensure non-discrimination on the basis of race, color, sex or national origin in the award and administration of contracts that it awards. It is the intention of AC TRANSIT to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to AC TRANSIT’s construction, procurement and professional services activities. Bidders required to obtain DBE and SBE participation on this project pursuant to the provisions herein. Bidders and their proposed subcontractors shall hold such licenses as may be required by the laws of the State of California for the performance of the work specified in the Contract Documents.

Firms bidding as a prime Contractor must possess a valid California Contractors State License Board Class “A” License at the time of bid opening and throughout the contract term. The Contractor will also be required to ensure that all subcontractors working on this project are holding valid licenses suitable for their trade.

Pursuant to Section 1773 of the California Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the State of California Department of Industrial Relations and in accordance with federal minimum rates (Davis-Bacon), as predetermined by the U.S. Secretary of Labor. The prevailing wage rates may be reviewed at AC TRANSIT’s offices.

Pursuant to Public Contract Code Section 22300, the successful Bidder may submit certain securities in lieu of the District withholding retention of payments during the Project.

Pursuant to District Board Policy 351, Small and Small Local Business Enterprise Policy, a 20% small business enterprise (SBE) utilization goal has been established for this procurement. Bidders are required to submit evidence in their bid submittals that the 20% SBE goal will be achieved or good-faith effort (GFE) documentation of unsuccessful attempts at achieving the 20% SBE goal. Examples of GFE include, but are not limited to outreach and evidence of two-way communications between bidder and potential subcontractor along with any follow-up efforts; negotiations with and contact information of firms that had
responded favorably to outreach efforts, and evidence as to why agreements with interested firms were not achieved. Certified SBE firms bidding as Prime Contractors ipso facto satisfy the 20% SBE utilization goal.

The District reserves the right to approve or disapprove good faith efforts aimed at achieving the SBE goal. For assistance identifying eligible small business enterprises, please contact the District’s Contracts Compliance Administrator, Phillip McCants, via email at pmccants@actransit.org.

Contract Documents will be made available on AC TRANSIT’s website at www.actransit.org and can be downloaded at no cost.

All questions prior to award of the Contract shall be directed to the attention of Kai Moore via e-mail at kmoore1@actransit.org. The deadline for submissions of questions and clarifications concerning the Contract Documents is December 4, 2015 by 4:00 PM. Only Addenda issued by the AC TRANSIT Purchasing Department are binding.

END OF SECTION 001113
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PART 1 - GENERAL

1.01 GENERAL

A. Information contained in this section is supplemental to or in explanation of information in the ADVERTISEMENT FOR BIDS contained in Section 001113 of the Contract Documents.

B. Terms used herein shall have the meaning set forth in Section 007200, Part 1.01, unless otherwise specified. Like terms that may be capitalized in one sentence and shown in lower case elsewhere may reasonably be interpreted to have the same meaning, such as "Bid and “bid”, “Bidder” and “bidder” “Contractor” and “contractor”, “Subcontractor” and “subcontractor”, etc.

1.02 PROJECT ESTIMATE

A. The estimate of services and/or quantities given in the Invitation for Bid (IFB), is an approximation, being given as a basis for the comparison of bids. The District does not, expressly or by implication, agree that the actual amount of work will correspond to the estimate. The District reserves the right to increase or decrease the amount of any class or portion of the work or to omit portions of the work.

1.03 EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK

A. The bidder shall examine carefully the Contract Documents and the site of work and shall inform itself of the conditions relating to the execution of the work. Failure to do so will not relieve the successful bidder of its obligation to enter into a Contract and complete the work in strict accordance with the Contract Documents. Conditions relating to the execution of work include the requirements of federal, state and local laws, statutes and ordinances relative to the execution of work, including, but not limited to, applicable regulations concerning prevailing wage rates, non-discrimination in the employment of labor, protection of the public and employee health and safety, and environmental protection.

B. The submission of a Bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, the character, quality and scope of work to be performed, the quantities of materials to be furnished and the requirements of the Contract Documents.

1.04 EXISTING INFORMATION

A. Where an investigation of surface topography and/or subsurface conditions has been conducted in areas where work is to be performed, prospective Bidders may inspect the records of such investigations at the District’s offices. There is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered.
The availability or use of information described in this Section is not intended to be and shall not be construed to relieve the Bidder or Contractor from properly examining the site and making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract Documents.

1.05 EXPLANATIONS/CLARIFICATIONS

A. Any explanation/clarification of the Contract Documents desired by a prospective bidder shall be requested in writing, via email, directed to the Contract Specialist so identified in Section 001113, ADVERTISEMENT FOR BIDS, and received no later than 4:00 p.m. on December 4, 2015. Any change to the Contract Documents will be made by written Addendum that will be posted to the District's Website. Upon posting, such Addendum will become a part of Contract Documents and binding on all bidders. The receipt of the addendum by the bidder shall be acknowledged and so noted in the space provided on the Bid Submission Form. Only written explanations/clarifications, instructions or changes so given by the District will be effective. Oral explanations or instructions will not be binding on the District.

B. AC TRANSIT’s reply to requests for explanations/clarifications received pursuant to the above instructions will be issued no later than 4:00 PM on December 22, 2015 via the District’s Website, www.actransit.org.

1.06 REQUEST FOR ALTERNATIVES/APPROVED EQUALS REQUESTS

A. It is understood that specifying a brand name or specific types of components and/or equipment in these Contract Documents shall not relieve the bidder from its responsibility to furnish the end product in accordance with the warranty and contractual requirements. The bidder is responsible for notifying the District of any inappropriate brand names, or types of components and/or equipment that may be called for in these Contract Documents, and to propose a suitable substitute for consideration. If the phrase "or approved equal" is inadvertently omitted, it is implied after any brand name.

B. Unless otherwise specifically provided in the Contract Documents, reference to any equipment, material, article or patented process by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition; and a bidder may, at its option, use any equipment, material, article, or process which, in the judgment of the District, is equal to that designated. To do so a bidder shall furnish, at its own expense, all test results, technical data, and background information required by the District in making the determination as to whether the proposed equipment, material or article or process, in the judgment of the District, is equal to that designated.

C. The District shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles, material or process, and its decision shall be final.

D. Prospective bidders may discuss these Contract Documents with the District's assigned Contract Representative for this project as noted in Section 001113, ADVERTISEMENT FOR BIDS. This, however, will not relieve bidders from the procedure of submitting written documented requests required as follows:

E. Requests for Approved Equals must be received by the District, in writing, electronically to the attention of the Contract Specialist noted in Section 001113, ADVERTISEMENT FOR BIDS, no later than 4:00 p.m. on December 4, 2015. No such requests will be considered by the District if received after this date. Any request for an Approved Equal must be fully supported with technical data, test results or other pertinent information as evidence that
the substitute offered is equal to or better than the requirements of the Contract Documents. In addition, any test requirements in the Contract Documents that pertain to an item under consideration for Approved Equal must be submitted with the request for Approved Equal.

F. AC TRANSIT’s reply to requests received pursuant to the above instructions will be posted by December 22, 2015.

PART 2 - BID REQUIREMENTS

2.01 PROCUREMENT FORMS AND SUPPLEMENTS

A. Bids shall be tendered as described herein and on the forms provided in Section 004000, PROCUREMENT FORMS AND SUPPLEMENTS.

B. All blank spaces in the PROCUREMENT FORMS AND SUPPLEMENTS must be completed, as required, in ink, preferably black. All price information shall be shown, clearly legible, in figures, where required. **No alterations shall be made to the Procurement Forms and Supplements.** A bid submittal with any change(s) made to the Procurement Forms and Supplements, without the consent of the District, may be subject to disqualification.

C. The bidder shall sign its bid in the blank space provided therefor. If bidder is the sole owner, the bid shall be signed by the owner. If bidder is a corporation, the legal name of the corporation and its State of incorporation shall be set forth and the Bid shall be signed by at least one officer authorized to sign contracts on behalf of the corporation. If bidder is a partnership, the true name of the firm shall be set forth, the names and addresses of all partners shall be given and the bid shall be signed by a partner in the firm authorized to sign contracts on behalf of the partnership. If the bidder is a joint venture, the Bid shall be signed on behalf of each participating company by officers or other individuals who have the full and proper authorization to do so. If the Bid is signed by an agent of the bidder other than an officer of a corporation or a member of a partnership, a notarized power of attorney must be on file with the District prior to opening of bids or must be submitted with the bid. If requested by the District, the bidder shall promptly submit evidence satisfactory to the District of the authority of the person signing the Bid.

D. Note that the successful bidder will prepare a Schedule of Values based on the Bid Form 004113 that will provide additional detail which will be used in conjunction with payment.

2.02 SUBMISSION OF BIDS

A. Bids must be submitted at the prescribed time and location specified in Section 001113, ADVERTISIMENT FOR BIDS. Any submission received after the prescribed time shall be rejected, regardless of whether or not bids are opened exactly at the prescribed time.

B. Any unauthorized conditions or qualifications entered on, or changes made to, the Bid Documents may render it non-responsive to this Invitation for Bid and the Bid may, in AC TRANSIT’s sole determination, be rejected.

C. Alterations by erasure or interlineation must be expressly explained or noted in the Bid Forms with the signature of the Bidder.

D. No telegraphic, telephonic, or facsimile (fax) or other electronically transmitted bids will be considered.
2.03 BID GUARANTY

A. Each bidder shall furnish and submit with its Bid one of the following forms of bidder’s security, in an amount equal to ten percent (10%) of the Grand Total Bid Price: a) Unconditional certified or cashier’s check on a solvent bank payable to AC TRANSIT; b) A bidder’s bond using the form entitled “Bidder’s Bond,” provided with the bid documents, which is properly executed by the bidder and the surety and is accompanied by corporate surety’s power of attorney. The surety’s signature shall be notarized and the surety shall be authorized to transact such business in the State of California and be acceptable to AC TRANSIT. Any condition or limitation placed upon said check or any alteration of the form of said bond, or imperfection in the execution thereof, may, in AC TRANSIT’s sole determination, render the Bid non-responsive to this Invitation to Bid and be rejected.

B. The bidder’s security shall be given as a guaranty that the bidder will not withdraw its Bid for ninety (90) calendar days after bid opening, and if awarded the Contract, will execute the required Contract and bonds within ten (10) working days after such Contract has been awarded to it or such additional time as may be allowed by AC TRANSIT. If the bidder fails or refuses to execute the required Contract and bonds, and provide the required insurance certificates within that time, the money and proceeds from the bidder’s security shall be applied towards payment of the damage to AC TRANSIT on account of the delay in the execution of the Contract and bonds and the performance of the work thereunder and the necessity of accepting a higher less desirable bid resulting from such failure or refusal to execute the Contract and bonds, and provide the required insurance certificates as required. The bidder’s security shall remain in full force and effect until a written contract is executed and all the required bonds are executed. The amount of the bidder’s security shall not constitute a limitation upon the right of AC TRANSIT to recover for the full amount of such damage.

C. Within 90 calendar days after the bid opening, the District may return the Bid guaranties to bidders except the three (3) lowest responsive and responsible bidders who are being considered in awarding the Contract. Retained Bid guaranties will be held until ninety (90) days after opening of Bids or until the Contract has been finally executed, whichever occurs first, after which all Bid guaranties, other than bidder’s security amounts that have been forfeited, may be returned.

2.04 DESIGNATION OF SUBCONTRACTORS

A. In accordance with the provisions of Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California, the bidder shall designate on the form provided in Section 004000 of the Contract Documents, each subcontractor who will perform work, supply materials, or render services for the bidder under this Contract in excess of one-half of one percent (0.5%) of the total bid submitted. The bidder shall list the portion of the work that will be done by each subcontractor. If the bidder fails to specify a subcontractor for any portion of the work, the bidder agrees to perform that portion of the work itself, and represents that it is qualified to perform that portion of the work itself.

2.05 NON-COLLUSION AFFIDAVIT

A. By submitting a bid, the bidder represents and warrants that such bid is genuine and not a sham or collusive or made in the interest or on the behalf of any person therein named, and that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the bidder has not in any manner sought collusion to secure the bidder an advantage over any other bidder.
B. All Bids shall be accompanied by an executed Non-Collusion Affidavit in the form required by Public Contract Code Section 7106 provided with the Procurement Forms and Supplements, Section 004000.

2.06 CERTIFICATION OF PROPOSED CONTRACTOR REGARDING DEBARMENT, SUSPENSION & OTHER INELIGIBILITY & VOLUNTARY EXCLUSION

A. Bidders shall complete and submit, under penalty of perjury, a form stating that the prospective bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, has never been debarred, disqualified, removed or otherwise prevented from bidding on, or completing a federal, state or local government project because of a violation of law or a safety regulation, and if so, to explain the circumstances.

B. A Bid shall be rejected from an entity that is currently debarred

C. All Bids shall be accompanied by an executed Certification of Proposed Contractor Regarding Debarment, Suspension & Other Ineligibility & Voluntary Exclusion as required by Public Contract Code Section 10162, on the form provided in the Procurement Forms and Supplements Section 004000.

2.07 RESPONSIBILITY OF BIDDERS

A. As a prerequisite to an award of Contract, the District will determine whether the low bidder meets the definition of a “responsible bidder” as set forth in Public Contract Code Section 1103: “a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.” In making this determination, the District may consider any information about the bidder, including information submitted with the Bidder’s Statement of Qualifications (included with the Procurement Forms and Supplements).

2.08 WITHDRAWAL OF BID

A. A Bidder may withdraw a Bid without prejudice, provided a written request is in the hands of the District not later than the time set for opening bids. The Bid will be set aside prior to the opening of bids and returned to the Bidder unopened. Withdrawal of a Bid does not prejudice the right of a bidder to submit a new Bid as long as it is received on or before the due date and time specified in Section 001113, ADVERSTISEMENT FOR BIDS. No Bidder may withdraw its bid for a period of ninety (90) days after the date of opening of the bids.

2.09 PUBLIC OPENING OF BIDS

A. Bids will be opened and read aloud publicly at the date, time and place designated in Section 001113, ADVERSTISEMENT FOR BIDS. All bidders and their authorized representatives are invited to be present.

2.10 ESCROW OF BID DOCUMENTS

A. Bid Documents shall consist of all documentation and calculated information generated by the Contractor in preparation of the bid. The bid documents shall conform to the requirements in the contract documents for this project and shall be submitted to AC Transit and held in escrow for the duration of the Contract.
B. In resolution of disputes involving the Project, the escrowed bid documents will be the only documents accepted from the Contractor. AC Transit understands that the information contained in the bid documents is extremely valuable to the bidder’s business. AC Transit agrees to safeguard the bid documents and information contained therein against disclosure including subcontractor bid documentation to the fullest extent permitted by law. However, in the event of a Public Records Act request, the documents may be released upon written notice to Contractor. Should Contractor disagree with the release of the documents, Contractor agrees to defend, indemnify and hold the District harmless in any proceeding brought as a result of the District’s failure to disclose the documents pursuant to a PRA. In the event of arbitration or litigation, the bid documents shall be subject to discovery.

C. Full compensation for preparing the bid documentation, presenting it for review and escrow and retrieval for review at the request of the District shall be considered part of the various items of work and no additional compensation will be made.

D. The District requires that the three (3) low bidders submit, within 48 hours after receipt of bids, one (1) copy of all documents including, but not limited to, electronic files generated in preparation of bid prices for this project. This material is hereinafter referred to as "Escrow Bid Documents". The Escrow Bid Documents of the Contractor will be held in escrow for the duration of the Contract. The Escrow Bid Documents shall be submitted in containers that are clearly marked on the outside with the Bidder’s name, date of submittal, project name and the words “Escrow Bid Documents”.

E. The Escrow Bid Documents are, and shall always remain, the property of the Contractor, subject to joint review by the District the Contractor as provided herein. The Escrow Bid Documents may be exempt from the Federal Freedom of Information Act, California Public Records Act, as they may contain proprietary and secret information belonging to the Contractor.

F. Escrow Bid Documents will be used to assist in the negotiation of price adjustments and Change Orders and in the settlement of disputes and claims. They will not be used for pre-award evaluation of the Contractor’s anticipated methods of construction or to assess the Contractor’s qualifications for performing the work.

G. Format and Contents

1. Bidders may submit Escrow Bid Documents in their usual cost estimation format; a standard format is not required. It is not the intention of this requirement to cause the Contractor extra work during the preparation of the Bid, but to ensure that the Escrow Bid Documents will be adequate to enable complete understanding and proper interpretation for their intended use. The Escrow Bid Documents shall be in English.

2. It is required that the Escrow Bid Documents clearly itemize the estimated costs of performing the work of each bid item contained in the bid schedule. Bid items should be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all quantity takeoffs, crew, equipment, calculations of rates of production and progress, copies of quotations from Subcontractors and Suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Bidder to arrive at the prices contained in the Bid.
Estimated costs should be broken down into the Bidder’s usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract cost, as appropriate. Plant and equipment and indirect costs should be detailed in the Bidder’s usual format. The Contractor’s reallocation of indirect costs, contingencies, markup and other items to each bid item shall be identified.

3. The Escrow Bid Documents shall be accompanied with a certification (a sample is included), signed by an individual authorized by the Contractor to execute bids, stating that the material in the Escrow Bid Documents constitutes all the documentary information used in preparation of the bid and that the Contractor has personally examined the contents of the Escrow Bid Documents’ container and has found that the documents in the container are complete.

BID DOCUMENTATION CERTIFICATION

THE UNDERSIGNED HEREBY CERTIFIES THAT THE BID DOCUMENTATION CONTAINED HEREBIN CONSTITUTES ALL OF THE INFORMATION USED IN PREPARATION OF THE BID AND THAT I HAVE PERSONALLY EXAMINED THESE CONTENTS AND HAVE FOUND THAT THIS BID DOCUMENTATION IS COMPLETE.

SIGNATURE: ______________________________

NAME: ______________________________

TITLE: ______________________________

FIRM: ______________________________

DATE: ______________________________

4. Escrow Bid Documents of the apparent successful Bidder will be examined, organized, and inventoried by representatives of the District, together with members of the Contractor’s staff who are knowledgeable of how the bid was prepared. This examination is to ensure that the Escrow Bid Documents are legible and complete. It will not constitute approval of proposed construction methods, estimating assumptions, or interpretations of Contract Documents. Examination will not alter any condition or term of the Contract.

5. If all the documentation required, has not been included in the original submittal, additional documentation shall be submitted, at the District’s sole discretion, within twenty four (24) hours after the original inventory and examination of the Escrow Bid Documents and prior to award of the Contract. The detailed breakdown of estimated costs shall be reconciled and revised, if appropriate, by agreement between the Contractor and the District before making the award. If the Contract is not awarded to the apparent successful Bidder, the Escrow Bid Documents of the Bidder next to be considered for award shall be processed as described above.

6. Timely submission of complete Escrow Bid Documents is an essential element of the Bidder’s responsiveness and a prerequisite to a Contract award. Failure to provide the necessary Escrow Bid Documents shall render the bid non-responsive.
Escrow Bid Documents of the unsuccessful Bidders will be returned following award of the Contract.

7. If any Contractor's Bid is based on subcontracting any part of the work, each Subcontractor, whose total subcontract price exceeds five percent (5%) of the total Contract price bid by the Contractor, shall provide separate Escrow Bid Documents to be included with those of the Contractor. Such documents shall be opened and examined in the same manner and at the same time as the examination described above for the apparent successful Bidder.

8. If the Contractor wishes to subcontract any portion of the work after award, the District retains the right to require the Contractor to submit Escrow Bid Documents from the Subcontractor before the subcontract is approved.

F. Storage

1. The Escrow Bid Documents will be placed in escrow, for the life of the Contract, in a mutually agreeable institution. The cost of storage will be paid by the District.

G. Examination

1. The Escrow Bid Documents shall be examined by both the District and the Contractor, at any time deemed necessary by either the District or the Contractor, to assist in the negotiation of price adjustments and Change Orders or the settlement of disputes and claims.

2. Examination of the Escrow Bid Documents is subject to the following conditions:
   
a. As trade secrets, the Escrow Bid Documents may be proprietary and confidential.

b. The District and the Contractor shall each designate, in writing to the other party and within ten (10) days after execution of the Contract, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents, except as otherwise required by law.

c. Access to the Escrow Bid Documents may take place only in the presence of duly designated representatives of both the District and the Contractor.

3. The Escrow Bid Documents at all times remain the property of the Contractor and the District will take all reasonable steps necessary to protect confidentiality except as otherwise required by law.

H. Final Disposition

1. The Escrow Bid Documents will be returned to the Contractor at such time as the following conditions have been satisfied.

a. The Contract has been completed.
b. Final payment has been issued by the District.

c. All litigation has been completed, and a written agreement has been executed between the District and the Contractor that no further litigation will be made.

2. The Escrow Bid Documents will be sealed and promptly returned to the Contractor by the party in charge of the Escrow Bid Documents. Reproduction of any portion of the Escrow Bid Documents will not be permitted at any time without the written permission of the Contractor except as otherwise authorized by law.

PART 3 - EVALUATION OF BIDS

3.01 BID EVALUATION PROCESS

A. Bids received shall be evaluated to determine the apparent low bidder. The apparent low bidder will be determined on the basis of the Grand Total Bid Price, as shown in Bid Submission Form.

B. Any mathematical errors that appear on a submitted bid will be corrected by the District and the District will use the mathematically corrected addition in determining the lowest responsive and responsible bidder.

3.02 REJECTION OF BIDS

A. Bids may be rejected if they show such items as: any alteration of form; additions not called for; conditional bids; incomplete bids; erasures; irregularities which make the bids incomplete, indefinite or ambiguous; no acceptable bid security; or if the bid is not properly executed.

B. AC TRANSIT reserves the right to reject any and all bids or to waive any irregularities and informalities in any bids or in the bid procedure.

3.03 DISQUALIFICATION OF BIDDERS

A. A Bid may be rejected on the basis of a bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, shall be disqualified, removed, or otherwise prevented from bidding on, or completing, a federal, state or local project because of a violation of law or a safety regulation.

B. More than one Bid from an individual, firm, partnership, corporation or combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested in more than one Bidder for the work contemplated may, in AC TRANSIT's sole determination, cause the rejection of all Bids in which such individual, firm, partnership, corporation or combination thereof is interested.

C. A contractor submitting a bid may be disqualified if their current Worker's Compensation Experience Modification Rate (EMR) is calculated to be equal to or greater than 1.15 or 115%. A contractor is required to submit their current Worker’s Compensation Experience Modification Rate as calculated by the company providing them Worker’s Compensation Insurance in the Bidder’s Statement of Qualifications and Business References Form.
3.04 RELIEF OF BIDDERS

A. Attention is directed to Public Contract Code sections 5100 to 5107, inclusive, concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in the bid presented, the bidder shall give the District written notice within five (5) working days after the opening of the bid of alleged mistake, specifying in the notice detail how the mistake occurred.

PART 4 - AWARD AND EXECUTION OF THE CONTRACT

4.01 AWARD OF CONTRACT

A. The Alameda-Contra Costa Transit District ("AC Transit" or "District") is requesting submission of firm fixed price bids from qualified, responsive and responsible firms for the Alameda Contra Costa (AC Transit) East Bay Bus Rapid Transit (BRT) Project Infrastructure and Station Platforms. The work shall include all supervision, labor, materials, and services as defined in this Invitation for Bid (IFB) and bid package.

B. The District reserves the right to reject any and all Bids and to waive any informalities and irregularities in the Bids received, other provisions in the Contract Documents notwithstanding.

4.02 TIME OF AWARD

A. The District shall make its best efforts to maintain the Time of Award schedule stated herein. However, failure to do so will not affect the District's rights under this section.

B. Within ninety (90) calendar days after the opening of Bids, the District will use best efforts to reject all Bids or award the Contract to the lowest responsible, responsive bidder. If the lowest responsible, responsive bidder refuses or fails to execute the Contract and provide an acceptable Performance Bond, Payment Bond, and insurance certificate(s), the District may award the Contract to the second lowest responsible, responsive bidder. District will use best efforts to make such award, if made, within ninety (90) days after the opening of Bids. If the second lowest responsible, responsive bidder refuses or fails to execute the Contract and provide an acceptable Performance Bond, Payment Bond, and insurance certificate(s), the District may award the Contract to the third lowest responsible, responsive bidder. District will use best efforts to make such award, if made, within ninety (90) days after the opening of Bids. The District reserves the right to adjust the periods of time specified above within which an award of Contract may be made and if the ninety (90) day period for award is insufficient, said period shall be subject to extension for such further period as may be agreed upon in writing by the District and the bidder or bidders concerned.

4.03 EXECUTION OF CONTRACT

A. The successful bidder shall have completed the Offer and Acceptance form and submitted it with their bid. Then the successful bidder, within ten (10) business days after having received the Notice of Award, sign and deliver to the District the Payment and Performance Bonds (See Project Forms Section for more information) and insurance certificates as required in the Contract Documents. After receiving the signed Contract Offer from the Bidder and receiving the Board of Directors Approval, the Contract will be signed by the District.

B. If the Contractor is an individual, the Contract shall be executed personally by the Contractor. If the Contractor is a partnership, it is desirable that the Contract be executed
by all of the partners, but it may be executed by one of them, provided that the partnership provide legal documentation of the partnership agreement declaring which individuals have signatory authority. If the Contractor is a corporation, it must be executed by at least one officer of the corporation consisting of the chairman of the board, president vice president, chief finance officer, and treasurer or by a person authorized by the corporation to execute written contracts on its behalf, and the corporate seal affixed thereto. In the alternative, a person other than an officer may sign the Agreement, provided evidence satisfactory to the District is provided indicating the individual's authority to bind the corporation. If the corporate seal is not affixed to the Contract, or if it is executed by a person other than an officer, or only by one officer, there must be attached to the Contract a certified copy of a resolution of the corporation authorizing such officer or person to execute written contracts for and on behalf of the corporation. If the Contractor is a joint venture, the Contract must be executed on behalf of each participating firm by officers or other individuals who have the full and proper authorization to do so.

4.04 FAILURE TO EXECUTE CONTRACT

A. Failure of a bidder to whom the Contract is awarded to promptly and properly execute the Contract or furnish acceptable Project Forms, or certificates of insurance, shall be just cause for the annulment of the award and the forfeiture of such bidder's Bid Guaranty.

4.05 NOTICE TO PROCEED

A. After execution of the Contract and submission of Contractor's performance and payment bonds and certificates of insurance, the District will issue the Notice to Proceed indicating that the Work may commence on the date indicated. The Notice to Proceed will also identify District's Designated Representative ("DDR") for the project. Notice to Proceed will be issued within 120 days of Notice to Award, or any longer period agreed upon between District and Contractor.

PART 5 - BID PROTEST PROCEDURES

5.01 BID PROTEST PROCEDURES

A. See Attachment A; Board Policy 354

END OF SECTION 002113
PART 1 - GENERAL

1.01 BACKGROUND

A. The purpose of the Pre-bid Meeting(s) is to familiarize all potential bidders with the terms and scope of the project, in addition to providing them with an opportunity to view AC TRANSIT’s work site(s), and to discuss AC TRANSIT safety and other requirements. Attendance at the Pre-bid Meeting(s) is strongly encouraged but not mandatory.

1.02 LOCATION AND TIME OF PRE-BID MEETINGS

A. A Pre-bid Meeting will be held prior to the date of bidding. The conference will take place on December 1, 2015 at 10:00 a.m., at the AC TRANSIT’s General Offices located 1600 Franklin Street, Oakland, CA 94612.
SECTION 004000

PROCUREMENT FORMS AND SUPPLEMENTS

PART 1 - GENERAL

1.01 INSTRUCTIONS TO BIDDERS

A. Forms shall be completed in accordance with the directions herein and the directions indicated in Section 001113, "Advertisement for Bids"; and Section 002113, "Instructions to Bidders" of the Contract Documents.

1.02 FORMS

A. Forms Required in Bid Submittal

Each of the following Forms must be completed as part of each Bidder's bid and shall be submitted before the specified time and date of the Bid Opening as identified in Section 001113, "Advertisement for Bids", of the Contract Documents.

1. Bid Letter (including acknowledgement of receipt of Addenda)
2. List of Subcontractors
3. Agreed to Letter of Assent, Project Labor Agreement for the AC Transit District
4. Equal Opportunity Certification
6. Acknowledgement of Insurance Requirements
7. Bidder’s Bond
8. Bidder’s Statement of Qualifications and Business References
9. Buy America Certificate
10. Certification Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion
11. Certification Regarding Lobbying
12. Disclosure of Lobbying Activities (SF-LLL)
13. Non-Collusion Affidavit
14. Bid Form (Parts 1 and 2)
15. Schedule of Bid Prices
16. Contract Offer and Acceptance Form
17. Prompt Payment Affidavit
Pursuant to the Invitation for Bids, the undersigned bidder herewith submits a bid on the Bid Form and Procurement Forms and Supplements attached hereto and made a part hereof, and binds itself on award to execute a Contract in accordance with its bid and the Contract Documents.

The Advertisement for Bids, Instructions to Bidders, General Requirements, Technical Specifications, Appendices, Contract Drawings, and Addenda, if any, are made part of this bid and all provisions thereof are hereby accepted, and all representations and warranties required thereby are hereby affirmed.

This offer shall be irrevocable for a period of ninety (90) days after the date on which bids are opened.

The undersigned bidder understands that any clarification made to the above or any new and different conditions or information submitted on or with its Procurement Forms and Supplements, other than that requested, may render the bid non-responsive.

The undersigned, as bidder, declares that the only persons or parties interested in this bid as principals are those named herein; that this bid is made without collusion with any other person, firm or corporation and in submitting this bid, that it has carefully examined the location of the proposed work, the attached proposed form of contract, and the plans, specifications and the other Contract Documents (collectively the Contract Documents); and agrees if this bid is accepted, that it will contract with AC TRANSIT, on the form of contract included with these specifications, to provide all necessary labor, materials, equipment, machinery, apparatus and other means of construction, and to do all the work specified in the Contract Documents, in the manner and time therein prescribed, and according to the requirements of the District’s Designated Representative as therein set forth, and that it will accept all full payment therefore based on the item prices set forth in its Bid Form.

The prices included within the Bid Form include all costs for labor, materials, tools, equipment, services, subcontractors, suppliers, taxes, insurance, shipment, delivery, overhead, profit and all other costs necessary to perform the work in accordance with the Contract Documents.

The undersigned bidder acknowledges receipt, understanding, and full consideration of the following addenda to the Contract Documents:

Firm Name: ________________________________
Contact Name/Title: __________________________
Business Address: ______________________________
____________________________________________
Phone: __________________ E-mail Address: __________________________
Contractor’s License No. ____________________________
Classification Type: ______________________________
License Expiration Date ______________________________
Internal Revenue Service (IRS) Reporting Requirements:

Check one: ☐ Corporation; ☐ Partnership; ☐ Sole Proprietor; ☐

Identify: State of Incorporation:

Provide one: Federal Tax Number:

Business License Number:

What is the official name registered with the IRS for this number?

Indicate your firm's estimated gross annual revenue for the following three years:

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<tr>
<th>2011/</th>
<th>2012/</th>
<th>2013</th>
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If SOLE OWNER, sign here:
I sign as sole owner of the business named above:

If PARTNERSHIP, one or more partners sign here:
The undersigned certify that we are partners in the business named above and that we sign this bid with the full authority to do so:

If CORPORATION, execute here:
Corporate Name:
Incorporated under the laws of the State of
The undersigned certify that they sign this bid with the full and proper authorization so to do:

By ____________________________ By ____________________________
Signature of Authorized Official* Signature of Authorized Official*

Title

Typewritten or Printed Name Typewritten or Printed Name
If JOINT VENTURE, execute here:

Joint Venture name composed of: ________________________________

The undersigned certify that they sign this bid with the full and proper authorization so to do:

_________________________________________________________
Signature of Authorized Official*                                  Signature of Authorized Official*

_________________________________________________________
Title                                                                 Title

_________________________________________________________
Typewritten or Printed Name                                      Typewritten or Printed Name

*If bidder is a partnership or Joint Venture, give the full names of all partners and/or Joint Ventures in the space provided (use additional sheet if required). If bidder is a corporation, at least one signature is required from the following: the Chairman of the Board, President, Vice-President Chief Financial Officer or Treasurer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to AC TRANSIT is provided demonstrating that such individual is authorized to bind the corporation (example, a copy of a certified resolution from the corporation’s board or a copy of the corporation's bylaws)

END OF BID LETTER
LIST OF SUBCONTRACTORS

The Bidder is required to furnish the following information in accordance with the provisions of Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California. This list and information shall include all subcontractors that will perform work, provide labor or render services to the Bidder in connection with the project in an amount in excess of one-half of one percent of the total amount of Bidder's Grand Total Bid Price.

Do not list alternative subcontractors for the same work. Use additional sheets if necessary.

<table>
<thead>
<tr>
<th>NAME OF SUBCONTRACTOR</th>
<th>LICENSE NUMBER &amp; LICENSE TYPE</th>
<th>LOCATION/PLACE OF BUSINESS</th>
<th>ESTIMATED COST OF SUBCONTRACT ($)</th>
<th>BUSINESS TYPE*</th>
<th>DESCRIPTION OF WORK</th>
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*1=DBE and SBE, 2=SBE, Non-DBE, 3=Other than Small

END LIST OF SUBCONTRACTORS
Letter of Assent  
PROJECT LABOR AGREEMENT  
for the  
AC TRANSIT DISTRICT  
CONTRACTOR AGREEMENT TO BE BOUND

The undersigned, as a Contractor(s) or Subcontractor (CONTRACTOR) on the AC Transit East Bay Bus Rapid Transit Project Infrastructure and Station Platforms, (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the “AC Transit Project Labor Agreement” (hereinafter AGREEMENT), a copy of which was received and is acknowledged, hereby:

(1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT, together with any and all amendments and supplements now existing or which are later made thereto only for the duration and scope of the Contractor’s work on the Project.

(2) Agrees to be bound by the legally established Trust Agreement as set forth in article 17 of this AGREEMENT; and

(3) Authorizes the parties to such trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR; and

(4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.

(5) Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a Subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

Dated: ___________________  
____________________________________  
(Name of Contractor)  
____________________________________  
(Authorized Officer & Title)  
____________________________________  
(Contractor’s State License #)  
____________________________________  
(Address)  
____________________________________  
(Phone)  
____________________________________  
(E-mail Address)
EQUAL OPPORTUNITY CERTIFICATION

The bidder, ________________________________, hereby certifies that it has _____/ has not _____ participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: the above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts that are subject to the equal opportunity clause. Contracts and subcontracts exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of $10,000 or under are exempt.)

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

The bidder’s execution on the signature portion of this Bid shall also constitute an endorsement and execution of those certifications that are a part of this Bid.

Within 30 days of contract award, the District will issue an EEO Form/Workforce Data Spreadsheet to the contractor to be filled in and returned within 30 days along with the contractor’s EEO Plan/Manual that shows adheres to EO11246.

END OF EQUAL OPPORTUNITY CERTIFICATION
Disadvantaged Business Enterprise (DBE) Certification

Company Name

Street /Mailing Address

City/State/Zip Code

TAX I.D._

I. PRIME CONTRACTOR

☐ The Bidder/Proposer is a Caltrans, or other authorized certifying agency, certified DBE under the FTA Uniform Certification Program.

Certification No. ___________________________  Expiration Date ___________________________

☐ The Bidder/Proposer has applied for DBE status through Caltrans, or other authorized certifying agency, under the FTA Uniform Certification Program.

Application Date ________________  Status of application ___________________________

☐ The Bidder/Proposer is not a Caltrans, or other authorized certifying agency, certified DBE under the Uniform Certification Program.

II. SUBCONTRACTOR (if proposed in proposal)

Attach a separate sheet for each subcontractor to be used in the performance of services under a proposal specifying the sub-contractor DBE status as stated under section I listed above.

If not already registered, sub-contractors should access www.actransit.org, and complete an online vendor registration form by selecting purchasing, online purchasing, and registering as an Online Purchasing User. A W-9, Request for Taxpayer Identification Number and Certification is required to complete the process.

Prime Contractors are requested to explain the DBE program and encourage sub-contractors to apply for certification.

Prime Signature ___________________________  Date ___________________________

(Position/Title)

(This page intentionally left blank)
ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS

Included in the Bid Price is full compensation for the requirements set forth in Section 007316, INSURANCE REQUIREMENTS of the Contract Documents, including:

a) Workers’ Compensation

Workers’ Compensation limits as required by State of California and Employer’s Liability limits of $1,000,000 per accident for bodily injury or disease. Policy shall include a waiver of subrogation.

b) Employer’s Liability coverage.

Two Million Dollars ($2,000,000) per accident; and

Two Million Dollars ($2,000,000) each employee by disease

c) Commercial General Liability coverage (including but not limited to premises and operations; contractual liability; personal and advertising injury; explosion, collapse, and underground coverage; products and completed operations, and; broad form property damage) of not less than:

Two Million Dollars ($2,000,000) combined single limit per occurrence or claim; and

Two Million Dollars ($2,000,000) general aggregate.

Policy shall include a Waiver of Subrogation and Additional Insured endorsement. Policy will also contain either a Cross Liability endorsement or Severability of Interests Clause.

d) Business Automobile Liability Insurance coverage of not less than:

One Million Dollars ($1,000,000) combined single limit occurrence.

Policy shall include a Waiver of Subrogation and Additional Insured endorsement.

e) Builder’s Risk/ “All-Risk” insurance policy covering the full value of the work set forth in invitation for Bid.


Signature of Bidder/Title ______________________ Date ______________________

END OF ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS
(This page intentionally left blank)
BIDDER’S BOND

KNOW THAT ALL PERSONS BY THESE PRESENT

That we ___________________________________________ As PRINCIPAL and ___________________________________________ As SURETY, are held and firmly bound unto the ALAMEDA-CONTRA COSTA TRANSIT DISTRICT herein called “AC TRANSIT” OR “District” the sum of ten (10) PERCENT OF THE TOTAL AMOUNT OF THE BID of the Principal named above, submitted by said Principal to the District for the work described below, for the payment of which lawful money of the United States of America, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents. In no case shall the liability of the Surety hereunder exceed the sum of $______________.

THE CONDITION OF THIS OBLIGATION IS SUCH,
That whereas the Principal has submitted a IFB No. 2016-1354 to the District for certain construction specifically described as follows, which is to be opened on ____________, for _____________________________________________________________________.

NOW, THEREFORE, if the aforesaid Principal is awarded a Contract, and within the time and manner required under the specifications, after the prescribed forms are presented to it for signature, enters into a written Contract, in the prescribed form in accordance with the Bid, and files two bonds with the District, one to guarantee faithful performance and the other to guarantee payment for labor and materials, then this obligation shall be null and void, otherwise, it shall be and remain in full force and effect.

In the event that the District brings suit upon this bond and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including a reasonable attorney’s fee to be fixed by the court.

California law shall govern the interpretation of this bond.

To be considered complete, both the Bidder and an admitted Surety insurer authorized by the California Insurance Commissioner to transact surety business in the State of California must sign this Bidder’s bond. In addition, the Surety’s signature must be notarized and a copy of the Surety’s power of attorney must be attached.

In witness whereof, WE HAVE HEREUNTO SET OUR HANDS AND SEALS ON THIS ___________ DAY OF ____________, __________

________________________________
PRINCIPAL

________________________________
BY

________________________________
PRINCIPAL SEAL
SURETY

BY

SURETY SEAL

ADDRESS OF SURETY

Subscribed and sworn to before me, a Notary Public in and for the State of California, County of ____________, this ______ day ___________, 20___.

________________________________________
Signature of Notary Public (Seal)
My commission expires _____________________, 20___

[END OF BIDDER'S BOND]
BIDDER'S STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES

Name Bidder ________________________________________________

Address of Principal Office ____________________________________________

Are you an individual _____, a partnership _____, a corporation _____ or a joint venture _____?

(Check as applicable)

If a partnership, list names and addresses of partners; if a corporation, list names of officers and directors and State of incorporation; if a joint venture, list names and addresses of ventures and if any venturer is a corporation, partnership or joint venture, list the same information for each such corporation, partnership and joint venture.

________________________________________________________________________

2. Are you licensed as a Contractor to do business in California? ______

License No. ____________ Classification __________________________

For the following questions, if a joint venture, give information for each of the ventures, by name. Attach additional sheets if necessary.

3. How many years has your organization been in business as a Contractor under your present business name? __________

4. How many years of experience has your organization had in construction work similar to the work you are interested in bidding?

   (a) As a general contractor? ___________________

   (b) As a subcontractor? _______________________

5. Show all the projects your organization has completed during at least the last five years in the following tabulation: If your organization has been in existence for less than five years, show all the projects your key personnel have completed during the last five years in the following tabulation. (For joint venture work, show the sponsoring individual or company). Attach additional sheets if necessary.

<table>
<thead>
<tr>
<th>Year</th>
<th>Type of Work</th>
<th>Value of Work</th>
<th>Location</th>
<th>For Whom</th>
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ISSUED FOR BID
6. Have you or your organization, or any officer or partner thereof, failed to complete a contract?
   If so, give details. Attach additional sheets if necessary.

   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

7. In what other lines of business are you financially interested? Attach additional sheets if necessary.

   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

8. Name the persons with whom you have been associated in business as partners or business associates in each of the last five years. Attach additional sheets if necessary.

   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

9. Give information below about the relevant experience of the principal individuals of your present organization including those individuals to be in responsible charge of this project. Attach additional sheets if necessary.

<table>
<thead>
<tr>
<th>Individual's Name</th>
<th>Present Position of Office</th>
<th>Years of Construction Experience</th>
<th>Magnitude and Type of Work</th>
<th>In What Capacity</th>
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10. Give information below about all your contract work underway, or for which you are committed. Attach additional sheets if necessary.

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Location</th>
<th>Value</th>
<th>Percent Complete</th>
<th>Scheduled Completion Date</th>
<th>For Whom Performed</th>
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</table>
11. References: Give only engineers, architects, or Districts, including public bodies, for which you have done work: Attach additional sheets if necessary.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Business</th>
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12. References: The following bank or banks can provide references as to the financial responsibility of the Bidder: Attach additional sheets if necessary.

(a) Name of Bank: __________________________
Address: __________________________________
City and State ____________ Telephone ____________
Officer Familiar with Bidder's Account: __________________________

(b) Name of Bank: __________________________
Address: __________________________________
City and State ____________ Telephone ____________
Officer Familiar with Bidder's Account: __________________________

(c) Name of Bank: __________________________
Address: __________________________________
City and State ____________ Telephone ____________
Officer Familiar with Bidder's Account: __________________________

13. References: The following surety company or companies can provide references as to the financial responsibility and general reliability of the Bidder: Attach additional sheets if necessary.

(a) Name of Surety Company: __________________________
Name of Local Agent (if different) __________________________
Local Address: Street __________________________
City and State ____________ Telephone ____________
Person Familiar with Bidder's Account: __________________________

(b) Name of Surety Company: __________________________
Name of Local Agent (if different) __________________________
Local Address: Street __________________________
City and State ____________ Telephone ____________
Person Familiar with Bidder's Account: __________________________
14. Is any litigation pending against your organization? _______________

If so, give details. Attach additional sheets if necessary.

_____________________________________________________________________

_____________________________________________________________________

15. Please provide your firm’s current Worker’s Compensation Experience Modification Rate. This rate should be provided by the company which provides your firm with Worker’s Compensation Insurance.

Worker’s Compensation Experience Modification Rate? ____________________________

The undersigned bidder represents and warrants that the foregoing information is true and accurate to the best of its knowledge and the undersigned intends that AC TRANSIT rely thereof in awarding the attached contract.

Signature of Bidder

Title

Dated: _________________, 201__

END OF BIDDER’S STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES
BUY AMERICA CERTIFICATE
(Steel, Iron or Manufactured Products)

SELECT AND COMPLETE ONLY ONE OF THE FOLLOWING CERTIFICATIONS:

Certificate of Compliance with 49 U.S. C. 5323(j)(1)
The Contractor hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

_________________________ Firm Name
_________________________ Signature of Authorized Official
_________________________ Name and Title of Authorized Official
_________________________ Date

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)
The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

_________________________ Firm Name
_________________________ Signature of Authorized Official
_________________________ Name and Title of Authorized Official
_________________________ Date

END OF BUY AMERICA CERTIFICATION
CERTIFICATION REGARDING DEBARMENT, SUSPENSION and OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

(A) By signing and submitting this Bid, the Bidder is providing the signed certification set out below.

(1) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(2) The Bidder shall provide immediate written notice to AC TRANSIT if at any time the Bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(3) The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” “bid” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (49 CFR Part 29). You may contact AC TRANSIT for assistance in obtaining a copy of those regulations.

(4) The Bidder agrees by submitting this Bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the department or agency with which this transaction originated.

(5) The Bidder further agrees by submitting this Bid that it will include the clause entitled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion”, as set out below in Subsection (B), in all subcontracts and in all solicitations for lower tier covered transactions as modified to identify the subcontractor.

(6) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

(7) Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(8) Except for transactions authorized under Paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.
(9) Is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or public agency.

(10) Has not within a three year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

(11) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification.

(12) Has not within a three year period preceding this bid had one or more public transactions (Federal, State or local) terminated for cause or default.

(B) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

(1) The Bidder certifies, by submission of this bid, that neither it nor its “principals,” as defined at 49 C.F.R. § 29.105(p), is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(2) If Bidder is unable to certify to the statements in this certification, Bidder shall attach an explanation to this proposal.

______________________________ Firm Name

______________________________ Signature of Authorized Official

______________________________ Name and Title of Authorized Official

______________________________ Date

END OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION
CERTIFICATION REGARDING LOBBYING

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

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions and as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96).

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Bidder, ___________________________, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any.

_____________________________ Signature of Authorized Official

_____________________________ Name and Title of Authorized Official

_____________________________ Date

END OF CERTIFICATION REGARDING LOBBYING
INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., “RFP-DE-90-001.”

9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.
    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

END OF FEDERAL LOBBY RESTRICTIONS
## DISCLOSURE OF LOBBYING ACTIVITIES
Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<table>
<thead>
<tr>
<th>1. Type of Federal Action:</th>
<th>2. Status of Federal Action:</th>
<th>3. Report Type:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. contract</td>
<td>a. bid/offer/application</td>
<td>a. initial filing</td>
</tr>
<tr>
<td>b. grant</td>
<td>b. initial award</td>
<td>b. material change</td>
</tr>
<tr>
<td>c. cooperative agreement</td>
<td>c. post-award</td>
<td></td>
</tr>
<tr>
<td>d. loan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. loan guarantee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f. loan insurance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Name and Address of Reporting Entity:</th>
<th>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Prime  ☐ Subawardee</td>
<td>Tier, if known:</td>
</tr>
<tr>
<td>Congressional District, if known:</td>
<td>Congressional District, if known:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. Federal Department/Agency:</th>
<th>7. Federal Program Name/Description: CFDA Number, if applicable:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>8. Federal Action Number, if known:</th>
<th>9. Award Amount, if known: $__________</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</th>
<th>10. b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Attach Continuation Sheet(s), if necessary)</td>
<td>(Attach Continuation Sheet(s), if necessary)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11. Amount of Payment (check all that apply): $__________ ☐ actual ☐ planned</th>
<th>13. Type of Payment (check all that apply):</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ a. retainer</td>
<td>☐ a. retainer</td>
</tr>
<tr>
<td>☐ b. one-time fee</td>
<td>☐ b. one-time fee</td>
</tr>
<tr>
<td>☐ c. commission</td>
<td>☐ c. commission</td>
</tr>
<tr>
<td>☐ d. contingent fee</td>
<td>☐ d. contingent fee</td>
</tr>
<tr>
<td>☐ e. deferred</td>
<td>☐ e. deferred</td>
</tr>
<tr>
<td>☐ f. other; specify</td>
<td>☐ f. other; specify</td>
</tr>
</tbody>
</table>

| 12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _______
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>value _________</td>
<td>value _________</td>
</tr>
</tbody>
</table>

| 14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: | |
| (Attach Continuation Sheet(s), if necessary) | (Attach Continuation Sheet(s), if necessary) |

| 15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No | |

---

**ISSUED FOR BID**
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reference was placed by the user above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

| Signature: _____________________________ |
| Print Name: ____________________________ |
| Title: _________________________________ |
| Telephone No. __________ Date: _________ |

Authorized for Local Reproduction

Standard Form - LLL-A

BILLING CODES 3410-01-C; 6450-01-C; 6690-01-C; 8025-01C; 7510-01-C; 3510-FE-C; 8120-01-C; 4710-24-C; 6116-01-C; 6051-01-C; 8230-01-C; 3210-01-C; 4210-32-C; 4410-18-C; 4510-23-C; 4810-25-C; 3001-01-C; 4000-01-C; 3820-01-C; 6560-50-C; 6820-61-C; 4310-RF-C; 6718-01-C; 4150-04-C; 7555-01-C; 7537-01-C; 7536-01-C; 6050-28-C; 4910-62-C
NON-COLLUSION AFFIDAVIT
TO BE EXECUTED
BY BIDDER AND SUBMITTED WITH BID

STATE OF CALIFORNIA

COUNTY OF ____________________________

________________________________________, being first duly sworn, deposes and

(Name)
says that he or she is ___________________________________________________ of

(position or title)

(the Contractor)

, the party making the foregoing contract swears that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any Contractor or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Contractor has not in any manner, directly or indirectly, sought by Contract, communication, or conference with anyone to fix the bid price of the Contractor or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Contractor, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the Contractor has not, directly or indirectly, submitted its or her bid price or any breakdown thereof, or the contents thereof, or divulged information or date relative thereto, or paid, and will not pay, any free to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Dated: ________________________ By: ______________________________

Subscribed and sworn to before me, a Notary Public in and for the State of California, County of ____________________________, this _____day ________, 20____.

Signature of Notary Public (Seal)
My commission expires _____________________, 20__

END OF NON-COLLUSION AFFIDAVIT

ISSUED FOR BID
1.01 INSTRUCTIONS

A. Bidders are directed to submit firm unit and lump sum prices for all Work set forth in the Contract Documents on the following form entitled Bid Form (Parts 1 and 2) and the Schedule of Bid Prices Form.

Unit prices and lump sum prices must be entered in the appropriate spaces provided on the form. Unit prices shall be multiplied by the Quantities shown, and the total shall be inserted in the AMOUNT column. In the event of any error or discrepancy between the Unit Price and the calculated AMOUNT, the Unit Price shall govern. The amounts shown in the AMOUNT column must be added together in arriving at the Grand Total Bid Price.

Amounts for Allowance bid items must be entered in the exact amount in the AMOUNT column.

The prices included within the Bid Form include all costs for labor, materials, tools, equipment, services, subcontractors, suppliers, taxes, insurance, shipment, delivery, overhead, profit and all other costs necessary to perform the Work in accordance with the Contract Documents.

B. The Grand Total Bid Price shall be the sum of the amounts bid for each of the designated portions of the Work and shall include the Allowance Items.

1.02 BID PRICES

A. The Contractor’s bid prices provided on a unit price basis shall remain firm and shall not be subject to adjustment under Section 007200, General Conditions, unless and until the actual quantity of work is increased or decreased by Contract Change Order in an amount greater than 25% from the estimated quantity indicated for such item.

B. Full compensation for complying with the requirements of the Supplementary Conditions, including warranties, shall be considered included in the bid items and no additional compensation shall be allowed therefor.

C. Full compensation for completion of all work as shown on the plans, as specified in the Standard Specifications and these Supplementary Conditions, and as directed by the District, shall be considered included in the bid items and no additional compensation shall be allowed.

1.03 UNBALANCED BIDS

A. All prices provided for each bid item shall be inclusive of all direct costs of the covered work (including all direct costs of Subcontractors, Suppliers, and Materialmen), plus a proportionate share of the costs for general requirements, overhead, insurance, applicable taxes, and any other indirect costs and profit.

B. Bidders are strongly discouraged from submitting unbalanced bids. As used herein, the term “unbalanced bid” is defined as any bid that does not include a reasonable proportionate allocation of indirect costs and profit to each bid item indicated in the Schedule of Bid Prices. The District reserves the right to reject any unbalanced bid if the
District determines that there is a reasonable doubt that an acceptance of the bid will not result in the lowest ultimate cost to the District with regard to the work.

C. The District reserves the right to delete any bid item in its entirety and/or significantly reduce the quantity of Work under a bid item. The District makes no representation that any Work under a bid item will be performed during the course of the Project or that the Work will be performed at the quantities indicated in the Schedule of Bid Prices. As provided in the General Conditions, for any deleted Work, Contractor shall not be entitled to payment of the indirect costs and profit included for said bid item. All bid items shall be considered distinct and severable from the remaining bid items, and each Bidder acts at its peril if its bid is unbalanced.

1.04 TOTAL BASIS FOR COMPARISON OF BIDS
   A. The District shall compare bids on the basis of the Grand Total Bid Price. Bid allowance work may or may not be awarded, at the District's discretion.

1.05 ENCROACHMENT PERMIT AND INSPECTION
   A. The Contractor shall be responsible for applying, paying all fees, and coordination for obtaining all Encroachment Permits for completion of the project. The actual lump sum cost paid for Encroachment Permit Fees and all work and materials to secure the permits should be incorporated into the Bidder's Submittal, and no additional compensation will be allowed. Failure or delay in obtaining encroachment permits shall not be used for the basis of a schedule delay or claim for unforeseen cost.

END OF SCHEDULE OF BID PRICES
BID FORM – Part 1

TO THE BOARD OF DIRECTORS OF THE AC TRANSIT DISTRICT
THIS BID IS SUBMITTED

BY:___________________________________________________________________
(Firm/Company Name)

Re: AC TRANSIT EAST BAY BUS RAPID TRANSIT PROJECT INFRASTRUCTURE AND STATION PLATFORMS, 1600 Franklin Street, Oakland, CA 94612, IFB No. 2016-1354

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the AC Transit District to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents.

2. Bidder accepts all of the terms and conditions of the Contract Documents, including, without limitation, those dealing with the disposition of Bid Guaranty. This Bid will remain subject to acceptance for 90 Days after the day of Bid opening.

3. In submitting this Bid, Bidder represents that Bidder has examined all of the Contract Documents, performed all necessary Pre-Bid investigations, and received the following Addenda:

<table>
<thead>
<tr>
<th>Addendum Number</th>
<th>ADDENDUM DATE</th>
<th>Signature of Bidder</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

4. The Bid Prices shall reflect all costs for the construction project, including Taxes, Bonds, Insurance, Freight, Disposal and Recycle Fees, which does not need to be broken out separately. Based on the foregoing, Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents.

5. The District reserves the right to delete any bid item of Work in its entirety. The District makes no representation that any work under a bid item of Work will be performed, and all work may be subject to a Contract Change Order that deletes such work. Bid items are distinct and severable from the other bid items, and Contractor shall not be entitled to any anticipated profit, unabsorbed overhead, or other indirect expense attributable to the deleted item.

ISSUED FOR BID
# BID FORM – Part 2

Bid Item Prices to Complete the AC Transit East Bay Bus Rapid Transit Project Infrastructure and Station Platforms

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>TOTAL PRICE ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 BASE BID PRICE</td>
<td>(Base Bid price must include all Bonds, freight, and taxes)</td>
<td></td>
</tr>
<tr>
<td>1 Allowance #1</td>
<td>EBMUD Water main Work</td>
<td>$600,000</td>
</tr>
<tr>
<td>2 Allowance #2</td>
<td>COZEEP</td>
<td>$77,400</td>
</tr>
<tr>
<td>3 Allowance #3</td>
<td>Business/Public Convenience</td>
<td>$300,000</td>
</tr>
<tr>
<td>4 Allowance #4</td>
<td>Permits</td>
<td>$150,000</td>
</tr>
<tr>
<td>5 Allowance #5</td>
<td>Driveway Removals</td>
<td>$82,000</td>
</tr>
<tr>
<td>6 Allowance #6</td>
<td>San Leandro Transit Center</td>
<td>$360,000</td>
</tr>
<tr>
<td>7 Allowance #7</td>
<td>Northern Layover</td>
<td>$500,000</td>
</tr>
<tr>
<td>8 Allowance #8</td>
<td>Furnish Splice Chambers</td>
<td>$132,000</td>
</tr>
<tr>
<td>9 Allowance #9</td>
<td>Furnish Manhole Cover and Frames</td>
<td>$31,200</td>
</tr>
<tr>
<td>10 Allowance #10</td>
<td>Base Repairs</td>
<td>$363,000</td>
</tr>
<tr>
<td>11 Allowance #11</td>
<td>Hazardous and Contaminated Material Removal</td>
<td>$363,000</td>
</tr>
<tr>
<td>12 Allowance #12</td>
<td>Design Modifications</td>
<td>$600,000</td>
</tr>
<tr>
<td>13 Allowance #13</td>
<td>Unforeseen Conditions</td>
<td>$1,016,000</td>
</tr>
</tbody>
</table>

**Base Bid**
(subtotal from Line Item 0)

**Total Allowances**
(Total of line items 1-13)

$7,214,600

**Grand Total Bid Price**
(Base bid + Total Allowances)

GRAND TOTAL BID PRICE $____________________________
(Numerically)

GRAND TOTAL BID PRICE $____________________________
(In Words)

CONTRACTOR NAME ________________________________

CONTRACTOR SIGNATURE ___________________________ DATE ____________

ISSUED FOR BID
Officers Authorized to Sign Contracts:

___________________________________________________________________________
(Name/Title)
___________________________________________________________________________
(Name/Title)

Telephone Number(s):

___________________________________________________________________________
(Area Code) (Number)
___________________________________________________________________________
(Area Code) (Number)

Mailing Address:

___________________________________________________________________________
ADDRESS
___________________________________________________________________________
ADDRESS
___________________________________________________________________________
ADDRESS

NOTE: This contract will be awarded on the basis of the not to exceed Grand Total Bid Price. Contract payments will be per section 00 72 00 Part 9.

[END OF BID FORM]
## SCHEDULE OF BID PRICES

(Line items shall not be modified by the proposer. Every line must have a unit price and amount indicated including zero value where appropriate)

<table>
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<th>Item</th>
<th>Sect. No.</th>
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| 1.   | Div 1: 01500  
     Div 1: 01570 | TRAFFIC CONTROL SYSTEM | LS   | 1          | 1        |        |
| 2.   | Div 1: 01510 | CONSTRUCTION SURVEY | LS   | 1          | 1        |        |
| 3.   | Div 1: 01520 | UTILITY POTHOLING | LS   | 1          | 1        |        |
| 4.   | Div 1: 01585 | PROJECT INFORMATION SIGNS | EA   | 1          | 5        |        |
| 5.   | Div 2.1: 7-8  
     Div 2.2: 13-3 | PREPARE STORMWATER POLLUTION CONTROL PLAN | LS   | 1          | 1        |        |
| 6.   | Div 2.1: 300-1  
     Div 2.2: 16 | CLEARING AND GRUBBING | LS   | 1          | 1        |        |

**BID ITEMS WITHIN THE SEGMENT B (CITY OF OAKLAND RIGHT-OF-WAY)**

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40. | Div 2.1: 303-5 | CONCRETE CURB RAMP | CY | 320 |  |  
41. | Div 2.1: 303-5 | CONCRETE SIDEWALK AND DRIVEWAY | CY | 700 |  |  
42. | Div 2.1: 303-5 | PRE/POST CONSTRUCTION SURVEY | EA | 32 | |  
43. | Div 2.1: 303-5 | DETECTABLE WARNING SURFACE | SF | 4,740 | |  
44. | Div 2.1: 303-5 | RELOCATE SIGN | EA | 1 |  |  
45. | Div 2.1: 303-5 | PARKING SPACE METERS | EA | 230 |  |  
46. | Div 2.1: 303-5 | PEDESTRIAN BARRICADE (TYPE I) | EA | 2 | |  
47. | Div 2.1: 303-5 | PEDESTRIAN BARRICADE (TYPE II) | LF | 47 | |  
48. | Div 2.1: 303-6 | COLORED STAMPED CONCRETE | CY | 250 | |  
49. | Div 2.1: 303-9 | MANHOLE (COO TYPE 1) | EA | 11 | |  
50. | Div 2.1: 303-9 | MANHOLE (COO TYPE 2) | EA | 7 | |  
51. | Div 2.1: 303-10 | TACTILE CONCRETE PAVING STRIP WITH ETCHED FINISH | SF | 2,980 | |  
52. | Div 2.1: 303-11 | UNCLASSIFIED SIDEWALK | SF | 35,000 | |  
53. | Div 2.1: 303-12 | UNCLASSIFIED CROSSWALK | SF | 21,300 | |  
54. | Div 2.1: 303-13 | UNCLASSIFIED ISLAND PAVING | SF | 890 | |  
55. | Div 2.1: 304-5 | INSTALL CATCH BASIN INSERT (STORMTEK ST3) IN EXISTING INLET | EA | 27 | |  
56. | Div 2.1: 304-5 | CATCH BASIN INSERT (STORMTEK ST3) | EA | 20 | |  
57. | Div 2.1: 304-6 | ARCHITECTURAL FENCE | LF | 720 | |  
58. | Div 2.1: 304-7 | INSTALLATION OF ARTISTICALLY ENHANCED HANDRAIL AND WINDSCREEN PANELS | LS | 1 | |  
59. | Div 2.1: 306-1 | 12" HDPE PIPE | LF | 700 | |
<table>
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<th>Item</th>
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**BID ITEMS WITHIN SEGMENT A (CALTRANS RIGHT-OF-WAY)**

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<td>Div 2.2: 20-5</td>
<td>BICYCLE RACK (SIDE RUNNING STATION)</td>
<td>EA</td>
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<td>269.</td>
<td>Div 2.2: 21</td>
<td>MOVE-IN/MOVE-OUT (TEMPORARY EROSION CONTROL)</td>
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<td>270.</td>
<td>Div 2.2: 25-1</td>
<td>CLASS 2 AGGREGATE SUBBASE</td>
<td>CY</td>
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<td>1,540</td>
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<td>271.</td>
<td>Div 2.2: 26-1</td>
<td>CLASS 2 AGGREGATE BASE</td>
<td>CY</td>
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<td>36,700</td>
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<td>272.</td>
<td>Div 2.2: 39-1</td>
<td>HOT MIX ASPHALT (TYPE A)</td>
<td>TON</td>
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<td>13,700</td>
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<td>273.</td>
<td>Div 2.2: 39-1</td>
<td>RUBBERIZED HOT MIX ASPHALT (GAP GRADED)</td>
<td>TON</td>
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<td>23,500</td>
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<tr>
<td>274.</td>
<td>Div 2.2: 39-1</td>
<td>TACK COAT</td>
<td>TON</td>
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<td>63</td>
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<td>275.</td>
<td>Div 2.2: 40-4</td>
<td>JOINTED PLAIN CONCRETE PAVEMENT</td>
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<td>2,270</td>
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<td>276.</td>
<td>Div 2.2: 56-2</td>
<td>FURNISH SINGLE SHEET ALUMINUM SIGN (0.063&quot;- UNFRAMED)</td>
<td>SF</td>
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<td>277.</td>
<td>Div 2.2: 56-2</td>
<td>FURNISH SINGLE SHEET ALUMINUM SIGN (0.080&quot;- UNFRAMED)</td>
<td>SF</td>
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<td>278.</td>
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<td>ROADSIDE SIGN - ONE POST</td>
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<td>279.</td>
<td>Div 2.2: 56-4</td>
<td>INSTALL SIGN (STRAP AND SADDLE BRACKET METHOD)</td>
<td>EA</td>
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<td>280.</td>
<td>Div 2.2: 59-6</td>
<td>PAINT CURB (2 COAT)</td>
<td>LF</td>
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<td>17,100</td>
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<td>281.</td>
<td>Div 2.2: 56-8</td>
<td>OFF-PLATFORM WAYFINDING SIGNAGE</td>
<td>LS</td>
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<tr>
<td>282.</td>
<td>Div 2.2: 62-1</td>
<td>3' X 2.5' REINFORCED CONCRETE BOX CULVERT</td>
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<td>283.</td>
<td>Div 2.2: 62-1</td>
<td>4’ x 2.5’ REINFORCED CONCRETE BOX CULVERT</td>
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<td>284.</td>
<td>Div 2.2: 62-1</td>
<td>10” HDPE PIPE</td>
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<td>285.</td>
<td>Div 2.2: 64-1</td>
<td>12” HDPE PIPE</td>
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<td>210</td>
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<td>286.</td>
<td>Div 2.2: 65-2</td>
<td>18” REINFORCED CONCRETE PIPE</td>
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<td>287.</td>
<td>Div 2.2: 70-5</td>
<td>DRAINAGE INLET MARKER</td>
<td>EA</td>
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<td>288.</td>
<td>Div 2.2: 70-9</td>
<td>SIDEWALK UNDERDRAIN</td>
<td>LF</td>
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<td>289.</td>
<td>Div 2.2: 70-8</td>
<td>SIDEWALK TRENCH DRAIN</td>
<td>LF</td>
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<td>420</td>
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<td>290.</td>
<td>Div 2.2: 70-10</td>
<td>INSTALL CATCH BASIN INSERT (STORMTEK ST3) IN EXISTING INLET</td>
<td>EA</td>
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<td>15</td>
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<td>291.</td>
<td>Div 2.2: 70-10</td>
<td>CATCH BASIN INSERT (STORMTEK ST3)</td>
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<td>16</td>
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<td>292.</td>
<td>Div 2.2: 70-11</td>
<td>4” CAST IRON PIPE</td>
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<td>293.</td>
<td>Div 2.2: 73-1</td>
<td>DETECTABLE WARNING SURFACE</td>
<td>SF</td>
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<td>294.</td>
<td>Div 2.2: 73-2</td>
<td>MINOR CONCRETE (CURB)</td>
<td>CY</td>
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<td>520</td>
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<td>Div 2.2: 73-2</td>
<td>MINOR CONCRETE (STATION PLATFORM CURB)</td>
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<td>296.</td>
<td>Div 2.2: 73-3</td>
<td>MINOR CONCRETE (CURB AND GUTTER)</td>
<td>CY</td>
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<td>297.</td>
<td>Div 2.2: 73-3</td>
<td>MINOR CONCRETE (GUTTER)</td>
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<td>298.</td>
<td>Div 2.2: 73-3</td>
<td>MINOR CONCRETE (CURB RAMP)</td>
<td>CY</td>
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<td>299.</td>
<td>Div 2.2: 73-3</td>
<td>MINOR CONCRETE (SIDEWALK AND DRIVEWAY)</td>
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<td>Div 2.2: 73-3</td>
<td>PRE/POST CONSTRUCTION SURVEY</td>
<td>EA</td>
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<td>301.</td>
<td>Div 2.2: 73-4</td>
<td>MINOR CONCRETE (TEXTURED PAVING)</td>
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<td>302.</td>
<td>Div 2.2: 73-6</td>
<td>TACTILE CONCRETE PAVING STRIP WITH ETCHED FINISH</td>
<td>SF</td>
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<td>1,390</td>
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<td>303.</td>
<td>Div 2.2: 73-7</td>
<td>PRECAST ARCHITECTURAL PAVERS</td>
<td>SF</td>
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<td>Quantity</td>
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<td>304.</td>
<td>Div 2.2: 73-8</td>
<td>INSTALLATION OF ARTISTICALLY ENHANCED HANDRAIL AND WINDSCREEN PANELS</td>
<td>LS</td>
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<td>1</td>
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<td>305.</td>
<td>Div 2.2: 73-9</td>
<td>UNCLASSIFIED SIDEWALK</td>
<td>SF</td>
<td>3,790</td>
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<td>306.</td>
<td>Div 2.2: 73-10</td>
<td>UNCLASSIFIED ISLAND PAVING</td>
<td>SF</td>
<td>710</td>
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<td>307.</td>
<td>Div 2.2: 75-1</td>
<td>MANHOLE FRAME AND COVER (COO TYPE 1)</td>
<td>EA</td>
<td>14</td>
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<td>308.</td>
<td>Div 2.2: 75-1</td>
<td>MANHOLE FRAME AND COVER (COO TYPE 2)</td>
<td>EA</td>
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<td>309.</td>
<td>Div 2.2: 75-1</td>
<td>MANHOLE FRAME AND COVER (CSL TYPE A)</td>
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<td>310.</td>
<td>Div 2.2: 75-1</td>
<td>INLET FRAME AND GRATE (TYPE GO)</td>
<td>EA</td>
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<td>311.</td>
<td>Div 2.2: 75-1</td>
<td>INLET FRAME AND GRATE (TYPE G3)</td>
<td>EA</td>
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<td>INLET FRAME AND GRATE (TYPE G4)</td>
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<td>313.</td>
<td>Div 2.2: 75-1</td>
<td>INSTALL GRATE IN EXISTING INLET</td>
<td>EA</td>
<td>47</td>
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<td>314.</td>
<td>Div 2.2: 79</td>
<td>6&quot; SEWER LATERAL PIPE</td>
<td>LF</td>
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<td>315.</td>
<td>Div 2.2: 79</td>
<td>SANITARY SEWER CLEAN OUT</td>
<td>EA</td>
<td>3</td>
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<td>316.</td>
<td>Div 2.2: 79</td>
<td>BUILDING SEWER CONNECTION</td>
<td>EA</td>
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<td>317.</td>
<td>Div 2.2: 80-4</td>
<td>ARCHITECTURAL FENCE</td>
<td>LF</td>
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<td>318.</td>
<td>Div 2.2: 82-1</td>
<td>OBJECT MARKER (TYPE K-1)</td>
<td>EA</td>
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<td>319.</td>
<td>Div 2.2: 83-1</td>
<td>PEDESTRIAN BARRICADE (TYPE I)</td>
<td>EA</td>
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<td>Div 2.2: 83-1</td>
<td>PEDESTRIAN BARRICADE (TYPE II)</td>
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<td>321.</td>
<td>Div 2.2: 84-2</td>
<td>4&quot; THERMOPLASTIC TRAFFIC STRIPE</td>
<td>LF</td>
<td>61,900</td>
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<td>322.</td>
<td>Div 2.2: 84-2</td>
<td>4&quot; THERMOPLASTIC TRAFFIC STRIPE (BROKEN 36-12)</td>
<td>LF</td>
<td>1,670</td>
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<td>323.</td>
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<td>4&quot; THERMOPLASTIC TRAFFIC STRIPE (BROKEN 17-7)</td>
<td>LF</td>
<td>4,540</td>
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<td>4&quot; THERMOPLASTIC TRAFFIC STRIPE (BROKEN 6-1)</td>
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<td>325.</td>
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<td>6&quot; THERMOPLASTIC TRAFFIC STRIPE</td>
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<td>6&quot; THERMOPLASTIC TRAFFIC STRIPE (BROKEN 8-4)</td>
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<td>8&quot; THERMOPLASTIC TRAFFIC STRIPE</td>
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<td>328.</td>
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<td>THERMOPLASTIC PAVEMENT MARKING</td>
<td>SF</td>
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<td>THERMOPLASTIC PAVEMENT MARKING (GREEN PREFORMED BICYCLE MARKING)</td>
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<td>PAVEMENT MARKER (RETROFLECTIVE)</td>
<td>EA</td>
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<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (42ND AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>332.</td>
<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (HIGH ST AND INTERNATIONAL BLVD)</td>
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<td>333.</td>
<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (45TH AVE AND INTERNATIONAL BLVD)</td>
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<td>334.</td>
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<td>TRAFFIC SIGNAL AND LIGHTING PLAN (46TH AVE AND INTERNATIONAL BLVD)</td>
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<td>LIGHTING PLAN (47TH AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>LIGHTING PLAN (48TH AVE AND INTERNATIONAL BLVD)</td>
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<td>TRAFFIC SIGNAL AND LIGHTING PLAN (50TH AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>338.</td>
<td>Div 2.2: 86</td>
<td>LIGHTING PLAN (51ST AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (52ND AVE AND INTERNATIONAL BLVD)</td>
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<td>TRAFFIC SIGNAL AND LIGHTING PLAN (53RD AVE AND INTERNATIONAL BLVD)</td>
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<td>Unit Price</td>
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<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (54TH AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (55TH AVE AND INTERNATIONAL BLVD)</td>
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<td>Div 2.2: 86</td>
<td>LIGHTING PLAN (56TH AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (57TH AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (58TH AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>346.</td>
<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (SEMINARY AVE AND INTERNATIONAL BLVD)</td>
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<td>1</td>
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<td>347.</td>
<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (62ND AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>348.</td>
<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (64TH AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>1</td>
<td></td>
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<td>349.</td>
<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (66TH AVE, HAVENSCOURT BLVD, AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>1</td>
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<td>Div 2.2: 86</td>
<td>TRAFFIC SIGNAL AND LIGHTING PLAN (67TH AVE AND INTERNATIONAL BLVD)</td>
<td>LS</td>
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<td>1</td>
<td></td>
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<tr>
<td>351.</td>
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**QUANTITIES FOR STATION PLATFORM**

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<tr>
<td></td>
<td>Div 3.2: 26 05 48</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Div 3.2: 26 05 53</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Div 3.2: 26 05 83</td>
<td></td>
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<td>Div 3.2: 26 43 00</td>
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<td>Div 3.2: 26 56 00</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**BID ITEM SUBTOTAL** (Sum of Bid Items 1-426)

<table>
<thead>
<tr>
<th>Item</th>
<th>Sect. No.</th>
<th>Description</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>427.</td>
<td>Div 1: 01505</td>
<td>MOBILIZATION (MAXIMUM OF 10% OF THE BASE BID SUBTOTAL A)</td>
<td>LS</td>
<td></td>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>

**SUBTOTAL A: MOBILIZATION** (Bid Item 427)

**ALLOWANCE ITEMS**

<table>
<thead>
<tr>
<th>Item</th>
<th>Sect. No.</th>
<th>Description</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>428.</td>
<td>Div 4 Div 1: 01 20 00</td>
<td>EBMUD WORK</td>
<td>LS</td>
<td>$600,000</td>
<td>1</td>
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</tr>
<tr>
<td>429.</td>
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<td>COZEESP</td>
<td>LS</td>
<td>$77,400</td>
<td>1</td>
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</tr>
<tr>
<td>430.</td>
<td>Div 1: 01 20 00</td>
<td>BUSINESS/PUBLIC CONVENIENCE</td>
<td>LS</td>
<td>$300,000</td>
<td>1</td>
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</tr>
<tr>
<td>431.</td>
<td>Div 1: 01 20 00</td>
<td>PERMITS</td>
<td>LS</td>
<td>$150,000</td>
<td>1</td>
<td>$150,000</td>
</tr>
<tr>
<td>432.</td>
<td>Div 1: 01 20 00</td>
<td>DRIVEWAY REMOVALS</td>
<td>LS</td>
<td>$82,000</td>
<td>1</td>
<td>$82,000</td>
</tr>
<tr>
<td>433.</td>
<td>Div 1: 01 20 00</td>
<td>SAN LEANDRO TRANSIT CENTER</td>
<td>LS</td>
<td>$3,200,000</td>
<td>1</td>
<td>$3,200,000</td>
</tr>
<tr>
<td>434.</td>
<td>Div 1: 01 20 00</td>
<td>NORTHERN LAYOVER</td>
<td>LS</td>
<td>$500,000</td>
<td>1</td>
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</tbody>
</table>

**ISSUED FOR BID**
<table>
<thead>
<tr>
<th>Item</th>
<th>Sect. No.</th>
<th>Description</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>435.</td>
<td>Div 1: 01 20 00</td>
<td>FURNISH SPLICE CHAMBERS</td>
<td>LS</td>
<td>$132,000</td>
<td>1</td>
<td>$132,000</td>
</tr>
<tr>
<td>436.</td>
<td>Div 1: 01 20 00</td>
<td>FURNISH MANHOLE COVER AND FRAMES</td>
<td>LS</td>
<td>$31,200</td>
<td>1</td>
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<tr>
<td>437.</td>
<td>Div 1: 01 20 00</td>
<td>BASE REPAIR</td>
<td>LS</td>
<td>$363,000</td>
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<tr>
<td>438.</td>
<td>Div 1: 01 20 00</td>
<td>HAZARDOUS AND CONTAMINATED MATERIAL REMOVAL</td>
<td>LS</td>
<td>$363,000</td>
<td>1</td>
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<tr>
<td>439.</td>
<td>Div 1: 01 20 00</td>
<td>DESIGN MODIFICATIONS</td>
<td>LS</td>
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<td>1</td>
<td>$600,000</td>
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<tr>
<td>440.</td>
<td>Div 1: 01 20 00</td>
<td>UNFORESEEN CONDITIONS</td>
<td>LS</td>
<td>$1,016,000</td>
<td>1</td>
<td>$1,016,000</td>
</tr>
</tbody>
</table>

|                      |                      | SUBTOTAL C: ALLOWANCES (Bid Items 428-440) | 7,414,600 |

GRAND TOTAL BID PRICE
(Sum of Subtotals A, B, and C)

NOTE: This contract will be awarded on the basis of the not-to-exceed Grand Total Bid Price. Contract payments will be per section 00 72 00 Part 9.
**Contract Offer and Acceptance Form**

<table>
<thead>
<tr>
<th>Invitation for Bid Offer and Acceptance</th>
<th>Alameda-Contra Costa Transit District</th>
</tr>
</thead>
<tbody>
<tr>
<td>IFB No.: 2016-1354</td>
<td>1600 Franklin Street, Purchasing Dept.</td>
</tr>
<tr>
<td>Director of Procurement and Materials: Jon Medwin</td>
<td>Oakland, CA 94612</td>
</tr>
</tbody>
</table>

**OFFER**

To the Alameda-Contra Costa Transit District (AC Transit):

The undersigned hereby agrees to furnish the material, service, or construction in compliance with all terms, conditions, specifications, and addenda in the above referenced solicitation. The Contractor shall complete all work under the Contract Documents within 305 calendar days of the effective date of the Notice to Proceed. The CONTRACTOR shall begin work as of the effective date of the Notice to Proceed, and shall diligently prosecute all of the work under this Contract in all parts and requirements as defined in the Contract Documents.

California Transaction (Sales) Privilege
Tax License Number__________________

Federal Employer Identification
Number______________________________

Company Name______________________________
Signature of Person Authorized to Sign Offer*______________________________

Address______________________________
Print Named______________________________

City, State, Zip Code______________________________
Title______________________________

*This Contract must be executed by at least one corporate officer, consisting of:
(1) the President, Vice President, Chair of the Board, Chief Financial Officer, or Treasurer. Alternatively, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to AC TRANSIT is provided demonstrating that such an individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation’s board or a copy of the corporation's bylaws).
ACCEPTANCE OF OFFER AND CONTRACT AWARD (For AC Transit Use Only)

We are pleased to inform you that Invitation for Bid (IFB) 2016-1354, AC Transit East Bay Bus Rapid Transit Project Infrastructure and Station Platforms, has been awarded to your firm.

The Contractor is now bound to sell the material, service, or construction based upon the above referenced solicitation, including all terms, conditions, specifications, addenda, etc., and the Contractor’s bid, and as modified by a Best and Final Offer (BAFO), if applicable, as accepted by AC Transit.

The Contract shall henceforth be known as Contract No. 2016-1354. The Contractor is hereby cautioned not to perform any work or provide any service under this Contract until valid certificates of insurance, a current and valid copy of your firm’s contractor’s license with the California Contractors State License Board, a payment bond and performance bond are received and accepted by AC Transit, if applicable, and a purchase order is issued for the material, service, or construction described herein. Any work initiated prior to a Notice to Proceed and the submission of the documents referenced above shall be performed solely at Contractor’s risk.

Awarded this ______________day of____________________________20_______________

The CONTRACTOR shall faithfully perform all of the work hereunder for the Bid Price accepted by AC TRANSIT, $________________________, payable by AC TRANSIT to the CONTRACTOR at the time and in the manner provided in the Contract Documents.

________________________________  _________________________
Michael A. Hursh                    Date
General Manager, AC Transit

Approved as to Form:

________________________________  _________________________
Denise Standridge                   Date
General Counsel, AC Transit
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SECTION 006000

PROJECT FORMS

PART 2 – GENERAL

2.01 GENERAL

A. The Bidder to whom the Contract is awarded shall furnish the following Project Forms within fourteen (14) calendar days after having received the Notice of Award:

1. Performance Bond, in an amount not less than one hundred percent (100%) of the Grand Total Bid Price, to secure faithful performance of the Contract, including, but not limited to, the warranty obligations following acceptance of the work by District. The City of Oakland shall be named as a Dual Obligee on the Performance Bond.

2. Payment Bond, in an amount not less than fifty percent (50%) of the contract price if the contract price is not more than $1 million, Forty percent (40%) of the contract price if the contract price is more than $1 million but not more than $5 million, or Two and one half million dollars ($2,500,000.00) if the contract price is more than $5 million of the Grand Total Bid Price, to secure payment of all claims of laborers, mechanics, or materialmen, subcontractors or other persons named in Civil Code Section 9100 for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the Contract.

Project Forms shall be on the forms bound herewith and shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to the District.

B. All alterations, extensions of time, extra and additional work and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties on the Project Forms.

END OF SECTION
PERFORMANCE BOND FORM

KNOW ALL PERSONS BY THESE PRESENTS, that

WHEREAS, THE Alameda-Contra Costa Transit District, herein called the “DISTRICT” or “AC TRANSIT” has entered into Contract No. 2016-1354 with ____________________________ called Principal for ____________________________

and;

WHEREAS, said Principal is required under the terms of Contract No. 2016-1354 to furnish a bond of faithful performance of the Contract.

NOW, THEREFORE, we, the Principal, and ____________________________ as Surety, are held and firmly bound to the District and the City of Oakland, in the penal sum of ____________________________

($ _______________ ) lawful money of the United States of America, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH that if the above bonded Principal shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions and agreements in the said Contract and any alteration thereof made as provided in the Contract, on its part to be kept and performed at the time and in the manner specified and in all respects according to their true intent and meaning, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force.

And the said Surety, for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way effect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

As a condition precedent to satisfy completion of the Contract, the above obligations to the amount of _______________ ($ _______________ ) being not less than ONE HUNDRED PERCENT (100%) of the total amount payable to the District or the City of Oakland, under this Contract, shall hold good for a period of one (1) year after the completion and acceptance of said work, during which time if the Principal makes full and satisfactory repair and replacement of defective materials, faulty workmanship, and work not conforming to the requirements of the Contract, and protects the District and the City of Oakland from cost and damage caused by same, then the obligation in the sum of _______________ ($ _______________ )shall become null and void, otherwise it shall remain in full force and virtue.

In the event that the District, the City of Oakland or its successors or assigns, shall be the prevailing party in an action brought upon this bond, then, in addition to the penal sum specified herein above, we agree to pay to the District, the City of Oakland or its successors or assigns, a reasonable sum on account of attorney’s fees in such action, which sum shall be fixed by the court.

California law shall govern the interpretation of this bond.

To be considered complete, both the Bidder and an admitted Surety insurer authorized by the California Insurance Commissioner to transact surety business in the State of California, must sign this Performance bond. In addition, the Surety’s signature must be notarized and a copy of the Surety’s power of attorney must be attached.

IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their seals this __________ day of ______________, __________, the name and corporate seal of each corporate party

ISSUED FOR BID
being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

________________________________
PRINCIPAL

_______________________________
BY

_______________________________
PRINCIPAL SEAL

_______________________________
SURETY

_______________________________
BY

_______________________________
SURETY SEAL

________________________________
ADDRESS OF SURETY

[END OF PERFORMANCE BOND]
PAYMENT BOND FORM

KNOW ALL PERSONS BY THESE PRESENTS, that _______________________ called the PRINCIPAL, and ______________ a corporation duly organized under the laws of the State of ____________, having its principal place of business at _____________________________ in the State of ____________, and authorized to do business in the State of California, hereinafter called the SURETY, are held and firmly bound unto the ALAMEDA CONTRA COSTA TRANSIT DISTRICT (AC TRANSIT), hereinafter called the OBLIGEE, or order in the sum of ________________________ ($______.00) lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS the Principal has entered into a Contract with the Obligee for ______________________________________ and said Principal is required under the terms of said Contract No. 2016-1354 to furnish a bond securing payment of claims to which reference is made in Section 3248 of the California Civil Code.

NOW, THEREFORE, if said PRINCIPAL or any of its subcontractors fails to pay any of the persons named in Section 9100 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed 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 the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, the SURETY, will pay for the same, in an amount not exceeding the sum specified in this bond, and also will pay, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This bond will inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

This bond is given to comply with Sections 9550-9566 of the California Civil Code. The liability of the PRINCIPAL and SURETY hereunder is governed by the provisions of said Codes, all acts amendatory thereof, and all other statutes referred to therein.

The Surety, for the value received, hereby agrees that no extension of time, alteration or addition to the terms of the Contract, or to the work to be performed there under or to the specifications incorporated therein shall impair or effect its obligations and to its bond and hereby waives notice of any such change, extension of time, alteration or addition.

California law shall govern the interpretation of this bond.

To be considered complete, both the Bidder and an admitted Surety insurer authorized by the California Insurance Commissioner to transact surety business in the State of California, must sign this payment bond. In addition, the Surety's signature must be notarized and a copy of the Surety's power of attorney must be attached.

IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their seals this __________ day of ____________, __________, 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.

____________________________________
PRINCIPAL
INSTRUCTIONS FOR BIDDER

[END OF PAYMENT BOND]
ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION

DOCUMENT 006290
California Public Contract Code §22300

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into this _____ day of __________________, 201 ____, by and between the Alameda Contra Costa Transit District, ("District"), whose address is 1600 Franklin Street, Oakland, CA 94612 ____, (Name of Contractor) ___________________________________________ ("Contractor"), whose place of business is located at (Contractor’s Address) ___________________________________________, and [ ] District, as escrow agent OR [ ] (Name of Bank) __________________________________________, a state or federally chartered bank in the State of California, whose place of business is located at __________________________________________ ("Escrow Agent").

For the consideration hereinafter set forth, District, Contractor and Escrow Agent agree as follows:

1. Pursuant to California Public Contract Code §22300, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to Contract Number 2016-1354 entered into between District and Contractor for AC Transit Alameda Contra Costa East Bay Bus Rapid Transit Project INFRASTRUCTURE AND STATION PLATFORMS located at 1600 Franklin Street, Oakland, CA 94612 ____, in the amount of $ ________________ dated ____________________ , 201 ____. Alternatively, on written request of Contractor, District shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify District within ten days of the deposit. The market value of the securities at the time of substitution shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between District and Contractor. Securities shall be held in name of ______________________________, and shall designate Contractor as the beneficial Owner.

2. District shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified in Paragraph 1 of this Document 00 6290.

3. When District makes payment(s) of retention earned directly to Escrow Agent, Escrow Agent shall hold said payment(s) for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when District pays Escrow Agent directly.

4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. Such expenses and payment terms shall be determined by District, Contractor, and Escrow Agent.

5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to District.

6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Contractor.

7. District shall have the right to draw upon the securities in event of default by Contractor. Upon seven days written notice to Escrow Agent from District of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.
8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

9. Escrow Agent shall rely on written notifications from District and Contractor pursuant to Paragraphs 5 through 8, inclusive, of this Document 00 6290 and District and Contractor shall hold Escrow Agent harmless from Escrow Agent’s release and disbursement of securities and interest as set forth.

10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

**ON BEHALF OF DISTRICT:**

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Signature</th>
<th>Address</th>
<th>City/State/Zip Code</th>
</tr>
</thead>
</table>

**ON BEHALF OF CONTRACTOR:**

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Signature</th>
<th>Address</th>
<th>City/State/Zip Code</th>
</tr>
</thead>
</table>

**ON BEHALF OF ESCROW AGENT:**

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Signature</th>
<th>Address</th>
<th>City/State/Zip Code</th>
</tr>
</thead>
</table>

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

**DISTRICT**

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Signature</th>
</tr>
</thead>
</table>

**CONTRACTOR**

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Signature</th>
</tr>
</thead>
</table>
At the time the Escrow Account is opened, District and Contractor shall deliver to Escrow Agent a fully executed counterpart of this Document 00 6290.

END OF DOCUMENT
PROMPT PAYMENT AFFIDAVIT

Contractor will place a check in the appropriate box below that applies to this payment request.

Re: Payment Request No. ________

I, ___________________________ (Name), the _________________________________

Title (e.g., President, VP., etc.)

of ___________________________ (“Company”), do state the following with regard to payments made under Contract No. __________________________ (“Contract”):

1. □ Subcontractors, at the first tier, both DBE and non-DBE, who completed work and were listed for payment on the prior Payment Request No. ________, were paid no later than seven (7) days after Company received payment from the District.

2. □ As required, copies of invoices and cancelled checks for subcontractors at the first tier who were paid under the prior payment request have been delivered or mailed to the Contracts Compliance Department. In addition, Company has attached to the current Payment Request all lien waivers for prior subcontractor payments and any other documentation required by the District. (Failure to attach all required documentation to the Payment Request or forward cancelled checks and invoices to the District’s Contracts Compliance Department may cause the Payment Request to be rejected by the District.)

3. □ All retained amounts withheld from any subcontractor who satisfactorily completed its portion of the contract work, including punch list items, were paid to the subcontractor(s) no later than sixty (60) days after it satisfactorily completed its work, whether or not the District has paid said retained amounts to Company. Attach a copy of the cancelled check evidencing payment of each retained amount.

4. □ There was no delay in or postponement of any payment owed to a subcontractor, whether periodic payment or retained amount, except for good cause and after receipt of prior written approval from the District’s Director of Procurement and Materials.

Subscribed and sworn to before me, a Notary Public in and for the State of California, County of ________________, this ______ day ____________, 20__.

________________________________________
Signature of Notary Public
(Seal)
My commission expires __________________________, 20__

________________________________________
Company Name

________________________________________
Signature

________________________________________
Print Name

________________________________________
Date: ________________________________

ISSUED FOR BID
<table>
<thead>
<tr>
<th>PART 1 - GENERAL PROVISIONS</th>
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</thead>
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<td>3.04 GUARANTY OF WORK</td>
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<td>3.05 PAYMENT OF TAXES</td>
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<td>3.07 SUPERINTENDENCE BY THE CONTRACTOR</td>
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SECTION 007200

GENERAL CONDITIONS

PART 1 - GENERAL PROVISIONS

1.01 GLOSSARY OF ABBREVIATIONS, TERMS, AND DEFINITIONS

A. Whenever the following abbreviations and terms, or pronouns in place of them, appear in the Contract Documents, the intent and meaning shall be interpreted as provided in this Section. Working titles having a masculine gender, such as "workman" and "flagman" and the pronoun "he," are used for the sake of brevity, and are intended to refer to persons of either sex.

B. Abbreviations

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<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
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<tbody>
<tr>
<td>AASHTO</td>
<td>American Association of State Highway and Transportation Officials</td>
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<tr>
<td>AL</td>
<td>Allowance</td>
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<tr>
<td>Cal-OSHA</td>
<td>California Occupational Safety and Health Administration</td>
</tr>
<tr>
<td>CALTRANS</td>
<td>California Department of Transportation</td>
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<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
</tr>
<tr>
<td>CPM</td>
<td>Critical Path Method</td>
</tr>
<tr>
<td>CY</td>
<td>Cubic Yard</td>
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<tr>
<td>DDR</td>
<td>District’s Designated Representative</td>
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<tr>
<td>DOL</td>
<td>United States Department of Labor</td>
</tr>
<tr>
<td>DOT</td>
<td>United States Department of Transportation</td>
</tr>
<tr>
<td>EA</td>
<td>Each</td>
</tr>
<tr>
<td>EPA</td>
<td>United States Environmental Protection Agency</td>
</tr>
<tr>
<td>Est.</td>
<td>Estimated</td>
</tr>
<tr>
<td>FAR</td>
<td>Federal Acquisition Regulations</td>
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<tr>
<td>FHWA</td>
<td>United States Department of Transportation, Federal Highway Administration</td>
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<tr>
<td>FTA</td>
<td>Federal Transit Administration</td>
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<tr>
<td>HR</td>
<td>Hour</td>
</tr>
<tr>
<td>ITE</td>
<td>Institute of Transportation Engineers</td>
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<tr>
<td>AC TRANSIT</td>
<td>Alameda Contra Costa Transit District</td>
</tr>
<tr>
<td>LF</td>
<td>Lineal Foot</td>
</tr>
<tr>
<td>LS</td>
<td>Lump Sum</td>
</tr>
<tr>
<td>MUTCD</td>
<td>California Manual on Uniform Traffic Control Devices</td>
</tr>
<tr>
<td>Misc.</td>
<td>Miscellaneous</td>
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<tr>
<td>MO</td>
<td>Month</td>
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<tr>
<td>NEMA</td>
<td>National Electrical Manufacturers’ Association</td>
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<tr>
<td>NTP</td>
<td>Notice to Proceed</td>
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<tr>
<td>OSHA</td>
<td>United States Department of Labor, Occupational Safety and Health Administration and Occupational Safety and Health ActQJ Queue Jump</td>
</tr>
<tr>
<td>RFC</td>
<td>Request for Change</td>
</tr>
<tr>
<td>RFI</td>
<td>Request for Information</td>
</tr>
<tr>
<td>RS</td>
<td>Reference Specifications, &quot;Standard Specifications for Public Works Construction&quot;, commonly known as the &quot;Green Book&quot;</td>
</tr>
<tr>
<td>SY</td>
<td>Square Yard</td>
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<tr>
<td>TSP</td>
<td>Transit Signal Priority</td>
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<tr>
<td>UL</td>
<td>Underwriters’ Laboratory</td>
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</table>
C. Definitions and Terms

AC TRANSIT or District: The Alameda Contra Costa Transit District acting through the District’s Designated Representative.

Acceptance: Documentation attesting to the act of an authorized representative of the District by which all Work under the Contract, or a specified portion thereof, is identified as having been completed satisfactorily.

Addenda: Written interpretations or revisions to any of the Contract Documents issued by the District before the bid opening.

Alameda Contra Costa Transit District: AC Transit, the District or Owner.

As Approved: The words “as approved”, unless otherwise qualified, shall be understood to be followed by the words “by the District’s Designated Representative for conformance with the Contract Documents”.

Architect/Engineer of Record: Professional architect or engineer designated for a particular project responsible for signing and sealing the permit drawings, interpretation of the drawings where ambiguities exist, review of requests for information, design change requests and shop drawings, resolution of errors and omission, and finalization of as-built drawings.

Assessment: A cost imposed on the Contractor for non-compliance with certain contractual requirements.

As Built Documents or Record Documents: Contract Documents modified to reflect changes resulting during the construction phase.

As Shown: and As Indicated: The words “as shown” and “as indicated” shall be understood to be followed by the words “by the Contract Documents” as appropriate.

Beneficial Occupancy: The taking possession of a portion of the Work by the District for its use and/or occupancy on other than a temporary or emergency basis.

Bidder: Any individual, firm, partnership, corporation or combination thereof, submitting a bid for the work contemplated, acting directly or through a duly authorized representative.

Bid Forms: The approved forms upon which the District requires that each Bidder submit its bid with regard to the Contract.

Bid Guaranty: The cashier’s or certified check or Bidder’s Bond, accompanying the bid submitted by the Bidder, as a guaranty that the Bidder will enter into an agreement with the District for the performance of the Work, if the Contract is awarded to it, and the Bidder will submit the required Project Forms and Certificates of Insurance. Also referred to as the Bidder’s Security.

Board, Board of Directors or Directors: The Board of Directors of the Alameda Contra Costa Transit District, the District.

Caltrans: The Department of Transportation, State of California

Change Order: A written order to the Contractor directing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or Contract Time provided in the Contract Documents and issued after the effective date of the Contract. A Change Order will not become effective until approved in writing and signed by the District, hereinafter referred to as an "Approved Change Order." An approved Change Order signed by the Contractor is hereinafter referred to as an "Executed Change Order."

Common Carrier: Anyone who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry.

Completion Time: The time the Work shall be completed as specified in the Contract Documents.

Construction Schedule: A list or graphic display of construction activities required for completing the Work, in a format required by the Contract Documents. The duration, start and finish date, and sequence of the significant activities, critical path, float and milestones must be indicated in the Construction Schedule.

Construction Staging Area: Property available for use by the Contractor during the construction period for the purpose of storing products and construction equipment and coordinating activities associated with the Work.

Contract: The written agreement covering the performance of the Work and the furnishing of labor, materials, tools and equipment in the construction of the Work. The Contract is a part of the Contract Documents and will include all approved Change Orders issued after the Contract is executed by the parties.

Contract Documents: Those documents that form the basis of the Contract, including, but not limited to, the Advertisement for Bids, Instructions to Bidders, Pre-bid Meeting, Bid Forms, Schedule of Bid Prices, Bidding Addenda, Form of Agreement, Project Forms, General Conditions, and Supplemental Conditions, Technical Specifications, Appendices, Contract Drawings, Addenda, accepted Bid when attached as an exhibit to the Contract, permits from other agencies, and all Change Orders issued after the execution of the Contract.

Contract Drawings: The plans identified in the Contract, showing the character, dimensions, and details of the Work.

Contract Price: The total compensation to be paid to the Contractor in accordance with the terms of the Contract.

Contract Time: The number of calendar days, or portion thereof, allowed for completion of the Work, including all authorized time extensions. The effective date for commencement of the Work specified in the Notice to Proceed shall define the beginning of the Contract Time.

Contractor: The individual, firm, partnership, corporation, joint venture or other legal entity that has contracted with the District to perform the Work. The term "prime contractor" shall mean Contractor.

Days: Unless otherwise stated, "days" shall mean calendar days.
District's Designated Representative(s): The individual(s) or firm(s) designated by AC TRANSIT to act as the final authority on all contract administration and management issues for the project on AC TRANSIT’s behalf. The District's Designated Representative (“DDR”) will be identified in the Notice to Proceed for the project, and may be an architect, engineer, construction manager, or any other consultant or employee of AC TRANSIT's choosing. The District’s Designated Representative may delegate specific administrative, technical or management functions to other consultants or AC TRANSIT employees at its discretion.

EBMUD: East Bay Municipal Utility District

EBMUD Standard Specifications: The Revision 1, November 2012, EBMUD Standard Specifications for Installation of Water Mains 20” and Smaller

EBMUD Standard Drawings: The Revision 1, November 2012, EBMUD Standard Drawings for Installation of Water Mains 20” and Smaller

Emergency: Any sudden generally unforeseen occurrence (such as a fire, flood, storm, earthquake, epidemic, civil disorder or other natural and/or man-made disaster) that has the potential to adversely affect the safety of life, the Work, and/or adjacent property; to interrupt contracts essential to the provision of daily transit service; and/or to cause catastrophic failure of revenue-producing equipment and/or facilities.

Field Change Notice: A written directive issued by the District to the Contractor ordering a minor addition, deletion, modification, or revision to the Work.

General Manager: General Manager of the District, the Alameda Contra Costa Transit District.

General Requirements: The provisions of Division 01, as may be amended by the District.


Inspector: A representative of the permitting agency responsible for verification of the construction activities on site.

Installation, Install: Completely assembling, erecting, and/or connecting materials; parts, components, supplies, and related equipment specified or required for the completion of the Work.

Legal Holidays: Those days designated as State holidays by the Government Code or declared by the Board, or otherwise specified in the Contract Documents.

Limit of Work: Boundary within which the onsite elements of the Work will be performed, except utility and drainage work in local streets and on private property.

Liquidated Damages: The amount prescribed in the Contract Documents to be paid to the District or to be deducted from any payment due or to become due the Contractor for each calendar days delay in completing the Work beyond the time allowed in the Contract Documents.

“Local Agency,” “Local agencies,” “Public Agency” and “Public Agencies” include, but is not limited to, the following participating agencies:

- City of Oakland
- City of San Leandro
- East Bay Municipal Utility District (EBMUD)
- California Department of Transportation or “CalTrans”
- Bay Area Rapid Transit (BART)
- Pacific Gas and Electric Company (PG&E)

Notice of Completion: A document recorded by the District with the County Recorder signifying completion of a work of improvement.

Notice to Proceed: A written notice given by the District to the Contractor fixing the date on which the Contract Time will commence to run, and also identifying the District’s Designated Representative for the project.

Notice of Termination: Written notice from the District to the Contractor and its Surety terminating the Contract, or a portion thereof, either for convenience of the District or for default due to the Contractor’s failure to perform its contractual obligations.

Or Equal: The term "or equal" shall mean that the "equal" product is the same or better than the product named in function, performance, reliability, quality and general configuration as approved by AC TRANSIT. The District will make determination of equality in reference to the project design requirements. Such equivalent products shall not be purchased or installed by the Contractor without written acknowledgment of the District.

Permitting Agency: Any government agency having jurisdiction over the construction project and requiring permits of any kind.

Plans: Refer to Contract Drawings.

Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for a portion of the Work.

Professional Engineer: An engineer licensed by the Board of Registration for Professional Engineers, State of California.

Provide: The term “provide” shall be understood to mean “furnish and install, complete and in place.”

Public Property: Property owned by the government or one of its agencies.

Quality Assurance: The process by which the Contractor and each subcontractor independently monitors the quality control efforts made in the performance of its own work.

Quality Audit: The process by which the District’s Designated Representative to independently verify quality control measures are being taken in accordance with applicable requirements.

Quality Control: The process by which the Contractor and each subcontractor measures and evaluates the work it performs in order to meet the required contractual and statutory quality standards.
Quality Surveillance: The process by which the District’s Designated Representative observes the Contractor to ensure that quality control and quality assurance measures are taken by the Contractor and its subcontractors.

Request for Change: A document initiated by the Contractor requesting that a Change Order be issued.

Request for Information (RFI): A document issued by the Contractor requesting information concerning the Contract Documents.

Salvage: To save any removed item. The salvaged item shall be reused in the contract or delivered and stockpiled for the District or others as specified in the Contract Documents.

Schedule of Values: The breakdown of the Contract Bid Price that will serve as the basis for Contractor’s Applications of Payment. Any lump sum item included within the Contract Price will be apportioned among values relating to specific components of the Work covered by said lump sum item.

Shop Drawings: Drawings, plans, diagrams, schedules and other data specifically prepared and submitted to the District by the Contractor, showing in detail: a.) The proposed fabrication and assembly of a special component of the Work; and b.) The installation (form, fit and attachment details) of a special component of the Work. Shop Drawings shall be deemed to include Working Drawings, Product Data, literature, and applicable performance and test data.

State: State of California and its agencies, including Department of Transportation (Caltrans)

State Standard Specifications: The 2010 edition of the Standard Specifications of the State of California, Department of Transportation. Any reference therein to the State of California or a State agency, office, or officer shall be interpreted to refer to AC TRANSIT or its corresponding agency, office, or officer acting under this contract, unless otherwise implied by the context.


Standard Drawings: Drawings for particular construction components that are generic and will remain the same from project to project.

Subcontractor: Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, engaged by the Contractor to furnish services, labor, equipment and materials for a portion of the Work.

Submittals: Those documents required to be submitted by the Contractor for review by the District in accordance to the Contract.

Substantial completion: The Work (or designated portion) is sufficiently complete, in accordance with the Contract Documents, so that the District can safely and conveniently occupy or utilize the Work (or such designated portion) for the use for which it is intended, and as needed for the District to conduct its operation.

Supplemental Conditions: Additional requirements that are applicable to the Contract as set forth in Division 00, Sections 007300 through 007373, as may be amended by District.
Supplier: Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, that supplies a tangible product as a portion of the Work, with services usually limited to delivery and/or required testing, and with manufacturing, fabrication, or production facilities located off the Work site.

Technical Specifications: Technical details, requirements, and descriptions of Work to be performed under the Contract. The Technical Specifications comprise Divisions 2 through 18 as applicable of the Contract Documents, as may be amended by District.

Temporary Construction Easement: A portion of land belonging to outside party(ies) on which agreed-upon activity can take place during the construction period.

Unit Price: The value established for a single item of work or group of items commonly regarded as a single entity, that is inclusive of all fundamental, direct and incidental costs and exclusive only of costs associated with any other unit price and any lump sum price.

Work: The sum total of productive and operative efforts used to generate the results specified, indicated in or reasonably inferable from the Contract Documents, including the furnishing of all labor, materials, and equipment.

Work Site: The property on which the Work will be performed, including all staging areas. The Work Site is defined in Division 01 of the Contract Documents.

Working Drawings: Original drawings prepared by the Contractor and/or its Subcontractors or Suppliers, of any tier, illustrating Work required for construction that will not become an integral part of the completed Work. This includes, but is not limited to, drawings for temporary structures such as decking, bulkheads, excavation supports, utility support, groundwater control, forming, false work, access roads, staging areas, and staging plans. A Working Drawing is one type of Shop Drawing.

1.02 INTENT OF THE CONTRACT DOCUMENTS

A. The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to describe a functionally complete project to be constructed. When the Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that the best general practice shall be followed and only materials and workmanship of the best standard quality shall be used. Any Work, materials or equipment that are customarily provided or that are reasonably inferable from the Contract Documents, as being required to produce the intended result shall be supplied, whether or not specifically called for. When words, which have a well-known technical or trade meaning, are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning.

B. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect on the first published date of the Advertisement for Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of District or Contractor, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to District, or District’s Designated Representative, any duty or authority.
to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the other provisions of the Contract Documents.

C. The Contract Documents are divided into parts, divisions, sections and articles for convenient organization and reference. Generally, there has been no attempt to divide the specification sections into work performed by the various building trades, work by separate subcontractors, or work required for separate facilities in the project.

1.03 EXAMINATION AND VERIFICATION OF CONTRACT DOCUMENTS

A. The Contractor shall thoroughly examine and become familiar with all of the various parts of the Contract Documents and shall determine the nature and location of the Work, the general and local conditions (including applicable laws) and all other matters which can in any way affect the cost, progress or performance of the Work under this Contract. Failure to make an examination necessary for this determination shall not release the Contractor from the obligations of the Contract. No oral agreement or conversation with any officer, or employee of the District, or with District’s Designated Representative either before or after the execution of the Contract, shall affect or modify any of the terms or obligations contained in the Contract Documents.

1.04 CONTRACT DRAWINGS

A. The Contract Drawings consist of general drawings and show such plans, elevations, sections, details and schedules as are necessary to give a graphic and pictorial description of the contemplated construction. All authorized alterations affecting the requirements and information given on the Contract Drawings shall be in writing.

B. District will furnish an electronic set of the finalized contract drawings to the Contractor. The Contractor may reproduce or purchase physical sets of the Contract Drawings at the Contractor’s cost.

1.05 COORDINATION AND INTERPRETATION OF CONTRACT DOCUMENTS

A. In the event of inconsistencies between requirements contained in different components of the Contract Documents, the precedence of the Contract Documents shall be as follows to resolve the conflicts.

1. Permits
2. Change Orders
3. The Contract
4. Addenda
5. The Supplemental Conditions (Sections 007300 through 007373) ET SEQ
6. Division 01
7. The General Conditions
8. The remainder of Division 00 sections
9. The Technical Specifications (Divisions 02 and greater)
10. Contract Drawings
11. Appendices and Standard Drawings

B. In the event of any doubt or question arising concerning the true meaning of the Contract Documents or should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall submit a Request for Information (“RFI”) to the District for such further written

ISSUED FOR BID
explanations as may be reasonably necessary and shall conform to the written explanation given as if part of the Contract Documents. The decision of the District in such cases shall be final.

Contractor shall anticipate that it will be necessary to prepare and submit RFIs regarding the Contract Documents. The District will respond to each RFI, after the Notice to Proceed is issued, by no later than fourteen (14) days after receipt of the RFI, unless the RFI is of significant complexity. Furthermore, in the event that there are numerous RFIs pending, Contractor shall cooperate with District in establishing a priority for responding to the RFIs, and potentially some RFIs may be responded to beyond the fourteen (14) day period.

Each RFI prepared by Contractor shall be full and complete. Contractor shall prepare RFIs so as to not cause any delay to the progress of the Work and to not cause any impact to Contractor’s labor productivity in the field. Contractor shall not assert any claims for delay or interference against District if Contractor fails to timely submit any RFI to District, after consideration of the response period allowed for District.

The response to an RFI shall not, by itself, constitute a writing that authorizes Contractor to perform any Work that causes an adjustment to either the Contract Time or Contract Price. If Contractor believes that any response to any RFI should constitute a compensable change, Contractor shall so notify District via a Request for Change, as described in Part 6, CHANGES IN THE WORK herein. Contractor’s failure to provide the required written notice shall constitute a waiver of Contractor’s right to seek a compensable change based on the RFI response.

C. The Contractor shall examine all Contract Documents; shall verify all figures in the Contract Documents before laying out the Work; shall promptly notify the District of all errors, inconsistencies, and/or omissions that it discovers; and, in instances where such non-conformities are discovered, shall obtain specific instructions in writing from the District before proceeding with the Work. Contractor’s performance of any Work affected by such non-conformities prior to the District’s decision shall be at the Contractor’s risk. Any Work that is customarily provided or that is reasonably inferable shall not relieve the Contractor from performing such work at no additional expense and/or delay, and such Work shall be performed as if fully set forth in the Contract Documents.

1.06 PRODUCT REFERENCES AND STANDARDS

A. When descriptive catalog designations, including manufacturer’s name, product brand name or model number are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications in effect as of the first published date of the Advertisement for Bids, except as may be otherwise stated.

B. Where references are made to standard specifications (such as RS - standard specifications for Public Works Construction [the Greenbook], or the State of California, Department of Transportation [Caltrans]), the following definitions shall apply:

1. All references to the “City”, “County”, “State”, “Agency”, or “Department” in the context of Districtship shall mean the District or Public Agency.

2. All references to the “Engineer” in the context of provider of compliance judgment shall mean the District’s Designated Representative. For those aspects of the construction subject to supervision or oversight by a Registered Professional Engineer, shall mean a Registered Professional Engineer retained by the District.

3. All references to the “Agent” shall mean District.
4. All references to the “plan(s)” shall mean the Contract Drawings.

END OF PART 1
PART 2 - DISTRICT

2.01 PERSONAL LIABILITY AND FACILITIES FOR AGENCY PERSONNEL

A. Neither the District's Board Members, General Manager, Secretary, Counsel, District’s Designated Representative, Officers, Agents, Representatives nor Employees shall be personally responsible for any liability arising under or by virtue of this Contract.

B. Facilities for Agency Personnel shall conform to Section 8, entitled “Facilities for Agency Personnel,” of the Greenbook except as modified in this document.

2.02 AUTHORITY OF THE DISTRICT AND THE DISTRICT’S DESIGNATED REPRESENTATIVE

A. The District has the final authority in all matters affecting the Work covered by the Contract Documents.

B. With respect to Contractor’s performance of the Work, the DDR shall have the authority to enforce compliance with the Contract Documents. In accordance with the Contract Documents, the Contractor shall promptly comply with all instructions from DDR, and the DDR shall have the authority to enforce and make effective such decisions and orders in the event the Contractor fails to promptly carry out same.

C. On all questions relating to Contractor’s use of certain materials or equipment, the decision of the DDR is final and binding, and shall be a condition precedent to any payment under the Contract Documents.

2.03 RIGHTS-OF-WAY

A. To the extent indicated in the Contract Plans, the District will provide the rights-of-way over private lands or the site to enable Contractor to perform its work. Contractor shall be solely responsible for securing any additional rights-of-way desired by the Contractor. The District will not be a party to nor assume any liability for any separate agreements reached between Contractor and any third parties with respect to these additional rights-of-way. The Contractor shall produce evidence that agreements are in place with said third parties before the Contractor uses those areas covered by the agreements. Any damage to such private lands caused by Contractor’s operations shall be the sole responsibility of Contractor and damages must be corrected and or remedied before the project will be considered for close out.

2.04 DISTRICT’S RIGHT TO STOP WORK

A. If the Contractor fails to promptly correct Work that is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the District may, in writing, order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Contractor shall immediately comply with District’s written order to stop the Work. Contractor shall resume Work as and when ordered to do so by the District. Any stoppage of the Work under this section shall be at Contractor’s expense, and Contractor shall have no claim against the District based on Contractor’s failure to perform the Work in accordance with the Contract Documents.

In addition to District’s right to stop Work, District may order Contractor to submit to District, at no additional cost to District, additional information concerning Contractor’s planned Work if Contractor fails to promptly correct Work that is not in accordance with the
requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents. The additional information ordered by District may include, but is not limited to, preparation of submittals or Working Drawings not otherwise required to be submitted under the Contract Documents.

In the event the District discovers that the Contractor has created an unsafe condition, District may arrange for other work forces to secure the required site(s). (Such remedial Work will be at the sole discretion of the District.) If this action is required, the District may unilaterally terminate Work under the Contract, and will pay only for the quantities of Work actually performed, less the cost of District’s remedial Work. In the event that Work is not halted, the Contractor must take immediate steps to correct the situation. There will be no extra payment for Work required to correct unsafe conditions.

The right of the District to stop the Work shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction or derogation of District’s other rights under the Contract Documents. The District’s right to stop the Work shall not relieve the Contractor of any of its responsibilities under or pursuant to the Contract Documents.

END OF PART 2
PART 3 - CONTRACTOR

3.01 INDEPENDENT CONTRACTOR STATUS

A. The Contractor shall independently perform all Work required by the Contract Documents and shall not be considered as an agent or employee of the District, nor shall the Contractor’s Subcontractors or employees be considered as subagents of the District.

B. The Contractor and the Contractor’s Subcontractors shall be licensed in accordance with the laws of the State of California.

3.02 CONSTRUCTION PROCEDURES AND SUPERVISION

A. Health and Safety Plan

Contractor shall designate a safety officer and have in place a health and safety plan in accordance to the laws of State of California and conduct safety meetings and document them in accordance to the law. Contractor shall have the safety record available for inspection during working hours and shall submit job site safety meeting reports with Payment application.

B. Supervision

Contractor shall assign both a Project Manager and Site Superintendent to the project. The Project Manager and Site Superintendent shall be assigned full time. Both individuals must be approved by the District and not changed without written approval by the District. District reserves the right to require the Contractor to release these individuals at its sole discretion and hire suitable replacements.

C. Special Inspections

Contractor shall hire and pay for a duly licensed independent testing and inspection agency acceptable to the permitting agencies and the District to perform all special inspections called for by the permitting agency. Required inspection reports must accompany the Application for Payment for the work. The Frequency of Testing shall be in accordance to the Caltrans Local Assistance Procedures Manual Chapter 16 Exhibit 16-R, Size, Frequency and Location of Sampling and Testing Tables.

D. Beginning of Work

After the execution of the Agreement by both parties, the District will issue the Notice to Proceed upon its determination that it is appropriate for the Contract Time to commence.

Within fifteen (15) Calendar days after the effective date contained in the Notice to Proceed, and subject to the requirements stated elsewhere in the Contract Documents. The Contractor shall commence Work at the site and shall diligently and continuously prosecute the Work to final completion within the time limit provided in the Contract Documents. Contractor shall also achieve any and all Contract milestones as described elsewhere in the Contract Documents.

The Contractor shall notify the District, in writing, of its intent to begin Work at the site.

The Contractor is not authorized to perform any Work until he has received a Notice to Proceed from the District. Should the Contractor begin Work in advance of receiving the
Notice to Proceed, such Work shall be considered as having been done by it at its own risk and as a volunteer.

E. Order of Work

The Contractor shall follow the sequence of operations as set forth in Division 01 Section 01 10 00 Paragraph 1.7.

Full compensation for conforming to such requirements will be considered as included in the prices paid for the various Contract items of work, and no additional compensation will be allowed therefore.

F. Disposal of Material Outside the Work Site

Unless otherwise stated elsewhere in the Contract Documents, the Contractor shall, at its own cost and expense, make its own arrangements for disposing of materials outside the work site. If local, state and/or federal laws and regulations require recycling of any type of material used in the project, then the contractor shall recycle such material as specified by those laws and regulations at its own cost. If the contractor shall reap any compensation from recycling material used in the project, then it shall return 50% of such compensation back to the District.

When any material is to be disposed of outside the work site, the Contractor shall first obtain written permission from the District to dispose of the material at the intended location. District’s approval will be contingent upon Contractor obtaining a written permit from the property owner on whose property the disposal is to be made. Prior to the disposal of any material at the intended location, Contractor shall submit said permit or a certified copy thereof to District, together with a written release from the property owner absolving the District from any and all responsibility related to the disposal of material on said property.

Disposal of all Hazardous Materials must be done in accordance with all laws and regulations. Copies of a required regulatory documentation including copies of final manifests shall be supplied to the District.

G. Access to the Work

The Contractor shall satisfy itself that the jurisdictions through which its operations and haul routes pass will permit such operations with respect to the type of vehicle, laden weights, frequency and dimensions of loads, hours of operation and required traffic control. All necessary permits, licenses or bonds shall be obtained and paid for by the Contractor.

H. Temporary Utilities

The Contractor shall make its own arrangements with utility companies for any temporary services it may require in performance of the Work and shall pay all costs of these services directly to these utility organizations.

I. Non-District Owned Facilities

The Contractor shall protect from damage those non-District owned facilities (e.g., utilities) that are to remain in place, be installed, relocated or otherwise arranged.

Contractor’s attention is directed to the possible existence of facilities not shown, and of facilities in a location different from that, which is indicated. The Contractor shall take steps
to ascertain the exact location of all facilities prior to doing any Work, which may damage such facilities or interfere with their service. Where the location of a facility is indicated or inferred from the presence of visible facilities such as buildings, meters and junction boxes, the Contractor shall make such excavations and explorations as are necessary to ascertain the correct location. Unless provided for elsewhere in the Contract Documents, the cost of such excavations and explorations will be considered as a part of the cost of other items of Work and no additional payment will be made. When excavation is required within eighteen inches of underground utilities including but not limited to gas, water, telecommunications and electrical distribution, the contractor shall hand dig required excavations until the utility is identified and protected from damage. Only after utilities have been identified i.e. physically located and protected may the contractor utilize mechanical excavation equipment. Such excavations and exploratory Work shall not entitle the Contractor to an extension of time.

If the Contractor discovers underground facilities not indicated or inferred, from the Contract Documents, the Contractor shall immediately give the District’s Designated Representative written notification of the existence of those facilities. The Contractor shall determine the exact location of the underground facilities and the cost of the work will be paid for in accordance with the Contract documents. The underground facilities shall be protected from damage as directed by the District’s Designated Representative and the cost of that work will be paid for as extra work. The Contractor shall, if directed by the District’s Designated Representative, repair any damage, which may occur to the underground facilities. The cost of that repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as extra work. Damage due to the Contractor’s failure to exercise reasonable care shall be repaired at the Contractor’s cost and expense.

Where it is determined by the District that the rearrangement of an underground facility, the existence of which is not shown on the Contract Drawings, is essential in order to accommodate the Work, the District will provide for the rearrangement of such facility by other forces or, when so ordered by Change Order, such rearrangement shall be performed by the Contractor and will be paid for as provided under a change order.

The Contractor shall be responsible for the maintenance of all utility facilities placed by it in temporary locations, and all utilities within the construction area not required to be relocated but which are required to be shored or supported during the construction period. The cost of such maintenance shall be borne by the Contractor, and no other compensation shall be due the Contractor for this Work.

The cost of providing and maintaining all necessary or required temporary structures, of making any necessary repairs, replacements, or similar operations, or furnishing indemnity or other bonds, if required, and all costs required by this Section shall be paid by the Contractor and shall be included in the prices bid in the schedule for other items of work.

J. **Lines and Grades**

Contractor shall perform all construction staking using a land surveyor licensed in the State of California. Contractor shall provide a staking plan prior to commencement of work for District’s review and maintain monuments, stakes, and marks, and shall update the plan as necessary. The District’s Designated Representative may verify the field condition. Errors or inconsistencies in the Contract Documents discovered by the Contractor shall be reported to the District’s Designated Representative within 24 hours and prior to constructing forms or related improvements. Any work installed with this requirement shall be subject to removal and replacement at the Contractor’s expense.
K. Archaeological Discoveries

Upon discovery of prehistoric or historic artifacts, or other indicators or examples of cultural resources discovered during the course of site preparation, grading, excavation, construction or other development activities, all operations within 50 feet of the find shall cease until such time as the District provides the services of a qualified archaeologist to evaluate the finds and recommend appropriate action. If any artifacts are found, then neither the District, nor the contractor shall be penalized for the delay.

Prehistoric materials can include flaked stone tools (e.g. projectile points, knives and choppers) or tool making debris of obsidian, chert, quartzite and other materials; culturally darkened soil (i.e. midden, which often contains heat affected rock, ash and charcoal, shellfish remains, and cultural materials); and stone milling equipment such as mortars, pestles and hand stones. Historic material may include wood, stone, concrete or adobe footings, walls and other structural remains; debris filled wells or privies; and deposits of wood, metal, glass ceramics and other refuse.

L. Conformity with Contract Documents

Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, required by the Contract Documents. Although measurement, sampling and testing may be considered evidence as to such conformity, the District shall be the sole judge as to whether the Work or materials deviate from the Contract Documents. At its option, District may elect to accept deviations from the Contract Documents with appropriate back charge assessments against the Contractor, and, if such an election is made, District will provide written notice to Contractor of such acceptance.

3.03 LABOR AND MATERIALS

A. Labor Code Requirements

At its own cost and expense, Contractor shall comply with all laws, rules and regulations that pertain to Contractor’s work force. Attention is directed to the following requirements of the California Labor Code:

1. Hours of Labor (Depends on each City)

   Eight hours labor constitutes a legal day’s work. The Contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the Contract is made or awarded, forfeit $25 for each worker employed in the performance of the Contract by the Contractor or any subcontractor under it for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code Section 1813. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of the Labor Code and notwithstanding any stipulation inserted in any contract pursuant to the requirements of these sections, work performed by employees of the Contractor or subcontractor in excess of 8 hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of 8 hours per day and in excess of 40 hours during any one week at not less than 1½ times the basic rate of pay, as provided for in Section 1815. In addition, contractor/subcontractor may be required to pay double the basic rate of pay for all hours worked in excess of 12 hours in any workday and under other circumstances. (See California Code of Regulations]
Title 8 sections 16100(c)(6), 16200(a)(3)(F) and applicable prevailing wage
determinations.)

2. **Labor Non-Discrimination**

Section 1735 of the Labor Code states that the Contractor shall not discriminate
against any employee who is employed upon public works because of race,
religious creed, color, national origin, ancestry, physical disability, mental disability,
medical condition, marital status, sex or age of such persons, except as provided
in Section 12940 of the Government Code.

3. **Prevailing Wages**

See Section 007343 Prevailing Wages.

4. **Payroll Records**

The Contractor's attention is directed to the following provisions of Labor Code
Section 1776. The Contractor shall be responsible for compliance with these
provisions by its subcontractors.

a. The Contractor and each subcontractor shall keep accurate payroll
records, showing the name, address, social security number, work
classification, straight time and overtime hours worked each day and
week, and the actual per diem wages paid to each journeyman,
an apprentice, worker, or other employee employed by it in connection with
the public work.

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

1. A certified copy of a contractor's payroll record shall be sent
electronically to the District's Contract Compliance Officer on a bi-
weekly basis over the course of the entire project, from the
commencement of work through project completion. If needed,
contractors shall be afforded the requisite training by the District
on how to submit said records.

2. A certified copy of an employee's payroll record shall be made
available for inspection or furnished to such employee or its
authorized representative on request.

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

4. A certified copy of all payroll records enumerated in subdivision
(a) shall be made available upon request to the public for
inspection or copies thereof made; provided, however, that a
request by the public shall be made through either the District, the
Division of Apprenticeship Standards or the Division of Labor
Standards Enforcement. If the requested payroll records have not
been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

c. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.

d. Contractor and each subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requests such records within 10 days after receipt of a written request.

e. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District or the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be redacted in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor shall not be redacted.

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

g. The Contractor shall have 15 days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (1). Failure to comply after such 15-day period will subject Contractor to a penalty to the state or the political subdivision on whose behalf the contract is made or awarded, in the amount of $100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

h. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, the penalties specified in subdivision (g) above for noncompliance with the provisions of said Section 1776 may be withheld from any monies due or which may become due to the Contractor.

i. The Contractor and each subcontractor shall preserve their payroll records for a period of 3 years from the date of completion of the Contract. (See 49 CFR, Section 48 CFR 52.222.8 and FTA Common Grant Rule.)

5. Apprentices

The Contractor shall fully comply with the requirements of Sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with Section 1777.5, the Contractor shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. The Contractor shall require each subcontractor who will perform work or labor or render service to the Contractor in or about the
construction of the work to comply fully with Sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

B. **Materials on Hand** - The District may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, at or prior to the time of the Contractor's submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment if all of the following are complied with: (i) the materials or equipment have been delivered to the Site and the Contractor can submit to the District the Contractor’s proof of payment; (ii) adequate arrangements, reasonably satisfactory to the District, have been made by the Contractor to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if such coverage is not afforded under the policy of Builder’s Risk insurance obtained by the District pursuant to the Contract Documents; and (iii) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District’s payment therefor. The Contractor acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the site of the Work pursuant to the preceding sentence shall be exercised exclusively by the District; the District’s exercise of discretion not to make payment for materials or equipment delivered or stored at the Site, but not yet incorporated into the Work shall not be deemed the District’s default hereunder. In the event that the District shall elect to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (ii) and (iii) of this Article shall be borne solely and exclusively by the Contractor and no payment shall be made by the District on account of such costs and expenses. No payments shall be made by the District for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site.

### 3.04 GUARANTY OF WORK

**A.** Notwithstanding inspections and acceptance by the District of Work furnished under the Contract Documents, the Contractor warrants to the District that all materials and equipment furnished will be of good quality and new, that the Work will be free from defects in material or workmanship, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

This warranty by the Contractor is in addition to any warranties or guarantees required elsewhere in the Contract Documents. This warranty shall be in effect notwithstanding any disclaimers, or limiting or conditional terms contained in such separate warranties furnished by manufacturers or suppliers.

Contractor agrees to correct all defective Work discovered by District during a period of one (1) year after the acceptance of the Contract by District or Relief from Maintenance whichever occurs first, or for such periods of time as set forth elsewhere in the Contract Documents. In addition to making such corrections, repairs and/or replacements of any defective Work, Contractor shall correct, repair and/or replace any components of the Work that are damaged as a result of such defective materials, equipment and/or workmanship. Such corrective work shall be at the sole expense of Contractor and shall be performed in a timely manner at the reasonable convenience of District.
All warranties set forth in the Contract Documents shall be deemed cumulative and not alternative or exclusive. Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation, which Contractor has under the Contract Documents or under any separate warranty or guaranty required thereby. The establishment of a specific warranty period relates only to the specific obligation of Contractor to correct defective Work, and it has no relationship to the time within which its obligation to comply with the Contract Documents or applicable provision of law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor’s liability with respect to its obligations other than specifically to correct the Work. Without limiting the foregoing, it is understood and agreed that Contractor shall remain responsible for latent defects with its work, regardless of the expiration of any warranty period set forth in the Contract Documents. Contractor shall correct, repair and/or replace any components of the Work that are damaged as a result of such defective materials, equipment and/or workmanship. Such corrective work shall be at the sole expense of Contractor and shall be performed in a timely manner at the reasonable convenience of District.

3.05 PAYMENT OF TAXES

A. Contractor shall pay all taxes and duties applicable to and assessable against any Work, equipment, materials, services, processes, and operations incidental to or involved in the Contract, including but not limited to, retail sales and use, transportation, export, import, business, and special taxes. The Contractor is responsible for ascertaining and acquainting itself with such taxes and making all necessary arrangements to pay them. The Contractor will maintain records that are auditable records, and these records shall be subject to District’s review to verify that Contractor’s tax payments are current at all times.

B. The Contract prices paid for the Work shall include full compensation for all taxes, which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate or any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the District, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract.

C. The Contractor shall withhold and pay any and all sales and use taxes, withholding taxes, whether Federal, State or local, Social Security taxes, State Unemployment Insurance charges and all other taxes which are now or hereafter may be required to be paid or withheld under any laws.

3.06 PERMITS AND LICENSES

A. The Contractor acknowledges and agrees that, prior to the submission of its bid for the Work, it fully familiarized itself with the requirements of all applicable federal, state, county, and municipal laws, codes, rules, and regulations, as well as the conditions of any required licenses and permits.

1. Should, during the course of the project the contractors or sub-contractors license(s) be revoked, suspended or other administrative action taken by the California State Contractors License Board the contractor shall notify the district in writing within 24 hours.

B. The Contractor shall procure all permits and licenses, including any applicable building permits, pay all charges and fees, and give all required notices necessary and incidental to the prosecution of the work and fulfillment of any and all permit conditions.
C. The Environmental Quality Act (Public Resources Code, Section 21000 to 21176) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from State or local agencies in connection with performing the Work. The Contractor shall comply with the provisions of that Act in obtaining such permits, licenses and other authorizations, and all permits, licenses and other authorizations shall be obtained in sufficient time to prevent delays to the Work.

D. The Contractor shall procure all building permits required in order to perform the Work, and shall procure a Certificate of Occupancy as a condition of final completion (if required by the local jurisdiction).

3.07 SUPERINTENDENCE BY THE CONTRACTOR

A. The Contractor shall supervise and direct the Work, which shall be performed in accordance with the requirements of the Contract Documents. The Contractor shall be solely responsible for implementation of all construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under the Contract. The Contractor shall be solely responsible for the safety of its employees, Subcontractors of any tier, Suppliers, visitors to the Contractor, and other third parties associated with the Contractor. Appropriate warning devices and markings shall be provided by the contractor such that job-sites are maintained in a safe manner.

B. Before issuance of the NTP, the Contractor shall designate, in writing, the Project Manager, Site Superintendent and Safety Officer for Contractor on the project. The District must approve each of these three positions before issuance of NTP. Instances of misconduct, contract non-compliance, unsatisfactory performance, or incompetence by these personnel shall be grounds for the District to direct Contractor to dismiss them from the project; Contractor shall immediately comply with District’s request, at no cost to the District, and shall designate a replacement according to the above designation procedure. Superintendent shall be assigned to the site full time and the Project Manager shall be present at the work site whenever actions of the elements necessitate its presence to take measures necessary to assure contract compliance and to protect the Work, persons or property. Any order or communication given to the Project Manager or Site Superintendent shall be deemed delivered to the Contractor. As stated in section 007200 part 3.02 B, the Project Manager and Superintendent are to be dedicated full-time to the project.

C. Additional requirements for superintendence or project staffing may be included in Division 01.

D. In the event the Contractor does not assign a full time Project Manager to the work site as required in the Contract Documents, the District may deduct from any progress payment due the costs plus markups for the times the Project Manager is away from the work site, plus the cost of any additional monitoring and reporting performed by the District. The District may also suspend the Work for cause if the Project Manager or Site Superintendent is not present at the work site, with no cost, claim or damages accruing to the District for such action. Suspension of work shall mean an order by the District to cease all construction activities.

E. When the Contractor has more than one construction Contract with the District, each Contract shall be independent of all others as to Field Offices, Field Staff, and Superintendence.
3.08 CONSTRUCTION SCHEDULE AND COMMENCEMENT OF WORK

A. Attention is directed to Division 01 for specific requirements concerning the Construction Schedule and Commencement of the Work.

3.09 DOCUMENTS ON WORK SITE

A. The Contractor shall keep one copy of all Contract Documents (including Change Orders), approved Shop Drawings, correspondence, meeting minutes, approved progress payments, and all other records relating to the Work at the work site. These records shall be maintained in good order, and they shall be available to the District and its authorized representatives for review, inspection and copying.

3.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES; SUBSTITUTIONS

A. Provision regarding shop drawings, product data and samples are addressed in Division 01 of the Contract Documents.

B. Substitutions During Construction

Contractor shall have followed the Approved Equal Procedure set forth in the Instructions to Bidders to obtain District approval for any proposed substitution. However, upon the showing by Contractor of changed circumstances subsequent to the bid opening that, in the sole discretion of District, justifies consideration of substitutions during construction, the Contractor may use the substitution procedure as set forth below.

For convenience in designation in the Contract Documents, certain articles or materials to be incorporated in the Work may be designated under a trade name or the name of a manufacturer and its catalog information. Except in those instances where the product is designated to match others in use in a particular improvement, either completed or in the course of completion, the use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

1. The Contractor shall submit its request in writing for an alternative article or material. Such request shall be made in ample time to permit review and approval without delaying the Work. Contractor shall not be entitled to an adjustment of the Contract Time or an increase in the Contract Price based on any Contractor-proposed substitution.

2. No such request will be considered unless accompanied by complete information and descriptive data necessary to determine whether the offered materials, articles, or equipment is equal to the specification in the Contract Documents. Samples shall be provided when requested by the District. The Contractor shall satisfy the District as to the equal quality, suitability or performance of the offered materials, articles or equipment. In the event that the District rejects the use of such alternative materials, articles or equipment, then one of the particular products designated by brand name will be furnished.

3. The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor, and it shall furnish all information necessary as required by the District. The District shall be the sole judge as to the quality and suitability of alternative articles or materials and its decisions shall be final. Where use of an alternative material involves redesign of, or changes to, other parts of the Work, the cost and the time required to affect such redesign or changes will be
considered in evaluating the suitability of the alternative material. Cost of redesign by the District will be borne by the Contractor.

4. Whenever classification, rating or other certification by a body such as UL or NEMA is a part of the specification for any material, Contractor’s request for use of alternative articles or materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with the Contract Documents. The cost of all testing required to prove equality of the material proposed shall be borne by the Contractor. Approval of an alternative shall be only for the characteristics or use named in such approval, and shall not be used to change or modify any requirement of the Contract Documents.

5. At its election, District reserves the right to consider any Contractor proposed substitution as a Cost Reduction Proposal under Section 6.2 “COST REDUCTION PROPOSALS” of these General Conditions in the event that there is a significant savings resulting from the substitution.

3.11 WORK SITE MAINTENANCE

A. Air Pollution Control

The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to the Work, including any air pollution control rules, regulations, ordinances and statutes specified in Section 11017 of the Government Code.

Material to be disposed of shall not be burned inside or outside the worksite with the exception of incineration at a licensed hazardous waste facility.

B. Water Pollution Control

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays and coastal waters from pollution by fuels, oils, bitumen, calcium chloride and other harmful materials and shall conduct and schedule its operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control, and abatement of water pollution to streams, waterways and other bodies of water, and shall conform to the requirements, which may be shown elsewhere in the Contract Documents.

C. Sound & Light Control Requirements

The Contractor shall comply with all applicable local, state and federal rules and regulations regarding sound control, noise level, and light control.

Each internal combustion engine, used for any purpose on the Project or related to the Project, shall be equipped with a muffler of a type recommended by the manufacturer. The muffler shall be in good working condition. No internal combustion engine shall be operated on the Project without said muffler.

D. Use of Pesticides

The Contractor shall comply with all local, state and federal rules and regulations of the Department of Food and Agriculture, the Department of Health, the Department of
Industrial Relations and all other agencies, which govern the use of pesticides required in the performance of the Work.

Pesticides include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliants, desiccants, soil sterilants, and repellents.

Any substance or mixture of substances intended for preventing, repelling, mitigating or destroying weeds, insects, diseases, rodents or nematodes and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant shall be considered as pesticide.

E. Weight Limitations

Unless expressly permitted elsewhere in the Contract Documents, the Contractor shall not operate construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limits set forth in Division 015 of the Vehicle Code over completed or existing base, surfacing, pavement or structures.

3.12 ACCESS TO WORK

A. Observation of Construction

The District, and all of its authorized representatives, shall at all times have safe access to the Work, and shall be furnished with every reasonable facility for ascertaining that the workmanship and materials are in accordance with the requirements and intentions of the Contract Documents. All Work done and all materials furnished shall be subject to the District’s Designated Representative’s on-site and off-site observation.

The observation and/or approvals of the workmanship or materials by the DDR shall not relieve the Contractor of any obligations to fulfill the requirements of the Contract Documents. Workmanship and materials not meeting such requirements shall be corrected, and unsuitable Work or material may be rejected, notwithstanding that such Work or materials have been previously observed and/or approved by the District, or that payment therefor has been included in a progress estimate.

The DDR may order re-examination of questioned Work at any time before final acceptance. If so ordered, the Contractor shall uncover the Work. If such work is found to be in accordance with the Contract Documents, the District will pay for the cost of uncovering, removing, recovering and replacing the parts removed; but if such Work so exposed or examined is not in accordance with the Contract Documents, the uncovering, removal, recovering and replacement shall be at the Contractor’s expense. Work, which has been covered prior to observation by the District, does not qualify as re-examined work; the District may order such work uncovered for observation without payment of any costs.

3.13 INDEMNIFICATION

A. Contractor shall defend, indemnify, and hold harmless AC Transit and its respective directors, officers, employees, and agents, including the District’s Designated Representative, EBMUD, City of Oakland, City of Leandro, State of California Department of Transportation and the successors and assigns of any of them (collectively referred to as "Indemnities") from and against all claims, demands, liability, suits, actions, costs or expenses for any and all loss or damage, including, but not limited to, personal injury, property damage, or economic loss, arising out of or resulting from allegations of (i) Contractor’s use of District’s property or any activities or Work performed hereunder by
Contractor; (ii) Contractor's performance of the Work under the Contract; or (iii) Contractor's breach of any provision of the Contract. The duty of Contractor to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. The only exception to these provisions is that Contractor's obligations under this section will not apply to the extent that the claims, demands, liability, suits, actions, costs or expenses are caused by Indemnities' active negligence, willful misconduct or criminal acts. Contractor waives any and all rights to any type of express or implied indemnity against Indemnities. This indemnity shall survive termination or acceptance of the Contract.

The Contractor has the entire responsibility for any and all injury to the public and to individuals; for all loss or damage arising from any obstructions or difficulties, either natural or artificial, which may be encountered in the project; for damage to property resulting from the performance of the work under this contract; for damage from any action of the elements prior to the final acceptance of the work; for damage from any act or omission not authorized by this Specification on the part of the Contractor or any agent or person employed by the Contractor.

Any person, firm or corporation that Contractor authorizes to Work on District property or public property, including Subcontractors, shall be deemed to be an agent of the Contractor for purposes herein, shall be subject to all the applicable terms herein, and shall be within the scope of Contractor's indemnity obligation described herein.

END OF PART 3
PART 4 - SUBCONTRACTORS

4.01 SUBCONTRACTING

A. The Contractor shall give its personal attention to the fulfillment of the Contract Documents and shall keep all Work under its control.

No subcontractor will be recognized as such and nothing in the Contract Documents shall create any contractual relationship between the District and any subcontractor. The Contractor is as fully responsible to the District for the acts and omissions of its Subcontractors of any tier as the Contractor for the acts and omissions of persons or entities directly employs it.

When a portion of the Work, which has been subcontracted by the Contractor, is not being prosecuted in a manner satisfactory to the District, the subcontractor shall be removed immediately upon the request of the District, and shall not again be employed with respect to the Work.

The on-site production of materials produced by other than the Contractor's own forces shall be considered as subcontracted. The erection, establishment or reopening of on-site plants for production of materials and the operation thereof in the production of materials for use on the Work shall conform to the requirements relating to labor set forth in the Contract Documents.

B. The Contractor shall also be responsible for coordinating the Work performed by Subcontractors and Suppliers.

C. Approval of Substitutions of Subcontractor:

1. The Contractor shall notify the District in writing of any request to substitute a Subcontractor in place of a Subcontractor listed in Contractor's Bid. Prior to such substitution, for Work that is greater than or equal to one-half of one percent (0.5%) of the Contract Price or if the Contractor proposes to substitute a DBE firm, the Contractor shall secure the written approval of the District's Contracts Compliance Office. The Contractor shall submit the following information in a form similar to the Bid/Submittal Form entitled, "LIST OF PROPOSED SUBCONTRACTORS," contained in the Contractor's Bid Forms. The District will review the information submitted relative to each Subcontractor in accordance with the requirements of the Subletting and Subcontracting Fair Practices Act and transmit written notification to the Contractor concerning its decision regarding approval of the proposed substitution. Information submitted by the Contractor shall include at least the following:

   a. Name of the Subcontractor
   b. Location and Phone Number of Place of Business
   c. Contact Person
   d. Contractor's License(s) number and expiration date
   e. DBE/MBE/WBE/Local Owned, status (if applicable)
   f. The portion of the Work that will be performed by each Subcontractor and its dollar value
   g. Reason(s) for the proposed substitution

D. Prompt Payment to Subcontractors
The Contractor shall pay any Subcontractors approved by the District for work that has been satisfactorily performed no later than seven (7) days from the date of contractor’s receipt of progress payments by the District. Within thirty (30) days of satisfactory completion of all work required of the Subcontractor, Contractor shall release any retained payments withheld to the Subcontractor. The Contractor will complete and sign a Prompt Payment Affidavit prior to Contract execution.

Any violation of these provisions shall subject the violating Contractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment, or nonpayment by the Contractor, or deficient subcontractor’s performance, or noncompliance by a Subcontractor. This clause applies to both DBE and non-DBE Subcontractors.

In the event the Contractor does not make progress payments or release retentions to the Subcontractors in accordance with the time periods in this section, the Contractor will be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment.

END OF PART 4
PART 5 - COORDINATION AND ACCESS

5.01 GENERAL

A. The Contractor acknowledges that the District may award, or has already awarded, other construction contracts for additional work or may perform additional work with its own forces and that such work may affect the Work under this Contract. Additionally the Contractor acknowledges that the State and other Public and Private Agencies may be granted a right-of-entry by District or Public Agency for the purpose of constructing facilities within and adjacent to the work site. It is the obligation of the Contractor to coordinate its Work with the work of others working within or adjacent to the District or Public Agency property.

During the performance of its Work, the Contractor shall not have exclusive access to or use of the work areas. The District may also require that certain facilities and areas be used concurrently by the Contractor and by other contractors working in the area. When two or more contractors are employed on related or adjacent District work, each shall conduct its operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor shall be responsible to the other for all damage to any work, to persons or property caused to the other by its operations, and for loss caused the other due to any unnecessary delays or failure to finish the work within the time specified for completion.

B. If any part of the Contractor's Work depends on the work of any other contractor and/or the District for proper execution and/or results, the Contractor shall promptly notify the District of any discrepancies and/or defects in said other work that would render its work unsuitable for proper execution and/or results prior to proceeding with the Contractor's own Work. If it becomes necessary, the District will resolve coordination and access problems.

C. Contractor and its representative in charge of the Work shall familiarize themselves with District or Public property and work site, and adjacent surroundings in the vicinity of said Work, and any private or public operations on adjoining properties.

END OF PART 5
PART 6 - CHANGES IN THE WORK

6.01 CHANGES

A. General:

1. The District may make at any time, and without notice to Contractor's surety and without invalidating the Contract, alterations, deviations, additions to or deletions of the Contract Documents, and may increase or decrease the quantity of any item or portion of the Work, or delete any item or portion of the Work, and may require extra work, as determined by the District to be necessary or advisable. All such changes shall be performed under the terms of the Contract Documents.

Any changes will be set forth in a written Contract Change Order issued by the District. The Contract Change Order will specify:

1. the Work to be done in connection with the change to be made;

2. the amount, if any, of the adjustment of the Contract Price, and the basis for compensation for the changed work ordered; and

3. The extent, if any, of the adjustment in the Contract Time.

A Contract Change Order shall not become effective until an authorized representative of the District has signed it. Upon receipt of an approved Contract Change Order, the Contractor shall promptly proceed with the ordered work, unless otherwise provided in the approved Contract Change Order. The Contractor shall not proceed with any change involving an increase or decrease in the Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, the Contractor shall promptly commence and diligently complete any change subject to the District's written authorization pursuant to the preceding sentence; the Contractor shall not be relieved or excused from its prompt commencement and diligent completion of any change subject to the District's written authorization by virtue of the absence or inability of the Contractor and the District to agree upon the extent of any adjustment to the Contract Time or the Contract Price on account of such change. The District's right to make changes shall not invalidate the Contract nor relieve the Contractor of any liability or other obligations under the Contract Documents. Any requirement of notice of changes in the scope of Work to the Surety shall be the responsibility of the Contractor. Changes to the Work depicted or described in the Drawings or the Specifications may be subject to approval by any government agencies with jurisdiction over the project. The District may make changes to bring the Work or the Project into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after award of the Contract.

B. Contractor Initiated Changes

1. If the Contractor should claim that any instruction, request, the Drawings, the Specifications, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the District and Construction Manager, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the
Contractor’s notice to the District and Construction Manager. Time is of the essence in Contractor’s written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District’s review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should be an adjustment of the Contract Time or the Contract Price shall be deemed Contractor’s waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. If the Contractor’s notice is denied by the District and the Contractor disagrees with the assessment and still believes that a revision to the Contract Time, Contract Price, and/or Construction Schedule is warranted, the Contractor may submit a claim pursuant to Part 7, “Dispute Resolution” of these General Conditions.

Unless otherwise allowed by the District, the costs associated with implementing an approved RFC shall be the responsibility of the Contractor. Such costs shall include coordination with all Subcontractors, and delays and disruption arising from the incorporation of the change or alternative into the Work.

C. District Initiated Changes

1. If the District approves of a change, a written Change Order prepared by the District shall be forwarded to the Contractor describing the change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. The Contractor’s attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable.

2. Request for Quotations: The District may issue a Request for Quotation (“RFQ”), which requests the Contractor to provide a quotation concerning a proposed change. RFQ’s will be numbered sequentially, specifying the time required for the Contractor to respond with a proposal. A RFQ shall not be considered as authorization to proceed with any change, nor shall such request justify any delay in executing existing Work. Contractor shall, upon receipt of a RFQ, promptly, within the time frame specified in the RFQ, provide quotations for increases or decreases in the Contract Price and the Contract Time resulting from the proposed change. Quotations shall be in the form specified by the District and shall include substantiating documentation with an itemized breakdown of Contractor and
Subcontractor costs to perform the change, including labor, materials, rentals, services, overhead and profit as set forth in this contract. The cost of preparing such quotations is included in the Contract Price, and Contractor shall not be entitled to any additional compensation for preparing them.

3. A Contract Change Order shall not be effective unless signed by an appropriately authorized representative of the District, at which time it is considered an “approved Contract Change Order.” Upon receipt of an approved Contract Change Order, the Contractor shall promptly proceed with the ordered Work.

In the event Contractor disagrees with the terms of an approved Contract Change Order, it may submit a written protest within ten (10) days of receipt of the approved Contract Change Order pursuant to the “Protest Procedures” Attachment A: Board Policy 354.

4. Executed Contract Change Order: A Contract Change Order signed by both parties is an “executed Contract Change Order.” By signing the Contract Change Order, the Contractor agrees that the specified compensation constitutes full compensation for the changed Work, including payment for interruption, disruption, acceleration, extended overhead, delay or any other “impact” claim or “ripple effect” claim. Contractor specifically understands and agrees that its execution of the Contract Change Order shall constitute a waiver of any right for Contractor to claim any additional compensation with respect to the subject matter of the Contract Change Order.

5. Field Change Notice: A Field Change Notice (“FCN”) is a written directive issued by the District’s Designated Representative ordering a minor addition, deletion, modification, or revision to the Work which does not constitute a change in Contract Documents and cannot be handled through a Change Notice or Request for Change process due to the urgent nature of the work. Upon receipt of the Field Change Notice, the Contractor shall promptly proceed with the Work set forth in the notice. The FCN may include the method of payment for the affected Work. To the extent a FCN requires a change to the Contract Documents, the District will issue a Contract Change Order to incorporate the change.

A FCN may include a not-to-exceed cost. The Contractor and District’s representative shall, on a daily basis, diligently monitor the costs associated with the FCN and inform the District’s Designated Representative when such costs are within twenty five (25) per cent of the not-to-exceed amount stipulated in the FCN. When such costs are within 25% of the not-to-exceed amount, the District’s Designated Representative and Contractor’s representative shall review the balance of the work to be completed and all anticipated costs. If the District’s Designated Representative and Contractor are in agreement, a revised FCN will be issued with a revised not-to-exceed amount.

D. Continuance of Construction:

Any disagreement by the Contractor with the District’s determination of the need for, or amount of, an adjustment in Contract Price or Contract Time associated with an approved Contract Change Order (or disagreement by the Contractor with the District's determination that a change has not occurred and no Contract Change Order is needed) shall not, under
any circumstances, relieve the Contractor from its obligation to promptly begin and
diligently prosecute the Work, including the change that is described in the approved
Contract Change Order. Should such disagreement occur, the Contractor’s attention is
directed to the provisions relating to “Protest Procedure” set forth elsewhere in these
General Conditions.

E. Differing Site Conditions

The contractor’s bid submittal shall be based upon their full review of the work site(s)
specified in the invitation for bid, thus declaring their satisfaction with such conditions. The
contractor shall not be entitled to any adjustment in the contract sum or contract time
regarding claimed latent or materially different site conditions (whether above or below
grade) if contractor knew or should have known of the existence of such conditions at the
time contractor submitted its bid, failed to give proper notice, or relied upon information,
conclusions, opinions or deductions of the kind that the contract documents preclude
reliance upon.

Within no later than twenty-four (24) hours of discovery of any purported differing site
conditions and before such conditions are disturbed, the Contractor shall notify the District
in writing: (1) material that the Contractor believes may be hazardous waste, as defined
in California Health and Safety Code Section 25117, that is required to be removed to a
Class I, Class II or Class III disposal site in accordance with provisions of existing law, (2)
subsurface or latent physical conditions at the site differing materially from information
made available to the Contractor before the submission of its bid, or (3) unknown physical
conditions at the site, of an unusual nature, differing materially from those ordinarily
encountered and generally recognized as inherent in work of the character provided for in
this Contract.

In the event conditions as described in (1), (2) or (3) above are discovered, the Contractor
shall continue to diligently prosecute the work in the other portions of the site not affected
by such conditions. The Contractor shall also use its best efforts to prevent and/or minimize
delays or disruptions to the affected portions of the work.

The District will promptly investigate the purported differing site conditions. If the District
finds that such conditions do materially differ and cause an increase or decrease in the
Contractor’s cost of, or the time required for, performance of any part of the Work under
this Contract, an equitable adjustment shall be made and the Contract will be modified in
accordance with the change order procedures set forth herein. In the event of any dispute
between the District and the Contractor over the significance or existence of the changed
conditions, the Contractor shall not be excused from the scheduled completion date set
forth herein, but shall retain such rights as provided elsewhere in these Contract
Documents.

No claim of the Contractor under this clause shall be allowed unless the Contractor has
given the notice required by this Section. No claim by the Contractor for an equitable
adjustment hereunder shall be allowed if asserted after final payment under this Contract.

F. Contract Price Adjustment

If a Contract Change Order provides for an adjustment to the Contract Price, the increased
amount owed to Contractor, or the credit due the District, shall be determined by one of
the following methods, or a combination thereof, as determined by the District and at its
sole discretion:
1. **Unit Prices.** The unit prices set forth in the Contractor’s Schedule of Bid Prices will be utilized where they are applicable. If the actual quantities of an item of work are greater or lesser than the District’s Designated Representative’s Estimate of quantity for such item of Work by more than twenty-five percent (25%) within a project segment, such that the application of unit prices in the Bid Form will cause substantial inequity to the District or Contractor, the unit prices will be adjusted by mutual agreement. District’s determination shall be subject to protest by the Contractor pursuant to the provisions relating to “Protest Procedure” set forth earlier in Section 002113 in the Contract Documents.

Unit prices for new items included in the Contract Change Order shall be as mutually agreed upon District’s determination shall be subject to protest by the Contractor pursuant to the provisions relating to “Protest Procedure” set forth elsewhere in the Contract Documents.

2. **Eliminated Items.** The District reserves the right to delete any bid item of Work in its entirety. The District makes no representation that any work under a bid item of Work will be performed, and all work may be subject to a Contract Change Order that deletes such work. Bid items are distinct and severable from the other bid items, and Contractor shall not be entitled to any anticipated profit, unabsorbed overhead, or other indirect expense attributable to the deleted item.

Should any bid item of Work be eliminated in its entirety and not accounted for in Sub-paragraph 1 above and, in the absence of an executed Contract Change Order covering such elimination, payment will be made to the Contractor for actual direct and verifiable costs incurred in connection with such eliminated bid item if incurred prior to the date of notification in writing by the District of such elimination. If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the District, and if orders for such material cannot be canceled, it will be paid for at the actual direct and verifiable cost to the Contractor. Actual direct costs shall include documented vendor shipping fees, supplier restocking fees, if applicable, and Contractor handling costs directly related to the eliminated item(s). In such case, the material paid for shall become the property of the District and the actual cost of any further handling will be paid for. If the material is returnable to the vendor and if the District so directs, the material shall be returned and the Contractor will be paid for the actual direct cost of charges made by the vendor for returning the material. The actual direct cost of handling returned material will also be paid for.

3. **Changes in Character of Work.** If an order by the District’s Designated Representative materially changes the character of the work from that indicated in the original Contract Documents, and if the change materially increases or decreases the actual unit cost of performing changed item as compared to the estimated unit cost of performing the work in accordance with the plans and specifications originally applicable thereto, an adjustment in compensation therefor will be made in accordance with the following:

The basis of such adjustment in compensation will be the difference between (i) an estimate of the reasonable unit cost to perform the work under the bid item or portion thereof involved in the change as originally planned and (ii) the actual unit cost of performing the work of said item or portion thereof involved in the change, as changed. Actual unit costs will be determined will be as agreed to by the Contractor and the District’s Designated Representative. Any such adjustment will apply only to the portion of the work of said item actually changed in character.
If the compensation for an item of work is adjusted under this Section “Changes in Character of Work”, the costs recognized in determining such adjustment shall be excluded from consideration in making an adjustment for such item of work under Section “Unit Prices”.

Failure of the District’s Designated Representative to recognize a change in character of the work at the time the approved contract change order is issued shall in no way be construed as relieving the Contractor of its duty and responsibility of filing a written protest pursuant to Attachment A: Board Policy 354.

Under no circumstances will work, that is considered to be a change in character, commence until the District’s Designated Representative and the Contractor agree to a price adjustment. No work shall commence until a Change Order is executed directing the Contractor to perform the work. However, the Contractor shall diligently prosecute all portions of the work that are not affected by the pending Change Order and shall use its best efforts to prevent and/or minimize delays or disruptions (if any) to the entire work caused by the pending Change Order.

Under no circumstance shall Contractor be entitled to claim a Change in the Character of Work to compensate for errors or deficiencies in Contractor’s original estimate for the work or to seek additional compensation for extra costs attributable to its own mismanagement or supervision of the work.

4. **Labor.** Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Change. Use of a labor classification which would increase labor costs associated with any Change shall not be permitted. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

5. **Materials and Equipment.** Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District’s obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for changes to the Work, in which event the Contractor shall not be compensated.
6. **Construction Equipment.** Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of $500.00 or less. Construction Equipment costs claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the District, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Contract or incidental to the use of such Construction Equipment.

7. **Mark-Ups on Changes to Work.** In the event of Changes to the Work, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below: For the portion of any Change performed by a Subcontractor of any tier, the percentage mark-up on allowable actual direct labor, material, and equipment costs incurred by that Subcontractor shall be no more than Ten Percent (10%). When work is performed by lower tier Subcontractors the next upper tier Subcontractor may mark up the lower tier Subcontractor cost by no more than 3%. In addition, for the portion of any Change performed by a Subcontractors the Contractor may add an amount no more than three Percent (3%) of the allowable actual direct labor, material, and equipment costs of Subcontractors performing the Changed Work. For the portion of any Change performed by the Contractor’s own forces, the mark-up on the allowable actual direct labor, materials, and equipment costs of such portion of a Change shall be Ten Percent (10%), plus insurance and Bond costs.

When a change includes deleted, work the mark-ups on the change shall be on the net added amount of the direct added costs. If the net change is a deduction to the Contract the Contractor or Subcontractor shall include a deduction of 3% and the cost of the insurance and bond for reduced value of the Work.

8. **Extra Work.** New and unforeseen work will be classed as extra work when determined by the District that such work is not covered by any of the various items for the costs of furnishing such materials and/or equipment or any mark-up thereon.
for which there is a bid price or by combinations of such items. In the event portions of such work are determined by the District to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such work will be classed as extra work.

The Contractor shall perform such extra work and furnish labor, material, and equipment therefor upon receipt of an approved Contract Change Order, and in the absence of such approved Contract Change Order, Contractor shall not be entitled to payment for such extra work. If the Contractor disagrees with any terms or conditions set forth in an approved Contract Change Order, he shall submit a written protest, per the standards set forth in Section 007200 “General Conditions” of this Document, to the District within ten (10) days after receipt of such approved Contract Change Order, but in no event after commencement of the Work covered by such approved Contract Change Order. The protest shall state Contractor’s points of disagreement with respect to the change order, including any and all specific references to portions of the Contract Document at issue. The Contractor’s protest shall also propose a modification of the items with which Contractor does not agree. If a written protest is not submitted within the time period set forth herein, payment will be made as described in the approved Contract Change Order. Contractor’s failure to timely submit a written protest shall constitute a waiver of Contractor’s right to claim any additional compensation beyond the amount stated in the approved Contract Change Order for the changed work. Approved Contract Change Orders which are not protested within such time period will be considered as executed Contract Change Orders, and payment made thereunder will constitute full compensation for all work resulting from the change.

9. When the protest of an approved Contract Change Order relates to compensation, the Contractor shall keep full and complete records of the work that is the subject of the protest. Contractor shall make all cost data pertaining to changed work available to the Engineer upon request. The Contractor shall submit substantiating cost data with the protest. Contractor’s failure to submit cost data shall constitute a waiver of Contractor’s right to claim any additional compensation for the disputed work.

10. The Contractor shall cooperate with the District’s Designated Representative to reach agreement at the earliest practical date with respect to the disputed work. If an agreement has been reached, a revised Contract Change Order will be approved by the District and issued to the Contractor for signature. Unless and until the District and Contractor agree upon the terms of compensation incorporated in a revised executed Contract Change Order, the compensation shall be as specified under the protested approved Contract Change Order.

11. When the protest of an approved Contract Change Order relates to an adjustment of Contract Time for the completion of the Work, those disputes will be determined in accordance with the provisions of "Delays and Extensions of Time” elsewhere in these Contract Documents.

12. If the Contractor’s protest is denied by the District and the Contractor disagrees with the assessment wishes to pursue the dispute further, the Contractor may submit a claim pursuant to Part 7, “Dispute Resolution” of these General Conditions.
6.02 COST REDUCTION PROPOSALS

A. The District encourages the Contractor to submit Cost Reduction Proposals whenever the Contractor identifies areas and/or instances in which there can be savings to the Work. Contractor may submit to the District, in writing, proposals for modifying the plans, specifications or other requirements of the Contract for the sole purpose of reducing the total cost of construction, including the time for completion of the Work. The Cost Reduction Proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

B. Cost Reduction Proposals shall contain the following information:

1. A description of both the existing Contract requirements for performing the Work and the proposed changes, together with advantages and disadvantages of each changed item.

2. An itemization of the Contract requirements (e.g., plans and specifications) that must be changed if the proposal is adopted.

3. Justification for changes in function or characteristics of each affected item, and the effect of the change on the performance of the completed Work.

4. A detailed estimate of the cost of performing the Work under the existing Contract and under the proposed change.

5. A statement of the time within which the District must make a decision thereon.

6. The Bid items of Work affected by the proposed changes, including any quantity variation attributable thereto.

Contractor’s submittal of its Cost Reduction Proposal shall include a certification by Contractor as follows: “Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the Cost Reduction Proposal.”

C. The provisions of this section shall not be construed to require the District to consider any Cost Reduction Proposal, which may be submitted hereunder. The District will not be liable to the Contractor for failure to accept or act upon any Cost Reduction Proposal submitted pursuant to this section nor for any delays to the Work attributable to any such proposal. If a Cost Reduction Proposal is similar to a change in the plans or specifications under consideration by the District for the project at the time said proposal is submitted, the District will not accept such proposal, and the District reserves the right to make such changes without compensation to the Contractor under the provisions of this section.

The Contractor shall continue to perform the Work in accordance with the requirements of the Contract until an approved Contract Change Order, incorporating the cost reduction proposal have been issued. If an approved Contract Change Order has not been issued by the date upon which the Contractor’s Cost Reduction Proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, such Cost Reduction Proposal shall be deemed rejected.
The District shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, District reserves the right to disregard the Contract bid prices if in the judgment of the District, such prices do not represent a fair measure of the value of Work to be performed or to be deleted.

The District reserves the right, where it deems such action appropriate, to require the Contractor to share in the District's costs of investigating a Cost Reduction Proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed, the Contractor shall indicate his acceptance thereof in writing, and such acceptance shall constitute full authority for the District to deduct amounts payable to the District from any monies due or that may become due to the Contractor under the Contract.

D. If the Contractor's Cost Reduction Proposal is accepted in whole or in part, such acceptance will be by an approved Contract Change Order, which shall specifically state that it is executed pursuant to this Section. Such change order shall incorporate the changes in the plans and specifications which are necessary to permit the Cost Reduction Proposal or such part of it as has been accepted to be put into effect, and shall include any conditions upon which the District's approval thereof is based if the approval of the District is conditional.

The Contractor is not entitled to share in either concurrent, collateral or future savings arising from the Cost Reduction Proposal. Collateral savings are those measurable net reductions in District's costs of operation that result from the Cost Reduction Proposal, including maintenance, logistics, and District-furnished equipment.

Acceptance of the Cost Reduction Proposal and performance of the Work thereunder shall not adjust the time of completion of the Contract unless specifically provided for in the approved Contract Change Order authorizing the use of the Cost Reduction Proposal.

The Contractor shall include appropriate Cost Reduction Proposal provisions in all Subcontracts of $5,000 or greater, and may include those provisions in any subcontract. Subcontracts shall state that any benefits accruing to the Contractor as a result of an accepted Cost Reduction Proposal initiated by a Subcontractor shall be shared by the Contractor and the Subcontractor in a manner specified in the agreement between them.

END OF PART 6
PART 7 - DISPUTE RESOLUTION

7.01 TIMELY NOTICE OF CLAIM

A. Contractor shall be solely responsible for providing written notice to District of any claims for additional compensation and/or time in accordance with the provisions of the Contract Documents. It is District’s intent to investigate and attempt to resolve any Contractor claims before the Contractor has performed any disputed Work. In addition, District desires to mitigate its responsibility (if any) for any Contractor claims before the disputed Work is performed. Therefore, Contractor’s failure to provide written notice within the time limitations set forth below shall constitute a waiver of Contractor’s claims for additional compensation and/or time.

7.02 NOTICE OF POTENTIAL CLAIM

A. The Contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the District (including the failure or refusal to issue a Change Order), or the happening of any event, thing or occurrence, unless he shall have given the District due written notice of potential claim as hereinafter specified, provided, however, that compliance with this section shall not be a prerequisite as to matters within the scope of the Contract Change Order protest provisions in, “Protest Procedure,” or the notice provisions in, “Delays and Extension of Time,” elsewhere in these Contract Documents, nor to any claim which is based on differences in measurement or errors of computation as to correct quantities.

B. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved and, insofar as possible, the amount of the potential claim. If based on an act or failure to act by the District, such notice shall be given to the District prior to the time that the Contractor has started performance of the Work giving rise to the potential claim for additional compensation, but in no event more than three (3) days after the occurrence that gives rise to the Contractor’s claim. In all other cases, notice shall be given within three (3) days after the happening of the event or occurrence giving rise to the potential claim.

C. The Contractor hereby agrees that he shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which a written notice of potential claim as herein required was not timely filed.

D. If there is a dispute over any claim, the Contractor shall continue to Work during the dispute resolution process in a diligent and timely manner as directed by the District, and shall be governed by all applicable provisions of the Contract.

E. The Contractor shall maintain cost records of all Work, which is the basis of any dispute. On a daily basis, Contractor shall submit to District completed daily forms, the format of which will be supplied by District, with respect to the Contractor’s costs of performing the disputed work. These daily forms shall itemize all Contractor costs in performing the disputed work, including, but not limited to, all costs relating to materials, labor and equipment with respect to the disputed work. These daily forms shall provide names or identification and classification of affected workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated. Said daily work forms shall be duly signed and verified by the Contractor or its authorized representative. District’s receipt of Contractor’s daily forms shall not constitute an approval of the Contractor’s protest. Contractor’s failure to submit the daily forms on a daily basis shall constitute a waiver of Contractor’s right to claim any additional compensation for the disputed work.
F. Each Contractor claim shall include full and complete information concerning the Claim. Contractor shall provide a clear, concise recital of the basis, upon which the claim is asserted, including a designation of the provisions of the Contract Documents upon which the claim is based. Contractor shall also include a statement as to the amount of time and/or compensation sought pursuant to the claim; if Contractor’s claim arises from an ongoing occurrence, Contractor shall so state in its claim including a description of the specific Work activities affected by the claim. All costs, expenses or damages and extensions of time claimed shall be described in reasonable detail under the circumstances together with complete supporting documentation.

The District will review any timely claim submitted by Contractor. In conducting this review, the District shall have the right to require the Contractor to submit such additional or supporting documents, data and other information as the District may require. The District will review any timely claim within 15 days after receipt by the District of all requested additional or supporting documents.

G. If an agreement can be reached which resolves the Contractor claim, the parties will execute a Contract Change Order to document the resolution of the claim. If the parties cannot reach agreement with respect to the Contractor claim, Contractor shall still be obligated to comply with the claim identification provisions identified in the section entitled “Final Payment and Claims”, elsewhere in these General Conditions.

H. In the event that a subcontractor or supplier asserts a claim against the Contractor under its agreement with Contractor, the subcontractor or supplier shall look only to the Contractor for any payment or relief. Subcontractors and suppliers shall have no claim or cause of action against the District if such claim or cause of action arises out of the subcontractor’s or supplier’s agreement with Contractor.

7.03 PUBLIC CONTRACT CODE CLAIM PROCEDURE

Contractor is directed to Section 7.02 of these contract documents regarding the notice provisions applicable to a construction claim. In the event the District and Contractor cannot resolve claims of $375,000 or less, the claims provisions of California Public Contract Code sections 20104-20104.6 shall apply, which provisions are summarized below. Any claim submitted by the Contractor shall be in writing and include the documents necessary to substantiate the claim.

For claims of less than fifty thousand dollars ($50,000), the District shall respond in writing within 45 days of receipt of the claim, or request additional documentation supporting the claim within 30 days of receipt of the claim. If additional documentation is requested, District will respond in writing to the claim within 15 days of receipt of the additional documentation, or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

For claims of over $50,000 and less than or equal to $375,000, District shall respond in writing within 60 days of receipt of the claim, or request additional documentation supporting the claim within 30 days of receipt of the claim. If additional documentation is requested, District will respond in writing to the claim within 30 days of receipt of the additional documentation, or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

If the claimant disputes the local agency’s written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency’s response or within 15 days of the local agency’s failure to respond within the time prescribed, respectively, and demand an informal conference to meet and
confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

7.04 VENUE

In the event of a dispute or breach of contract, venue shall be in Alameda County, California.

END OF PART 7
PART 8 - TIME

8.01 DELAYS AND EXTENSIONS TO THE WORK

A. Contractor must complete all Work within the time specified in Division 01 of these Contract Documents. The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any delay in substantially completing the Work (or parts thereof) beyond the time set forth in the Supplementary Conditions elsewhere in the Contract Documents, provided that such delay was caused by unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of public enemy, fire, floods, abnormal weather (as described below), tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes and freight embargoes, fire, changes made pursuant to the provisions of “Changes in Work” elsewhere in the Contract Documents or acts or neglect of the District not contemplated by the Contract Documents. In all cases, any extension of time is conditioned on the following:

1. That the cause is not due to the fault or negligence of the Contractor, and the Contractor has taken reasonable precautions to prevent the delays and minimize the effects thereof; and

2. That the Contractor notifies the District’s Designated Representative in writing within three (3) days from the beginning of such delay specifying the nature of the delay and the measures that have been or will be taken to prevent or minimize the delay. Failure to submit written notice within this time period shall constitute an absolute waiver of any claim for a time extension.

B. No extension of time will be granted for a delay caused by a shortage of materials, unless the Contractor furnishes to the District documentary proof that he has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work and further proof, in the form of schedule data as required in "Project Scheduling Requirements" elsewhere in the Contract Documents, that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire Work which could not be compensated for by revising the sequence of the Contractor’s operations. Only the physical shortage of material will be considered as a cause for extension of time, and no consideration will be given to any claim that material could not be obtained at a reasonable, practical or economical cost or price, unless it is shown to the satisfaction of the District that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and the usual practices in obtaining such quantities. Compliance with Buy America requirements shall not be used as the basis for a schedule delay or cost claim.

C. The term “shortage of materials,” as used in this section, shall apply only to materials, articles, parts or equipment which are standard items and shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the Contract Documents.

D. No extensions of time will be granted for delays that have no measurable impact on the completion of the Work (or parts thereof) under the Contract Documents. When extensions of time are granted, they will be limited to the period equivalent to the actual number of days lost on the critical path or controlling operations of the Construction Schedule, taking into account the extent to which that delay could be decreased by reasonable mitigation measures by the Contractor. All requests for extensions of time must be supported with a critical path analysis showing the critical path and impacts to it. Contractor’s failure to submit this analysis will be sufficient cause for denial of any request for a time extension.
E. Within a reasonable period of time after the Contractor submits the notice and information required by this section, the District will determine whether an extension of time is justified and, if so, the number of days for the extension.

F. Abnormal weather may be a valid basis for a time extension under the Contract. The term “abnormal weather” is defined as the occurrence of both of the following two conditions: (i) rain conditions that exceed the criteria set forth immediately below; and (ii) rain conditions that cause the below specified impact to Contractor’s operations.

Time extensions caused by weather will be allowed when the Controlling operation is impacted. The Contract Time includes an Allowance for up to 24 calendar days for weather-related delays.

In addition, before a time extension may be granted for weather-related delays, Contractor must establish that the weather either significantly impacted at least 60% of the planned work of the controlling operations for a particular day or prohibited at least five (5) hours of work on the controlling operations planned for that day. Contractor shall employ reasonable methods to mitigate the impact of weather (i.e., dewatering, protection of site, etc.) Unused Weather Allowance days will become Project Float.

G. Any Contractor claim for damages or additional compensation based on delay shall be limited to only those circumstances where the Contractor has fulfilled each of the following three (3) requirements:

1. Contractor has established its entitlement to a time extension pursuant to the provisions described above regarding delay and extensions to the Work.

2. The delay was caused solely by the District by District’s issuance of changes made pursuant to the provisions of “Changes in Work” elsewhere in these General Conditions or by or acts or neglect of the District.

3. The delay was unreasonable under the circumstances and not within the contemplation of the parties.

It is expressly understood and agreed that delays caused by the District will be non-compensable when there are concurrent delays caused by the Contractor. Also, Contractor shall have no entitlement to additional compensation for any delay where there have been concurrent delays caused by non-compensable delays, including, but not limited to, fire, floods, tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, civil unrest, labor disputes and freight embargoes.

In the event that the Contractor submits a claim for additional costs associated with overhead, the Contractor shall, within 60 calendar days of the District’s Designated Representative’s written request, submit to the District’s Designated Representative an audit examination and report performed by an independent Certified Public Accountant of the Contractor’s actual unanticipated overhead costs. The independent Certified Public Accountant’s audit examination shall be performed in conformance with the requirements of the American Institute of Certified Public Accountants Attestation Standards. The audit examination and report shall depict the Contractor’s project and company-wide financial records and shall specify the actual overall average daily rates for both field and home office overhead for the entire duration of the project, and whether the costs have been properly allocated. The rates of field and home office overhead shall exclude all unallowable costs as determined in the Federal Acquisition Regulations, 48 CFR, Chapter 1, Part 31. The audit examination shall determine if the rates of field and home office overhead:
1. are allowable in conformance with the requirements of the Federal Acquisition Regulations, 48 CFR, Chapter 1, Part 31;

2. are adequately supported by reliable documentation; and

3. related solely to the project under examination.

Upon the District’s Designated Representative’s written request, the Contractor shall make its financial records available for audit by the District for the purpose of verifying the actual rate of overhead specified in the audit submitted by the Contractor. The overhead specified in the audit, submitted by the Contractor, will be subject to approval by the District’s Designated Representative.

H. Right of Way Delays. If, through the failure of the District to acquire or clear the right of way as specified in the Contract Documents, the Contractor sustains loss which could not have been avoided by the judicious handling of its Work, Contractor will be entitled to such amount as the District may find to be fair and reasonable for such part of the Contractor’s actual loss, as, in the opinion of the District was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work:

1. The time for which such compensation will be paid will be the actual normal working hours during which such delay conditions exists, but in no case will exceed 8 hours in any one day.

2. The days for which compensation will be paid will be each calendar day of the work week (defined elsewhere in the Contract Documents), and legal holidays, during the existence of such delay, no payment will be made for right of way delays in accordance with the provisions in this section.

Actual loss shall be understood to include no items of expense other than idle time of personnel, cost of extra moving of equipment, and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this section, “Delays and Time Extensions.” The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided pursuant to “Changes to the Work” elsewhere in the Contract Documents.

In addition to the compensation described above, if performance of the Contractor’s Work is delayed as a result of the failure of the District to acquire or clear right of way, an extension of time determined pursuant to the provisions in “Delays and Extensions to the Work”, will be granted.

8.02 LIQUIDATED DAMAGES

A. It is agreed by the parties to the Contract that in case all the Work called for under the Contract in all parts and requirements is not completed within the number of calendar days as set forth in Division 01, damage will be sustained by the District, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the District will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the District, the sum set forth in Division 01 per day for each and every calendar days delay in completing the Work in excess of the number of calendar days prescribed and the number of additional calendar days, if any, authorized by Contract Change Order; and the Contractor agrees to pay said liquidated damages.
herein provided for, and further agrees that the District may deduct the amount thereof from any monies due or that may become due the Contractor under the Contract.

B. Contractor’s attention is directed to Division 01 of these Contract Documents addressing “Liquidated Damages” regarding payment of liquidated damages in the event of a delay in the completion of the Work.

END OF PART 8
PART 9 - PAYMENTS AND COMPLETION

9.01 SCOPE OF PAYMENT/ PROSECUTION, PROGRESS AND ACCEPTANCE OF WORK

A. In consideration for the satisfactory performance of Work under the Contract Documents, District shall pay Contractor the Contract Price identified in the Contract. The Contract Price may not be changed except as specified in the Contract Documents.

If the “payment” clause in the Contract Documents relating to any unit price in the bid schedule requires that said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured nor paid for under any other pay item which may appear elsewhere in the Contract Documents.

B. Prosecution, progress and acceptance of work shall conform to Section 6, entitled “Prosecution, Progress and Acceptance of the Work,” of the Greenbook except as modified in this document.

C. Use of improvements during construction shall conform to Section 6-10, entitled “Use of Improvement during Construction,” of the Greenbook except as modified in this document.

9.02 PROGRESS PAYMENTS

A. Within 15 days after the effective date in the Notice to Proceed Contractor shall submit to District a detailed Schedule of Values per the requirements of Div 01 Section 01 20 00 Price & Payment Processing.

Upon its approval, the Schedule of Values will form a basis for determining the compensation payable to Contractor based on its actual progress of each Bid Item per the Schedule of Bid Prices. Prior to any progress payment being made the Contractor must have obtained an approved Schedule of Values.

At the District’s Designated Representative’s discretion the approved Schedule of Values may be used as the basis of calculating the adjustment in compensation for a Bid Item due to changes ordered by the District’s Designated Representative. When an ordered change increases or decreases the quantities shown in an approved Schedule of Values, at the District’s Designated Representative’s discretion, the adjustment in compensation may be determined in the same manner specified for increases and decreases in the quantity of a bid item of work in accordance with Section 6.1 C 1, “Unit Prices” of the General Provisions.

B. On a monthly basis, Contractor shall submit Applications for Payment. Contractor’s Applications shall be based on the Schedule of Values and on the Bid Item pricing submitted with Contractor’s bid. These applications shall be supported by documentation specified in Division 01. The Contractor shall certify that the Work for which payment is requested has been accomplished. When requested by District, Contractor shall submit receipts, invoices and other documentation that the District requires to be furnished for purpose of evaluating the application.

C. Pursuant to Public Contract Code Section 20104.50, District will pay Contractor within thirty (30) days of its receipt of an undisputed and properly submitted Application for Payment, after deducting all previous payments, retention, and other sums as described in the Contract Documents. Within seven (7) calendar days of its receipt of Contractor’s Application for Payment, District will determine whether it complies with the provisions of the Contract Documents. As appropriate, District will return the application to the Contractor accompanied by a document prepared by District setting forth the reasons for
the rejection. Thereafter, Contractor shall correct and resubmit the Application for Payment. Progress payments may be withheld for Work that is not performed in accordance with the Contract Documents.

D. The District may deduct the following from each progress payment:

1. An amount equal to 100% of the amount claimed under any stop payment notice or other lien filed against the Contractor, plus an amount to provide for the reasonable cost of any litigation thereunder.

2. Any liquidated damages or assessments that have accrued as of the date of the application for payment.

3. Any sums expended by the District in performing any of the Contractor’s obligations under the Contract that the Contractor has failed to perform.

4. Any other sums that the District is entitled to recover from the Contractor under the terms of the Contract including damages to District property.

5. Any sums associated with Contractor not staffing the Project with Project representatives as required in the Supplementary Conditions of the Contract Documents.

6. The failure of the District to deduct any of the above identified sums from a progress payment shall not constitute a waiver of the District’s right to such sums.

9.03 RETENTION ON PROGRESS PAYMENTS

A. From each progress payment estimate, five percent (5%) will be deducted and held in retention by the District, the remainder less any deductions described above will be paid to the Contractor as progress payments.

The District shall retain five percent (5%) of the Contract total value until final acceptance. Pursuant to Public Contract Code Section 22300, the successful Bidder may submit Securities in lieu of retention payments by the District. Upon Contractor’s request, District will make payment of funds withheld from progress payments, pursuant to the requirements of California Public Contract Code Section 22300, if Contractor deposits in escrow with District or with a bank acceptable to District, securities eligible for investment under California Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and District, upon the following conditions:

1. Contractor shall bear the expenses of District and the escrow agent in connection with the escrow deposit made.

2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to Contractor pursuant to this section.

3. Contractor shall enter into an escrow agreement satisfactory to District, which agreement shall be substantially similar to the form provided in California Public Contract Code Section 22300.

4. Contractor shall obtain the written consent of the surety to such agreement.
9.04 RELIEF FROM MAINTENANCE AND BENEFICIAL OCCUPANCY

A. Relief from Maintenance

1. Attention is directed to “Responsibility for Work and Materials” contained elsewhere in these General Conditions regarding Contractor’s responsibility to rebuild, replace, repair or restore the Work in the event of any injury, loss or damage to same. Upon written request by the Contractor, District may relieve the Contractor of the responsibility to maintain and protect certain portions of the Work which have been completed in all respects in accordance with the requirements of this Contract ("Relief from Maintenance"). Portions of the Work, for which the Contractor may be granted Relief From Maintenance, shall be identified in Division 01.

2. Relief from Maintenance, if granted, and the scope thereof shall be documented in writing. After District’s granting of Relief from Maintenance, Contractor shall still be obligated to perform warranty work with respect to the portions of the Work covered by the Relief from Maintenance. In addition, District’s granting of Relief from Maintenance shall not be construed as an acceptance by the District of any latent defects discovered with regard to Contractor’s work. Furthermore, Contractor’s obligations under Section 3.13, “Indemnification,” shall still remain applicable after District’s grant of Relief from Maintenance.

3. With respect to any portion of the Work covered by a District’s granting of Relief from Maintenance, the warranty periods called for with respect to in the Contract Documents shall not commence until the date of Relief from Maintenance.

B. Beneficial Occupancy

1. The District may at any time notify the Contractor in writing that it intends to take Beneficial Occupancy of any portion of the Work even though the Work may not be Substantially Complete. Unless the reason for District’s taking Beneficial Occupancy is that the Contractor has not completed the Work (or portions thereof) in accordance with the Contract Time (in such event Paragraph 3, below, applies), District’s Beneficial Occupancy shall relieve the Contractor from its responsibility for maintenance, loss or damage to that portion of the Work for which the District has taken Beneficial Occupancy other than that resulting from the Contractor's act or omission, negligence willful misconduct or breach of warranty.

2. Should the Work (or portion thereof) not be completed in accordance with the Construction Schedule within the Contract Time (as adjusted under the terms of the Contract Documents), the District shall have the right, but not the obligation, to take Beneficial Occupancy of the Work. In such event, Contractor shall not be entitled to any additional compensation on account of said occupancy by District, nor shall Contractor be relieved of any of its responsibilities under the Contract Documents, including, without limitation, Contractor’s obligation to complete the Work in accordance with the Construction Schedule.

3. Beneficial Occupancy shall not be deemed an acceptance of the Work. Within a reasonable time after District provides notice that it intends to take Beneficial Occupancy, the Contractor and the District shall make an inspection of that portion of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected before the Work has achieved Final Completion. During any Beneficial Occupancy of the Work, the District shall allow
the Contractor reasonable access to complete or correct items on the list and to complete other related Work.

4. District's Beneficial Occupancy shall not relieve the Contractor of its responsibility to maintain all insurance and bonds required under the Contract Documents until the entire Project is accepted by the District.

9.05 FINAL INSPECTION AND ACCEPTANCE OF THE WORK

A. When Contractor believes that the entire Work is fully and finally completed, including the satisfactory completion of inspections, tests, and documentation specified in the Contract Documents and the completion of all punch list and clean-up items, the Contractor shall submit to the District a written request for Final Acceptance within fifteen (15) days thereafter, specifying that the Work is fully and finally completed and the date on which it was completed. Within 15 days after receipt of the request for Final Acceptance, the District will inspect the Work and will either:

1. Reject the request for Final Acceptance, specifying the defective and/or uncompleted portions of the Work, or

2. Issue an executed Notice of Final Acceptance and record a Notice of Completion with the County Recorder.

B. If the District rejects the request for Final Acceptance; the Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, the Contractor shall again submit a written request for Final Acceptance of the Work, specifying a new date based on the date the defective and/or uncompleted portions of the Work were corrected. Thereafter, the foregoing procedure shall apply successively until District has verified that the Work is fully and finally completed and given the Contractor an executed Notice of Final Acceptance. Immediately upon and after such formal written acceptance by the District, the Contractor will be relieved of the duty of maintaining the Work as a whole.

All warranties commence upon Final Acceptance of the Work or Relief from Maintenance, whichever occurs first.

District's Final Acceptance of the Work shall not be construed as an acceptance by the District of any latent defects discovered with regard to Contractor's work. Furthermore, Contractor's obligations under Section 3.13, "Indemnification," shall still remain applicable after District's grant of Final Acceptance of the Work.

C. Record Documents and Operation and Maintenance Manuals.

Prior to issuance of the Notice of Final Acceptance by the District, the Contractor shall submit to the District the Record Documents and Operation and Maintenance Manuals as specified under Division 01.

9.06 FINAL PAYMENT AND CLAIMS

A. Final payment will be made only after Contractor has achieved Final Completion of the Work pursuant to the provisions of the section titled “Final Inspection and Acceptance of the Work” contained elsewhere in the Contract Documents. The Final Payment shall include the remaining balance of the contract price and any retention from progress payments previously withheld by the District.
Before final payment can be made, the Contractor shall have furnished the District with the following:

1. All As-Built drawings, catalogues, instruction sheets and information as required by the Contract Documents.

2. One signed copy of the Release as discussed below in this section and on a form furnished by the District.

Within thirty (30) days of the date of the District’s Notice of Final Acceptance, the Contractor shall prepare and submit a proposed Final Invoice, showing the proposed total amount due the Contractor, segregated by Bid item quantities, Change Order Work, and other basis for payments; deductions made or to be made for prior payment; and amounts previously retained. Prior invoices and payments shall be subject to correction in the proposed Invoice for Final Payment. Payments to the Contractor will be made only for the actual quantities of the Contract items of work constructed in accordance with the Contract Documents.

Submitted with Contractor’s proposed Final Invoice shall be its final documentation with respect to any claims that the Contractor has elected to continue to pursue; if there are no such claims, Contractor shall include a statement that there are no outstanding claims regarding the Work. The District shall consider no Claim filed with the proposed Final Invoice unless the Contractor has fully complied with the conditions of the Notice of Potential Claims, Protest Procedures and Delays and Extensions of Time sections of the Contract Documents.

The District will review the Contractor’s proposed Final Invoice and necessary changes or corrections will be forwarded to the Contractor. Within ten (10) days thereafter, the Contractor shall submit a revised proposed Final Invoice incorporating changes or corrections made by the District together with any new claims resulting therefrom. Upon approval by the District, the corrected proposed Final Invoice will become the approved Final Invoice.

If no claims are submitted with the proposed Final Invoice, and agreements are reached on all questions regarding the proposed Final Invoice, the District in exchange for an executed release, satisfactory in form and substance to the District as provided below, will pay the entire sum found due on the approved application. However, the District will withhold sums sufficient to pay all unsettled claims for which stop payment notices have been filed pursuant to Section 9350 et seq. of the California Civil Code, together with the reasonable cost of any litigation thereunder.

If the Contractor does submit claims with the proposed Final Invoice, then upon final determination of all the Contractor’s claims, the District will pay the entire sum found due upon the final invoice, including the amount, if any, allowed on claims, except that the District will withhold sums sufficient to pay all unsettled claims for which stop payment notices have been filed pursuant to Section 9350 et seq. of the California Civil Code, together with the reasonable cost of any litigation thereunder.

Claims filed by the Contractor shall be fully supported and made in sufficient detail to enable District to ascertain whether the basis and amount of said claims are valid. If additional information or details are required by the District to determine the validity of the claims, Contractor shall furnish such further information or details so that District receives the information or details no later than seven (7) days after receipt of the written request from the District. Failure to submit such information and details to the District within the time specified will be sufficient cause for denying the claim.
Contractor shall maintain and submit full and complete records of the costs and additional time incurred for the work for which a claim for additional compensation is made. District or its designated claim investigator shall have access to any additional records as may be required by the District to determine the facts and contentions involved in the claims. Failure to permit access shall be sufficient cause for denying the claims.

A notarized certificate indicating the following language shall accompany claims submitted by the Contractor:

Under the penalty of perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the claim submitted herewith for additional compensation and time, if any, made with respect to the Work on this Contract is a true and accurate statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between Contractor and District.

Name
Title
Date
Notary

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of an independent Certified Public Accountant. Any such overhead claim shall also be subject to audit by the District, and Contractor shall provide all records requested by the District in performing the audit.

Any costs or expenses incurred by the District in reviewing or auditing any claims that are not supported by the Contractor’s cost accounting or other records shall be deemed to be damages incurred by the District, shall be to the extent allowed under the California False Claims Act, or other applicable law.

G. The release from the Contractor shall be from any and all claims arising from the Work under and in connection with the Agreement and shall release and waive any claims against the District. The release shall be accompanied by a certification by the Contractor.

1. That it has resolved any claims made by Subcontractors, Suppliers and other against the Contractor or the Project.
2. That it has no reason to believe that any party has a valid claim against the Contractor or the Project which has not been communicated in writing by the Contractor to the District with the certification; and
3. That all warranties and guarantees are in full force and effect. The release and the certification shall survive Final Payment.

H. Final payment will be made within 30 days after receipt of an approved final invoice and other required submittals referenced above and determination of all Contractor’s claims, or
60 days after acceptance of the work by the District, whichever is later, provided, however, that if an approved final invoice has not been submitted within 60 days after acceptance of the work by the District, the District may elect to make payment of sums not in dispute without prejudice to the right of either the District or the Contractor in connection with such disputed sums.

The District may withhold from the Final Payment an amount not to exceed 150% of any amount in dispute between the District and the Contractor.

I. The making of final payment shall not operate to release the Contractor or its sureties from obligations arising under this Contract, the Project Forms and warranties as herein provided. Specifically, the making of final payment shall not constitute a waiver and release of claims by the District arising from

1. Unsettled or future liens,

2. Failure of the Work to comply with the requirements of the Contract Documents,

3. The terms of any warranties required by or contained in the Contract Documents,

4. The right to any insurance proceeds or the right to make any insurance or bond claims,

5. Any claims with respect to Contractor’s obligation of indemnity with respect to claims, asserted by third parties, or

6. Any latent deficiencies with the Work or Contractor’s fraud.

9.07 STOP PAYMENT NOTICES

A. The District will retain and withhold from payment to the Contractor sufficient sums to cover stop payment notices filed pursuant to Section 9350 et seq. of the California Civil Code, including an amount to provide for the reasonable cost of any litigation thereunder.

END OF PART 9
PART 10 - PROTECTION OF PERSONS AND PROPERTY

10.01 SUBSURFACE EXCAVATIONS, NOTIFICATION

A. The Contractor shall contact the regional notification center, “Underground Service Alert,” and schedule its Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Without limiting the foregoing, Contractor’s attention is directed to Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 and 4216.4, which provides, in part:

“Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.”

“(a) When the excavation is within the approximate location of subsurface installation, the excavator shall determine the exact location of subsurface installations in conflict with the excavation by excavating with hand tools within the area of the approximate location of subsurface installations as provided by the operators in accordance with Section 4216.3 before using any power-operated or power-driven excavating or boring equipment within the approximate location of the subsurface installation, except that power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there are no subsurface installations contained in the pavement.”

10.02 TRENCH EXCAVATION SAFETY PLAN

A. Attention is directed to California Labor Code Section 6705. At least five days in advance of excavation of any trench five feet or more in depth, the Contractor shall submit Working Drawings to the District’s Designated Representative showing the design of shoring, bracing, sloping and other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such Working Drawings vary from the shoring system standards established by the Cal-OSHA Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared and signed by a civil or structural engineer registered in the State of California. Nothing in this section shall be deemed to allow the use of a shoring, sloping or protective system less effective than that required by the Cal-OSHA Construction Safety Orders of the Division of Industrial Safety.

Contractor’s Working Drawings shall be subject to approval insofar as the details affect the character of the finished Work and for compliance with design requirements applicable to the construction when specified or called for, but details of the design will be left to the Contractor who shall be responsible for the successful construction of the Work. The District’s Designated Representative shall approve working Drawings before any Work involving such drawings is performed. It is expressly understood that approval of the Working Drawings shall not relieve the Contractor of any of its responsibility under the Contract of its obligations under the Contract Documents.
10.03 HAZARDOUS CHEMICALS AND WASTES

A. The Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances during the course of the Work. The Contractor shall immediately report any such release to the District. The Contractor shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the District by any agency as a result of such release and shall hold harmless, indemnify and defend the District from any claims arising from such release. For purposes of this section only, the term “claims” shall include:

1. All notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and

2. Any claim, cause of action, or administrative or judicial proceeding brought against the District, its directors, employees, and agents for any loss, cost (including reasonable attorney’s fees), damage or liability, sustained or suffered by any person or entity, including the District.

If the performance of the Work creates any hazardous wastes, those wastes shall be properly disposed of according to federal, state and local laws, at the expense of the Contractor. The Contractor shall dispose of the wastes under its own EPA Generator Number. In no event shall the District be identified as the generator. The Contractor shall notify the District of any such hazardous wastes and the District reserves the right to a copy of the results of any tests conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to its disposition. The Contractor shall hold harmless, indemnify and defend the District from any claims arising from the disposal of the hazardous wastes, regardless of the absence of negligence or other malfeasance by Contractor. Disposal of all Hazardous Materials must be done in accordance with all laws and regulations. Copies of a required regulatory documentation including copies of final manifests shall be supplied to the District.

10.04 PUBLIC SAFETY

A. The Contractor shall assume all responsibility for public safety during the performance of its Work, and all costs arising therefrom shall be included in the Contract Price. Whenever the Contractor’s operations create a condition hazardous to traffic or to the public, he shall furnish, erect and maintain, at its expense, such fences, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public. The Contractor shall establish the pedestrian detours with comparable lighting to the original pedestrian areas. The Contractor shall arrange for such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions affecting traffic. For Work in a public right-of-way, the Contractor shall comply with the rules and regulations of the State, County or local agency that owns the right-of-way.

B. The Contractor shall promptly and fully comply with and carry out, and shall without separate charge therefor to the District, all safety and first aid requirements prescribed by all applicable Federal, State and local laws and regulations, rules and orders. The Work shall be done in a safe manner; and Contractor shall safeguard the safety and health of its employees, Subcontractors, and the people of local communities. Contractor shall also be responsible for ensuring that its Subcontractors comply with the provisions of this section.
Upon the failure of the Contractor to comply with any of the requirements of this section, the District shall have the authority, but not the duty, to stop the Work until such failure is remedied. Contractor shall not be entitled to an adjustment of the Contract Time or an increase in the Contract Price due to any such suspensions.

C. When required by the Contract Documents, the Contractor shall construct, maintain and remove detours for the use of public traffic, without additional cost to the District, unless separate payment is specified in the Supplementary Conditions.

The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the work until such detours are in satisfactory condition for use by public traffic.

D. Due care shall be exercised to avoid injury to existing improvements or facilities, utility facilities, adjacent property and trees, shrubs and other plants that are not to be removed.

Trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines, sewer and waterlines, highway facilities, and any other improvements or facilities, under or above ground, that are within or adjacent to the work limit line shall be protected from injury or damage, and the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor’s operations, they shall be replaced or restored at the Contractor’s expense and Contractor shall pay for any fines and/or penalties that are imposed as a result. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work site, or as good as required by the Contract Documents if any such objects are a part of the Work. The District may make or cause to be made such temporary repairs as are necessary to restore to service any damaged facility. The cost of such repairs shall be borne by the Contractor, and the costs may be deducted from any monies due or to become due to the Contractor under the Contract.

The fact that any underground facility is not shown on the Contract Plans shall not relieve the Contractor of its responsibility pursuant to “Non-District Facilities,” elsewhere in the Contract Documents. It shall be the Contractor’s responsibility, pursuant thereto, to ascertain the location of such underground improvements or facilities, which may be subject to damage by reason of its operations.

Full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the Work involved in protecting or repairing property as specified in this section, shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefor.

10.05 EMERGENCIES

A. In an emergency affecting the safety of life, the Work, or adjoining property, the Contractor, without special instructions or authorization from the District, shall act at its discretion to prevent such threatened loss or injury. In such an emergency, the Contractor may perform such additional work as is reasonably required. Any compensation claimed by the Contractor on account of Work performed pursuant to an emergency shall be determined in accordance with the provisions relating to General Conditions Part 6.01 (titled: Changes) contained elsewhere in the Contract Documents.
PART 11 - MISCELLANEOUS PROVISIONS

11.01 LAWS TO BE OBSERVED

A. The Contractor shall keep itself fully informed concerning all requirements of law, including but not limited to all State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the Work, the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Contract Documents for the Work in relation to any such requirements, the Contractor shall immediately report the same to the District in writing.

The laws of the State of California shall govern the Contract Documents.

If any part of the Contract Documents is declared invalid by a court of law, such decision will not affect the validity of the remaining portion, which shall remain in full force.

11.02 RIGHTS IN LAND AND IMPROVEMENTS

A. The Contractor shall make no arrangements with any person or entity to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the District and any third party District, former District tenant of such land, structure or buildings. The Contractor shall not occupy District-owned property outside the limit of the Work shown on the Contract Drawings unless he obtains prior approval.

11.03 ANTITRUST CLAIMS

A. The Contractor's attention is directed to the following provision of Public Contract Code Section 7103.5(b), which shall be applicable to the Contractor and its subcontractors:

“In entering into a public works contract or a sub-contract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all right, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 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 sub-contract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgement by the parties.”

11.04 THIRD PARTY RIGHTS

A. No provisions of the Contract Documents shall in any way inure to the benefit of any third party (including the public at large) so as to constitute such person a third party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract Documents.

B. Pursuant to Public Contract Code section 9201, District shall have full authority to compromise or otherwise settle any third-party claim relating to the Contract at any time.
C. District shall provide for timely notification to the Contractor of the receipt of any third-party claim, relating to the contract. Notice shall be in writing and will be provided within thirty (30) days.

D. District shall be entitled to recover its reasonable costs incurred in providing the notification required by subdivision C.

11.05 ASSIGNMENT

A. The performance of the Contract may not be assigned except upon the written consent of the District. Consent will not be given to any proposed assignment, which would relieve the original Contractor or its surety of their responsibilities under the Contract, nor will the District consent to any assignment of a part of the Work under the Contract.

The Contractor may assign monies due or to become due under the Contract and such assignment will be recognized by the District, if given proper notice thereof, to the extent permitted by law, but any assignment of monies shall be subject to all proper set-offs in favor of the District and to all deductions provided for in the Contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by the District for the completion of the Work in the event that the Contractor should be in default therein.

11.06 RIGHTS TO DRAWINGS, TECHNICAL DATA AND PATENTS

A. Shop Drawings and Working Drawings submitted to the District by the Contractor, Subcontractor or any lower tier Subcontractor pursuant to the Contract, are the property of the District and the District may use, and disclose in any manner and for any purpose, Shop Drawings and Working Drawings delivered under the Contract.

B. Technical Data including manuals or instructional materials, computer or microprocessor software which are delivered or submitted to the District by the Contractor, Subcontractor, or any lower tier Subcontractor pursuant to the Contract are the property of the District, and the District may use or disclose same in any manner and for any purpose.

C. Patents. The Contractor shall assume all costs arising from the use of patented materials, equipment, devices or processes, used on or incorporated in the Work and shall indemnify and save harmless the District, and its duly authorized representatives, from all suits at law, or actions of every nature for, or on account of, the use of patented materials, equipment, devices or processes. In case such materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor, at its expense, shall:

1. Secure for the District the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license or licenses, or

2. Replace such materials, equipment, devices or processes, or

3. Modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid therefor without prejudice to any other rights of the District.

11.07 GRATUITIES AND CONFLICT OF INTEREST

A. The Contractor shall not offer or provide gratuities in the form of gifts, entertainment, loans, meals, rewards, and/or services to representatives of the District, including but not limited
to, employees, Board Members, agents, Engineering Service Consultants, Consulting Engineers and Architects, Inspectors and/or Testing Agencies retained by the District. If it is found that the Contractor has violated this provision, the Contract may be subject to termination for default as defined elsewhere in these General Conditions.

B. During the term of the Contract and until the final payment has been made to the Contractor, the Contractor shall not employ or compensate in any manner whatsoever, the District’s employees and authorized representatives, agents, and any Engineering Service Consultants, Consulting Engineers and Architects, Inspectors, and/or Testing Agencies retained by the District. Any exceptions to the employment or compensation to any of the above named parties must be made in writing by the District. If the Contractor offers or provides employment or compensation to those named above during the term of the Contract, the Contract may be subject to termination for default.

11.08 PROHIBITED INTERESTS

No member, director, officer or employee of the District during his or her tenure or for one year after that tenure shall have any interest, direct or indirect, in this Contract or proceeds under this Contract.

END OF PART 11
PART 12 - TERMINATION OF THE CONTRACT

12.01 TERMINATION OF CONTRACT FOR CAUSE

A. An “Event of Default” as referred to in this section may occur if the Contractor:

1. Fails to maintain progress of the Work in accordance with the requirements of the Contract Documents; or

2. Fails to prosecute the Work or any of its components in accordance with the Contract Documents; or

3. Persistently or repeatedly fails or refuses to supply sufficient properly skilled workers or proper material to permit the performance of the Work in accordance with the Contract Documents; or

4. Fails to make prompt payment to Subcontractors or Suppliers in accordance with the respective agreements between the Contractor and Subcontractor and Contractor and Supplier; or

5. Fails to comply with applicable laws, ordinances or rules, regulations or orders of a public authority having jurisdiction over the Work; or

6. Abandons, assigns or sublets the Contract without approval of the District; or

7. Becomes bankrupt or is subject to appointment of a receiver on behalf of Contractor; or

8. Otherwise is guilty of a substantial breach of a provision of the Contract Documents.

B. Upon the District’s reasonable belief that there has been an Event of Default by Contractor, District shall give the Contractor written notice thereof. The Contractor thereafter shall cure the default as soon as possible and in no event after ten (10) days from Contractor’s receipt of District’s written notice.

C. If the Contractor does not timely cure its default, the District may, without waiver of any of its other rights and remedies, elect to terminate the Contract, or portion thereof.

Upon the District's election to terminate the Contract, or portion thereof, the District shall have the right to complete the Work, or the portion involved, by whatever means and methods it deems expedient, including the hiring of others on such terms as the District deems advisable. The District shall have the right to take possession of the Contractor's materials, plant, tools, equipment and property of any kind provided by or on behalf of the Contractor for the purpose of the Work, or a portion of them, without being responsible to the Contractor for fair wear and tear. The Contractor shall have no rights in such property during its use by the District. The District shall not be required to obtain the lowest prices for completing the Work or a portion of it but shall make such expenditures as, in the District's sole judgment, best accomplish such completion.

The expense of completing such Work or portion thereof, together with a reasonable charge for engineering, managerial and administrative services, as certified by the District, shall be charged to the Contractor, and the expense so charged shall be deducted by the District out of such monies as may be due or may at any time thereafter become due to the Contractor. In case such expense is more than the sum which otherwise would have
been payable to the Contractor under the Contract, then the Contractor or its surety or sureties shall promptly pay the amount of such excess so due. When the District terminates the Contract under this section, the Contractor shall not be entitled to receive any further payments until the Work is completed and there has been a final settlement of costs of completing the Work covered by such notice of default.

D. The District will issue to the Contractor a written notice specifying that the Contract, or portion thereof, is terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the District, the Contractor shall:

1. Stop all Work under the Contract; or if partial termination, stop Work relating to the terminated portion of the Contract;

2. Perform Work the District deems necessary to secure the work site for termination including measures to leave the worksite in a safe condition.

3. Remove equipment from the site of Work, as specified by the District.

4. Take such action as is reasonably necessary to protect materials from damage.

5. Notify all Subcontractors and Suppliers that the Contract or portion thereof is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the District.

6. Provide the District with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the District may request;

7. Dispose of materials not used in the Work as directed by the District’s Designated Representative. It shall be the Contractor’s responsibility to provide the District (a) with good title to all materials purchased by the District hereunder, including materials for which partial payment has been made by District and (b) with bills of sale or other documents of title for such materials;

8. Subject to the prior written approval of the District, settle all outstanding liabilities and all claims arising out of Subcontracts or orders for materials terminated hereunder. To the extent directed by the District, the Contractor shall assign to the District all rights, title and interests of the Contractor under subcontracts or orders for materials terminated hereunder. District shall be at liberty to negotiate with and engage any Subcontractors who had contracted with Contractor for the Work.

9. Furnish the District with the documentation required to be furnished by the Contractor under the provisions of the Contract Documents, including, on projects as to which federal funds are involved, all documentation required under the federal requirements included in the Contract; and

10. Take such other actions as the District may direct.

E. If only a portion of the Work has been terminated, Contractor shall perform the remainder of the Work in conformity with the Contract Documents and in such a manner as not to interfere with District or others in their performance and completion of the portion of the Work which was terminated.
F. District may recover from Contractor the amount of any loss or damage, including consequential damages, suffered or incurred as a result of Contractor’s default.

12.02 TERMINATION FOR CONVENIENCE OF THE DISTRICT

A. The District may terminate the Contract, in whole or in part, at any time and for any reason, whenever the District shall determine that such termination is in the best interests of the District. Any termination which is not based on the circumstances set forth in Section 12.01 above shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective. In such event, Contractor shall be paid for all actual substantiated direct costs of materials furnished and Work performed up to the date of termination and such additional compensation as the District deems proper and reasonable to effect termination.

B. Upon Contractor's receipt of a written notice of termination for convenience, the Contractor shall cease Work as to those portions of the project so terminated and shall undertake the steps outlined in Section 12.01 above.

C. In the event that the District terminates this Contract under Section 12.01 above and it is determined for any reason that there was not sufficient cause to do so, the District's termination automatically will convert to a termination for convenience under this Section and the terms and conditions outlined in this Section automatically will be applied to effectuate the Contract termination. Thus, damages to which a Contractor may be entitled as a result of an improper default termination will be limited to the amounts provided for in this section.

END OF SECTION
SECTION 007300

SUPPLEMENTARY CONDITIONS

The following Sections are supplemental to the General Conditions, Section 007200.

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END OF SECTION
SECTION 007300
SUPPLEMENTARY CONDITIONS

PART 1 - GENERAL

1.01 ADDITIONAL PROVISIONS

Contractor may be subject to fines by public agencies for any violations and/or breach of contract provisions such as, but not limited to, improper traffic control, unapproved working hours, failure to maintain site cleanliness and dust control, construction safety and environmental health issues, improper or unapproved construction staging and material storage, the unnecessary restriction of on street parking when not required for construction operations, extended blockage of public access to the right-of-way or to private property. Fines will be determined at the sole discretion of the public agency or agencies who maintain rights to such property where Contractor performs work.

1.02 ADDITIONAL DEFINITIONS

A. City of Oakland Engineer – City of Oakland Public Works authorized representative.

B. City of San Leandro Engineer - City of San Leandro Public Works authorized representative.

C. Caltrans Engineer - State of California Department of Transportation authorized representative.

D. EBMUD Engineer - East Bay Municipal Utility District authorized representative.

E. BART Engineer - Bay Area Rapid Transit District authorized representative

F. PG&E Engineer - Pacific Gas & Electric authorized representative
SECTION 007315
PARTNERING

PART 1 - PARTNERING

1.01 GENERAL

The District strives to work cooperatively with all contractors; partnering is our preferred way of doing business. The District encourages project partnering among the project team made up of significant contributors from the District. The Contractor, the City of Oakland, Caltrans, The City of San Leandro and other invited stakeholders.

1.02 IMPLEMENTATION

A. In implementing project partnering, the District manages the Contract by:

1. Using early and regular communication with involved parties
2. Establishing and maintaining a relationship of shared trust, equity, and commitment
3. Identifying, quantifying, and supporting attainment of mutual goals
4. Developing strategies for using risk management concepts
5. Implementing timely communication and decision making
6. Resolving potential problems at the lowest possible level to avoid negative impacts
7. Holding periodic partnering meetings and workshops as appropriate to maintain partnering relationships and benefits throughout the life of the project
8. Establishing periodic joint evaluations of the partnering process and attainment of mutual goals

B. Partnering does not void any part of the Contract.

C. The Field Guide to Partnering on Caltrans Construction Projects is available to the project team as reference. This guide provides structure, context, and clarity to the partnering process requirements. For the guide, go to the Caltrans Division of Construction Web site.

D. In implementing project partnering, the project team must:

1. Create a partnering charter that includes:
   a. Mutual goals, including core project goals and may also include project-specific goals and mutually supported individual goals
b. Partnering maintenance and close-out plan

c. Dispute resolution plan that includes a dispute resolution ladder and may also include use of facilitated dispute resolution sessions

d. Team commitment statement and signatures

2. Participate in bi-monthly, (i.e., every other month) partnering evaluation surveys to measure progress on mutual goals and may also measure short-term key issues as they arise.

3. Evaluate the partnering facilitator on the Partnering Facilitator Evaluation forms. The District provides the evaluation forms to the project team and collects the results. The District makes evaluation results available upon request. Facilitator evaluations must be completed at the end of:

   a. Initial partnering workshop

   b. Project close-out partnering workshop

4. Conduct a project close-out partnering workshop

5. Document lessons learned before Contract acceptance

### 1.03 Optional Training in Partnering Skills Development

A. The Contractor, the District and the major stakeholders cooperatively schedule the training session and select a professional trainer, training site, and 1 to 4 topics from the following partnering skills list to be covered in the training:

1. Active listening
2. Building teams
3. Change management
4. Communication
5. Conflict resolution
6. Cultural diversity
7. Dealing with difficult people
8. Decision making
9. Effective escalation ladders
10. Emotional intelligence
11. Empathy
12. Ethics Facilitation
13. Skills Leadership
14. Partnering process and concepts
15. Project management
16. Project organization
17. Problem solving
18. Running effective meetings
19. Time management
20. Win-win negotiation

B. Before the initial partnering workshop, the trainer conducts a 1-day training session in partnering skills development for the Contractor's and the Engineer's representatives. This training session must be a separate session from the initial partnering workshop and must be conducted locally. The training session must be consistent with the partnering principles under the Field Guide to Partnering on Caltrans Construction Projects.

C. The Contractor, the District, and the other major stakeholders will send at least 2 representatives to the training session.

1.04 PAYMENT AND COST SHARED

A. Cost Share:

1. The District and the Contractor shall each pay 1/2 of partnering workshops and sessions based on facilitator and workshop site cost

2. The District and the Contractor shall each pay 1/2 of monthly partnering evaluation survey service cost

3. The District shall pay the full cost of the Optional Partnering skills development trainer and training site cost

B. The District determines the costs based on invoice prices minus any available or offered discounts. The District does not pay markups on these costs.

END OF SECTION
SECTION 007316
INSURANCE REQUIREMENTS

PART 1 - INSURANCE REQUIREMENTS

1.01 GENERAL

A. Any person, firm or corporation Contractor authorizes to work upon the Property, including any subcontractor, shall be deemed to be Contractor's agent and shall be subject to all the applicable terms of this Section. Prior to entry upon the Property by such agents, Contractor shall provide AC TRANSIT with satisfactory evidence (e.g., in the form of a Certificate of Insurance) that it and its Subcontractors or other agents who will perform work under this agreement are insured in accordance with the following. Such insurance shall remain in effect throughout the term of this Agreement and shall be at the sole cost and expense of Contractor (or its agents or Subcontractors).

It is strongly recommended that contractors confer with their respective insurance carriers and/or brokers to determine in advance of proposal submission the availability of insurance, Certificates and Endorsements as prescribed and provided herein. If a contractor fails to comply strictly with the insurance requirements, that contractor may be disqualified from award of the contract. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages for property which may arise from or in connection with the performance of the work hereunder by the Contractor, Contractor’s agents, representatives, employees or subcontractors. The District reserves the right to alter, amend, increase or otherwise modify the insurance requirements stated herein.

1.02 WORKERS’ COMPENSATION COVERAGE

A. Contractor shall at its own cost and expense, procure and maintain Workers' Compensation coverage to its employees for the duration of the contract and as required by the California Labor Code. Likewise, Contractor shall require all of its subcontractors to procure and maintain Workers' Compensation Insurance for the duration of the contract. The Contractor shall also maintain Employer's Liability coverage with minimum limits of $1 million per occurrence.

B. The policy shall contain a waiver of subrogation in favor of AC TRANSIT and its respective officers, directors, employees, volunteers and agents, City of Oakland, City of Leandro, and State of California Department of Transportation while acting in such capacity.

C. Prior to commencing work or entering onto the Property, Contractor shall provide the District’s Designated Representative with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate and policy shall also provide that the Contractors' policy will not be cancelled without 30 days prior written notice to the District’s Designated Representative.
1.03 COMMERCIAL GENERAL LIABILITY

A. Contractor shall, at its own cost and expense, procure and maintain for the duration of the contract Commercial General Liability insurance which shall include, as additional insureds, AC TRANSIT, and its respective directors, officers, employees, volunteers and agents, City of Oakland, City of Leandro, and State of California Department of Transportation while acting in such capacity.

B. The insurance shall provide bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least $2 million per occurrence or claim and a general aggregate limit of at least $2 million. This insurance shall include but not be limited to premises and operations; contractual liability, personal and advertising injury; explosion, collapse, and underground coverage, products and completed operations, and broad form property damage.

C. Prior to commencing work or entering onto the Property, Contractor shall provide the District’s Designated Representative of AC TRANSIT with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy.

D. The policy(ies) shall indicate that it is primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by AC TRANSIT. The policy shall contain a waiver of subrogation in favor of AC TRANSIT and its respective directors, officers, employees, volunteers, agents, City of Oakland, City of Leandro, and State of California Department of Transportation while acting in such capacity.

E. The policy shall also contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of AC Transit, City of Oakland, City of Leandro, and State of California Department of Transportation as additional insureds shall not in any way affect AC TRANSIT’s rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Contractor. Said policy shall protect Contractor and AC TRANSIT in the same manner as though a separate policy had been issued to it, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

F. For any claims related to this Contract, the Contractor’s insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, directors and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, directors, employees, or volunteers shall be in excess of the Contractor’s insurance and shall not contribute with it.

G. Any Failure with reporting provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its officers, officials, directors or employees.

1.04 AUTOMOBILE LIABILITY

A. Contractor shall, at its own cost and expense, procure and maintain for the duration of the contract Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least $2 million per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from commercial general liability insurance. Coverage is to be equal to Insurance Services Business Auto Form CA0001 (01/87) covering Automobile Liability, code 1 (any auto).
Such insurance shall include, as additional insureds, AC TRANSIT and its respective directors, officers, employees, volunteers, and agents, City of Oakland, City of Leandro, and State of California Department of Transportation while acting in such capacity. Said policy shall contain a waiver of subrogation in favor of AC TRANSIT and its respective directors, officers, employees, volunteers, agents while acting in such capacity. Prior to commencing work or entering onto the Property, Contractor shall provide the Director, Procurement & Materials of AC TRANSIT with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy.

B. If Contractor’s property is self-insured, Contractor hereby agrees to waive any subrogation rights it may acquire in favor of the AC TRANSIT and its respective directors, officers, employees, volunteers, agents while acting in such capacity.

C. For any claims related to this Contract, the Contractor’s insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, directors and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, directors, or volunteers shall be in excess of the Contractor’s insurance and shall not contribute with it.

D. Any Failure with reporting provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its officers, officials, directors or employees, City of Oakland, City of Leandro, and State of California Department of Transportation.

1.05 **BUILDER’S RISK / “ALL-RISK” INSURANCE**

A. Contractor will be responsible for purchasing and maintaining an “All Risks” Builder’s Risk insurance policy covering the full value of the work, excluding seismic coverage, insuring the interests of the District, the Contractor and Subcontractors of all tiers. The Contractor will be responsible for any deductible under this policy on each and every loss occurrence.

B. The policy will cover all materials, supplies and equipment that are intended for construction and specific installation in the project, while such materials, supplies and equipment are located at the project site, in transit and while temporarily located away from the project site. The policy will also cover all physical loss to the work on a replacement cost basis with limits no less than the total Contract value. Any loss under the insurance shall be payable to AC TRANSIT and the Contractor as their interests appear in the damaged property.

C. Any property not covered by the Builder’s Risk insurance policy, such as the Contractor’s or any subcontractor’s personal property, shall also be the Contractor’s responsibility. The District will not be responsible for loss or damage to property of any kind owned or leased by the Contractor, the Contractor’s Subcontractors of all tiers, and/or the Contractor’s and Subcontractors’ employees or agents.

D. The Contractor shall provide a Certificate of Insurance to the District evidencing this insurance, as well as a waiver of subrogation endorsement.

E. The Contractor shall include AC TRANSIT, and its respective directors, officers, employees, volunteers and agents as additional insureds.
1.06 PROFESSIONAL LIABILITY INSURANCE

A. The following provision(s) apply to any licensed professional engaged by the contractor to perform portions of the Work.

B. Each Professional shall maintain the following insurance: Professional Liability Insurance, insuring against professional errors and omissions arising from Professional’s Work on the Project, in an amount not less than $1,000,000 combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than two years following Final Completion of the Project.

1.07 GENERAL INSURANCE REQUIREMENTS

A. Acceptable Insurance

1. All policies will be issued by insurers acceptable to AC TRANSIT (generally with an A.M Best & Co. Rating of no less than A:-VII). Upon evidence of financial capacity satisfactory to AC TRANSIT, Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance. All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Contractor's personnel and equipment have been removed from the Property, and the Work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Contract.

2. Prior to commencing work or entering onto the Property, Contractor shall provide the District’s Designated Representative with a Certificate(s) of Insurance evidencing the coverage listed above, and upon request, a certified duplicate original of the policy(ies). The Certificate shall stipulate that the insurance company(ies) issuing such policy(ies) shall give written notice to the District’s Designated Representative of any material alteration or reduction in coverage of aggregate limits, if such limits apply, and provide at least thirty (30) days’ notice of cancellation.

3. Each policy required shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party or reduced in coverages or limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to the District.

4. Should any work under this Contract be sublet, Contractor shall require each Sub-Contractor of any tier to comply with all of the agreement’s insurance provisions and provide the proof of such compliance to the District.

5. These insurance requirements are not intended to and shall not in any manner limit or otherwise qualify the liabilities and obligations otherwise assumed by the Consultant under this Contract, including but not limited to the provisions concerning indemnification.

6. Compliance with these insurance requirements is considered a material part of the Contract and breach of any such provision may, at the option of the District, be considered a material breach of the Contract and result in action by the District to withhold payment and/or terminate the Contract.
B. Claims-Made Insurance

1. If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

   a. Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements). Each Policy is to be on an "occurrence" form. The "Claims Made" form requires District as well as Contractor being required to provide evidence of the Policy's retroactive date.

   b. Contractor shall make every effort to maintain similar insurance for at least five (5) years following project completion, including the requirement of adding all named insureds.

   c. If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Contractor Permit.

   d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

   e. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurer's liability.

C. Failure to Procure or Maintain Insurance

The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of the agreement.

D. Regulatory Compliance

In addition to the requirements described above, Contractor shall comply with any additional coverages required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations. The Contractor and/or Subcontractors shall obtain all permits, licenses and other forms or documentation that are required and forward them with the required evidence of insurance to District.

E. Terms of Policies

Except as provided in Section 2 concerning claims made insurance policies, all insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Contractor's personnel and equipment have been removed from District's property, and the Work has been formally accepted.

F. Evidence of Insurance

The Contractor shall furnish to District Certificates of Insurance or, upon request a certified copy of all policies, for all specified coverages prior to commencing work within ten (10) business days of award of Contract. All policies and certificates required hereunder shall provide for thirty (30) days written notice to the District of cancellation or reduction in limits. The certificates and policies shall also evidence any specific requirements of coverage as set forth in this Section.
G. Reporting of Incidents, Losses or Claims

1. The Contractor agrees to immediately notify AC TRANSIT’s DDR following any accident or injury, which occurs in connection with the Work under this Contract. In addition, the Contractor shall provide a detailed written report of the accident or injury to AC TRANSIT within seven (7) days of its occurrence.

END OF SECTION
SECTION 007339

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

A. This solicitation and resulting contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal of 8% has been established for this procurement. The Contractor must indicate in its bid via its list of subcontractors its intention to satisfy the 8% DBE goal or provide adequate good faith effort documentation of its attempts to satisfy the 8% DBE goal including, but not limited to two-way communications with DBE firms aimed at establishing a contract and verifiable reasons as to why a contract did not result and advertising of the contractor’s attempt at gaining DBE participation.

B. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the District deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

C. The successful bidder/offeror will be required to report its DBE participation obtained throughout the period of performance.

D. The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the Contractor’s receipt of payment for that work from the District.

E. The Contractor must promptly notify the District whenever a DBE Subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the District.

F. Use of DBE Financial Institutions.

Pursuant to 49 CFR §26.27, the District strongly encourages contractors and subcontractors to utilize the services offered by DBE financial institutions. A list of DBE financial institutions can be found online at http://www.fms.treas.gov/mbdp/current_list.html or provided by the District’s Contracts Compliance Administrator, Phillip McCants via email request to pmccants@actransit.org.

END OF SECTION
SECTION 007343

PREVAILING WAGES

PART 1 – PREVAILING WAGES

1.01 PAYMENT OF PREVAILING WAGES

This Contract will be subject to both federal and state prevailing wage laws. The federal requirements (Davis-Bacon Act) are included in Section 007373 of the Contract Documents. The state requirements are set forth below in Section 1.02. To the extent the Contract provisions required by the FTA and State law are inconsistent; the Contractor is responsible for complying with the more comprehensive or stricter requirements, i.e., paying the higher of the two wages.

1.02 CALIFORNIA PREVAILING WAGE REQUIREMENTS

A. General

The Contractor and any Subcontractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Contractor and any Subcontractor shall, as a penalty, forfeit to the state or political subdivision not more than $200 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the Director of Industrial Relations for the work or craft in which the worker is employed under the contract. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of whether the failure to pay the correct rate of per diem wages was due to the Contractor’s good-faith mistake, and on the previous record of the Contractor or Subcontractor in meeting their respective prevailing wage obligations. In addition to said penalty, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or Subcontractor.

If a worker employed by a Subcontractor on a public works project is not paid at least the general prevailing per diem wages by the Subcontractor, the Contractor shall not be liable for the penalties described above unless the Contractor had knowledge of that failure of the Subcontractor to pay the specified prevailing rate of wages to those workers or unless the Contractor fails to comply with all of the following requirements:

1. The contract executed between the Contractor and the Subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.

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

3. Upon becoming aware of the Subcontractor’s failure to pay at least the specified prevailing rate of wages to the subcontractor’s workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public work project.
4. Prior to making final payment to the Subcontractor for work performed on the public works project, the Contractor shall obtain an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor has paid at least the specified general prevailing rate of per diem wages to the Subcontractor’s employees on the public works project and any amount due pursuant to 1813 of the Labor Code.

Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify the Contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a Subcontractor on that public works project to pay workers at least the general prevailing rate per diem wages.

Pursuant to the provisions of Section 1773 of the Labor Code, the District has obtained the general prevailing rate of wages applicable to categories of workers the District anticipates will be utilized for this project for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workers concerned, or if no collective bargaining applies, those holidays identified in Government Code Section 6700. In the event that the Contractor intends to utilize categories of workers different from, or in addition to, those anticipated by the District, it shall be Contractor's responsibility to bring such categories of workers to the District’s attention immediately, and to obtain the appropriate wage rate from the Department of Industrial Relations (with the District’s assistance if necessary). (See Title 8 California Code of Regulations Section 16202.)

The Contractor shall post general prevailing wage rates at a prominent place at the site of the Work.

Pursuant to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204, changes in general prevailing wage determinations shall apply to the project only if issued by the Director of Industrial Relations prior to the District’s bid issuance date.

1.03 FUTURE WAGE INCREASES

The District will not recognize any claim for additional compensation based on the payment by the Contractor of any increased wage rate required during the term of the Contract to the state prevailing wage rate, or the federal minimum wage rate. The possibility of wage increases during the course of the Contract is one of the elements to be considered by the Contractor in determining the bid, and such wage increases will not, under any circumstances, be considered as the basis of a claim against the awarding body with regard to the Contract.

1.04 COORDINATION WITH CALIFORNIA PREVAILING WAGES

When both California and Federal prevailing wage rates apply, the Contractor and any Subcontractors shall pay their workers the higher of the two rates. The Contractor and any Subcontractors shall insert this clause in any lower tier contract.

1.05 GENERAL WAGE DETERMINATIONS

END OF SECTION
SECTION 007349

PROJECT LABOR AGREEMENT

See Attachment B: Project Labor Agreement

END OF SECTION
SECTION 007350
CONSTRUCTION CAREERS POLICY

PART 2 – GENERAL

2.01 PURPOSE

The Alameda-Contra Costa Transit District ("AC Transit") operates a bus system serving Alameda and Contra Costa counties, and owned by the public. AC Transit’s Bus Rapid Transit project ("BRT Project"), scheduled to commence operation in 2017, will generate substantial employment and business opportunities through the construction phase.

For purposes of the BRT Project, AC Transit has implemented targeted hiring strategies focused on areas of high unemployment, and on individuals with barriers to employment. These objectives will be advanced by targeting the BRT Project’s construction employment and training opportunities in ways calculated (i) to mitigate the harms caused by geographically-concentrated poverty, (ii) to fight unemployment and underemployment in vulnerable populations and neighborhoods, including populations with barriers to employment, (iii) to advance the skills of targeted workers and enable workers to earn wages that will assist them in moving out of poverty, (iv) to provide links to career paths for targeted workers, and (v) to facilitate rapid completion of the BRT Project.

These objectives will also be advanced, and the proprietary interests of AC Transit will be protected, by avoidance of labor misunderstandings, grievances and conflicts on the BRT Project. Project labor agreements minimize the possibilities for such controversies, thereby promoting project cost containment, timely and economical project completion. Project labor agreements can also facilitate efforts to target construction job opportunities as described above. AC Transit therefore shall implement this Policy through the negotiated project labor agreement and any subsequent amendments by its Board of Directors that facilitate achievement of the goals of this Policy.

Capitalized terms herein shall have the definitions set forth in Section II, below.

2.02 DEFINITION OF TERMS

A. The following capitalized terms shall have the following meanings in this Policy. These definitions encompass both the singular and plural form.

1. "AC Transit" means the Alameda-Contra Costa Transit District.

2. "Apprentice" means an individual registered and participating in an apprenticeship program approved by the US Department of Labor (DOL) and/or California Division of Apprenticeship Standards.

3. “BRT Project” means the AC Transit Bus Rapid Transit Project, as described in the "Record of Decision on the East Bay Bus Rapid Transit Project in Alameda County, California," issued by the Federal Transit Administration on June 8, 2012, including attachments.

4. “Building Trades Council” means the Building and Construction Trades Council of Alameda County, AFL-CIO.
5. “Chronic Unemployment” means unemployment as defined by the U.S. Bureau of Labor Statistics and lasting 27 weeks or longer.

6. “Construction Contract” means a contract to perform construction work on the BRT Project.

7. “Contractor/Subcontractor/Employer” or “C/S/E” means any individual firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and which has entered into a contract with AC Transit, the Prime Contractor, or another C/S/E, subcontractor, or owner/operators of any tier, with respect to the construction of any part of the BRT Project.

8. “Criminal Justice System Involvement” means direct involvement with the criminal justice system through having an arrest record, or indirect involvement through affiliation or residency in an area with high levels of gang activity as identified/verified by a law enforcement agency.

9. “Disadvantaged Worker” means an individual who, prior to commencing work on the BRT Project, is domiciled in an Economically Disadvantaged Area and faces at least two of the following barriers to employment: (1) being homeless; (2) being a custodial single parent; (3) receiving public assistance; (4) having a criminal record or other Criminal Justice System Involvement; (5) suffering from Chronic Unemployment; (6) emancipated from the foster care system; or (7) being a veteran of the U.S. military.

10. “Economically Disadvantaged Area” means a zip code that includes a census tract or portion thereof in which the median annual household income is less than $40,000 per year, as measured and reported by the U.S. Census Bureau in the 2010 U.S. Census and as updated upon the U.S. Census Bureau issuing updated Median Annual Household Income data by census tract in the American Community Survey.

11. “Employment Hiring Plan” means a plan presented by a C/S/E to AC Transit, requiring approval by AC Transit’s General Manager or his or her designee prior to commencement of performance of Project Work, as described in Section III.4 of this Policy.

12. “Alternative Referral Source” means an independent third-party individual, entity or employee with approved by AC Transit as having the capacity to promptly refer Targeted Workers to C/S/Es.

13. “Letter of Assent” means the document that formally binds each C/S/E to adherence to all the forms, requirements and conditions of the PLA.

14. “Policy” means this Construction Careers Policy for the BRT Project. This Policy shall govern BRT Project construction contracts, under terms set forth herein.


16. “Prime Contractor” means a C/S/E that has entered into a Prime Contract.
17. “Project Labor Agreement” or “PLA” means an agreement regarding construction work on the Project and entered into by AC Transit, the Building Trades Council, and affiliated construction trade unions, providing labor peace commitments, governing certain working conditions, and facilitating satisfaction of Targeted Hiring Requirements.

18. “Project Work” means construction work performed in the construction of the BRT Project. AC Transit reserves the right to designate scope of construction work at all times.

19. “Reporting Period” means the monthly reporting period for measuring the compliance of a Prime Contractor with Targeted Hiring Requirements. These monthly reporting periods will continue until construction of the BRT Project has been completed.

20. “Targeted Hiring Requirements” means the requirements set forth in Section III.B.3 of this Policy.


22. “Union” means a construction trade union that executes a PLA.

PART 3 - COVERAGE OF PROJECT.

3.01 COVERAGE

A. Except as provided otherwise herein, this Policy applies to all BRT-related construction contracts.

B. AC Transit shall modify or not enforce any aspect of the Policy in accordance with a valid and binding instruction from the U.S. Department of Transportation.

PART 4 - IMPLEMENTATION

4.01 IMPLEMENTATION

A. All Requests for Proposal/Invitations for Bid specifications for the BRT Project shall require all C/S/Es submitting bids or proposals to agree to the terms of this Policy and any PLA. All references in this Policy to C/S/Es’ responsibilities under a PLA are not applicable to C/S/E’s falling under any DBE exemption provision of a PLA.

B. All Prime Contracts shall include a provision obligating all C/S/Es to comply with the terms of this Policy through incorporation into Construction Contracts, and with any PLA through a Letter of Assent to AC Transit.

C. The Prime Contract shall include provisions establishing liquidated damages amounts as described in Section III.B.5.a of this Policy, enforceable by AC Transit in its sole discretion.
PART 5 - EXCLUSIONS AND/OR MODIFICATIONS

5.01 EXCLUSIONS AND/OR MODIFICATIONS

A. This Policy shall only apply to Construction Contracts, as defined in Section II (Definition of Terms), subject to such limitation as set forth herein.

B. This Policy shall not apply to, or impact in any way, service contracts or operation, inspection or maintenance contracts entered into by AC Transit including, but not limited to, such contracts relating to the BRT Project, services provided at any AC Transit facility or building, and/or the operation or maintenance of any AC Transit-owned or AC Transit-operated facilities or buildings.

C. This Policy shall not apply to a C/S/E’s non-manual employees, including, but not limited to, superintendents, supervisors, staff engineers, quality control and quality assurance personnel, time keepers, mail carriers, clerk, office workers, messengers, guards, safety personnel, emergency medical and first aid technicians, and other engineering, administrative, supervisory, and management employees.

D. This Policy shall not apply to material suppliers of raw materials, manufactured products, offsite hauling or delivery by any means of material, supplies, or equipment required to any point of delivery, except an offsite prefabrication facility dedicated solely to Project Work.

E. This Policy shall not apply to officers and employees of AC Transit, nor shall it apply to work performed by or on behalf of other governmental entities and public utilities.

F. This Policy shall not apply to the work of persons, firms and other entities that perform consulting, planning, scheduling, design, environmental, geological, management, or other supervisory services on any AC Transit project including, but not limited to, consultants, engineers, architects, geologists, construction managers, and other professionals hired by AC Transit or any other governmental entity.

G. This Policy shall not apply to the common division of work recognized through local practice for systems integration and testing, as-built documentation, including, but not limited to, those items excluded by the National Electrical Code (NFPA70) identified projects as “Not Covered” under Article 90.

H. The provisions of this Policy shall not be applicable where prohibited by federal or state law, or where the application would violate or be inconsistent with the terms and conditions of a grant or a contract with an agency of the United States or the State of California, or the valid instructions of an authorized representative of any of these agencies with respect to any grant or contract. If enforcement of any provision of this Policy is enjoined by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

PART 6 - TARGETED HIRING

6.01 TARGETED HIRING

A. Each Prime Contractor and its C/S/Es shall ensure that at least 20% of all hours of Project Work will be performed by apprentices, but the hours performed by apprentices in each individual craft shall not exceed the ratio to journeyman established by the applicable craft union’s approved apprenticeship standards. Disadvantaged Workers will perform 25% of all apprenticeship hours worked on the BRT Project.
B. Each Prime Contractor and its C/S/Es shall comply with U.S. Executive Order 11246 and all implementing regulations, as amended from time to time, including satisfaction of hiring goals for minorities (25.6%) and women (6.9%).

C. Apprentice Sponsorship Requirements: In each calendar year, for each twenty thousand (20,000) hours of Project Work performed by a Prime Contractor and its C/S/Es, such Prime Contractor and/or any of its C/S/Es shall sponsor one or more Disadvantaged Workers as a newly enrolled apprentice, and employ such Disadvantaged Worker(s) for an aggregate total of at least one thousand hours of Project Work and/or construction work on other projects during the term of the Prime Contractor’s Project Work.

D. Local Hire Requirement: Each Prime Contractor and its C/S/Es, pursuant to approval by the District’s Board of Directors, are required to make a Good Faith Effort to employ local residents of Oakland and San Leandro for at least 50% of all hours of Project work on a craft-by-craft basis through procedures including requests for local residents from union hiring halls and Alternative Referral Sources.

E. Contractor Procedures. C/S/Es shall undertake the following steps in the following order, in an effort to retain Targeted Workers.

1. Step One: Utilize the C/S/E’s discretion to assign to perform Project Work any current employees who are Targeted Workers;

2. Step Two: If the C/S/E utilizes a Union hiring hall to retain workers, utilize name call, rehire, or similar procedures in the relevant collective bargaining agreement to request particular individuals who have been identified as Targeted Workers;

3. Step Three: If the Contractor utilizes a Union hiring hall to retain workers, request that the hiring hall refer Targeted Workers;

4. Step Four: If the above steps have not enabled satisfaction of the percentage requirements set forth in Section III.B.3 of this Policy related to hiring of Targeted Workers, request referral of needed categories of workers from an Alternative Referral Source;

5. Step Five: Fairly consider workers that have been referred by an Alternative Referral Source within three (3) business days of request therefor.

PART 7 - COMPLIANCE

7.01 COMPLIANCE

A. AC Transit or its authorized representatives shall determine whether a Prime Contractor and its C/S/Es have complied with the requirements of this Policy and any PLA. A Prime Contractor is ultimately responsible for it and its C/S/Es’ compliance with Policy and PLA requirements.

1. If, after taking into account all hours of Project Work performed under a Prime Contract up to that point in time of the Reporting Period, the Targeted Hiring Requirements have been satisfied for that Prime Contract, then the Prime Contractor and its C/S/Es working on that Project shall be deemed to be in compliance at that time.
2. If the Targeted Hiring Requirements have not been satisfied for the BRT Project for a Reporting Period, the Prime Contractor nonetheless may be deemed to be in compliance if it demonstrates both (a) that it and each of its C/S/Es have complied with all other requirements of the PLA and this Policy, and (b) that it and each C/S/E have either (i) satisfied the Targeted Hiring Requirements with regard to the Project Work that it has performed or (ii) satisfactorily demonstrated the following:

a. Adherence to procedures contained in its Employment Hiring Plan as approved by AC Transit.

b. Requests to Unions, through written requests, of sufficient numbers of Targeted Workers to meet the percentages set forth in the Targeted Hiring Requirements for that C/S/E’s portion of Project Work.

c. Documented contact with alternative referral sources in each instance when the relevant Union did not refer qualified Targeted Workers within the 48 hours following the C/S/E’s request.

d. The C/S/E’s fair consideration of any Targeted Worker subsequently referred by Alternative Referral Sources.

3. Accurate records documenting the C/S/E’s compliance efforts include (but are not limited to) the following:

a. A listing by name and address of all recruitment sources contacted by the C/S/E;

b. The date of the recruitment contact and the identity of the person contacted, the trade and classification and number of hire referrals requested;

c. The number of Targeted Worker hires made as a result of the contact;

d. The identity and address of the worker(s) hired pursuant to the contact;

e. Documentation of when a referral was not hired (reason for non-hire) and/or premature termination.

PART 8 – ENFORCEMENT

8.01 LIQUIDATED DAMAGES

A. Each Prime Contractor agrees to the following:

1. The Prime Contractor and its C/S/E’s commitment to comply with the requirements this Policy and any PLA are material elements of the Prime Contract.

2. The Prime Contractor will be liable to AC Transit for Liquidated Damages as provided in this Section.
3. The failure of the Prime Contractor and its C/S/Es to comply with the requirements of this Policy will cause harm to AC Transit and the public which is significant and substantial but extremely difficult to quantify.

4. Due to the difficulty of estimation of damages for violation(s) of requirements of this Policy, the Prime Contractor agrees to pay liquidated damages in amounts as follows:
   a. The Prime Contractor shall pay liquidated damages equal to the average journeyperson wage on the BRT Project for each hour the BRT Project fell short of satisfaction of the Targeted Hiring Requirements.
   b. If the Prime Contractor is out of compliance with the Targeted Hiring Requirements during any Reporting Period, the Prime Contractor shall meet with AC Transit to develop a plan for compliance. The Prime Contractor has until the next Reporting Period to effectuate compliance, or Liquidated Damages shall be withheld from progress payments.
   c. Before Liquidated Damages are assessed, the Prime Contractor shall be notified of the proposed Liquidated Damages and served with a summary of the information upon which the Liquidated Damages are based.
   d. Liquidated Damages shall be withheld from all subsequent monthly progress payment request(s) as disputed funds until such time as Prime Contractor is found to be in compliance, or the relevant Prime Contract is terminated or completed.
   e. Should the relevant Prime Contract be terminated or completed before the Prime Contractor is found to be in compliance, any additional Liquidated Damages shall be withheld from the Prime Contractor's retention payment.

B. Liquidated Damages Appeal

1. The Prime Contractor may appeal the assessment of Liquidated Damages before AC Transit's General Manager. Prior to the hearing, the Prime Contractor shall be provided a summary of the information upon which the recommendation assessment is based.

2. The Prime Contractor must request an appeal in writing within 10 calendar days of receipt of the Liquidated Damages assessment summary. At the hearing, the Prime Contractor will be allowed to provide evidence that it has made all of the showings required under Section III.B.4.b of this Policy. Failure to submit a written request for an appeal within the time frame stipulated in this Section will be deemed a waiver of the right to appeal and the recommendation for assessment of Liquidated Damages will be implemented.

C. Termination

Consistent, substantial violations of this Policy by any Prime Contractor may result in contract termination.
PART 9 - SPECIAL LIMITED PURPOSE COMMITTEE

9.01 SPECIAL LIMITED PURPOSE COMMITTEE

A. The District’s General Manager has appointed a Special Limited Purpose Committee to (a) assist AC Transit with compliance with this Policy and (b) make recommendations to AC Transit related to implementation of the Policy. The Special Limited Purpose Committee will consist of one San Leandro community representative, one Oakland community representative, one construction trades union representative, one AC Transit representative and one C/S/E representative. At the conclusion of each Reporting Period, the Committee may review any compliance information provided by C/S/Es to AC Transit. In the event that AC Transit or another governmental agency having jurisdiction over the subject matter of this Policy deems a C/S/E to be out of compliance with the Policy, that C/S/E will meet with AC Transit and the Special Limited Purpose Committee (unless otherwise directed by AC Transit) to discuss Policy implementation issues and challenges to facilitate future compliance. The committee may also recommend changes to facilitate compliance, and AC Transit will notify the committee not less than 30 days before the AC Transit Board formally considers any change to the Policy.

PART 10 - WORKFORCE DEVELOPMENT FUND

10.01 WORKFORCE DEVELOPMENT FUND

A. AC Transit requires each C/S/E to contribute $0.10 per hour of Project Work to a workforce development fund administered by AC Transit with the advice of the Special Limited Purpose Committee. AC Transit will ensure that expenditures from the fund are used exclusively to train and refer for employment on the Project workers who are either Disadvantaged Workers or are in a category designated for employment and training efforts by United States Executive Order 11246 and its implementing regulations, as amended from time to time.

PART 11 – RESPONSIBILITIES

11.01 AC TRANSIT RESPONSIBILITIES

A. AC Transit or its designee shall ensure that the following responsibilities are met for the BRT Project:

1. AC Transit shall ensure that each Construction Contract includes the detailed requirements of this Policy and any PLA, as required terms for the Prime Contractor and other C/S/Es.

2. Pursuant to the executed PLA, AC Transit shall collect a Letter of Assent from each C/S/E and ensure that the letters are distributed to all required parties.

3. AC Transit shall review, approve or disapprove Employment Hiring Plan (EHP) submissions prior to a C/S/E’s estimated start of work. Approval of a C/S/E to work on the BRT Project is contingent upon approval of a C/S/E’s EHP.
4. AC Transit shall monitor and enforce the requirements of the PLA and this Policy, and shall take compliance action where appropriate.

5. AC Transit shall assess Liquidated Damages in accordance with Section III.B.5.a of this Policy.

11.02 C/S/E RESPONSIBILITIES

A. Each Prime Contractor and all other C/S/Es shall satisfy the following responsibilities, in addition to other responsibilities set forth in this Policy:

1. The Prime Contractor shall ensure that it and each C/S/E submits an EHP to AC Transit for approval by AC Transit project manager or his/her designee, at least 20 business days prior to starting their work on the BRT Project. Each C/S/E shall include in its EHP a description of how it will meet the Targeted Hiring Requirements set forth in the PLA and this Policy. No C/S/E shall be approved to work on the BRT Project without an approved EHP.

2. The Prime Contractor shall read and understand the requirements of this Policy and any PLA, and shall acknowledge in writing, in a separately-initialed portion of the Prime Contract, such understanding and its commitment to comply with requirements of this Policy and any PLA.

3. The Prime Contractor shall sign and submit their Letters of Assent prior to the start of work. No C/S/E shall be approved to work on the BRT Project without submitting a signed Letter of Assent.

4. Prior to start of work on the BRT Project, the Prime Contractor shall recommend an Alternative Referral Source for approval by AC Transit. The Prime Contractor shall provide documentation of Alternative Referral Sources’ qualifications, which shall include the ability to verify the status of Disadvantaged Workers for purposes of this Policy, to AC Transit within 10 days of request by AC Transit. Upon AC Transit’s approval of its Alternative Referral Source, the Prime Contractor shall ensure that its C/S/E’s know Alternative Referral Sources and understand the Alternative Referral Sources’ role. The Prime Contractor and its C/S/Es shall coordinate with Alternative Referral Sources for services to support their efforts in meeting the Targeted Hiring Requirements as described in Section III.B.3 of this Policy.

5. Each C/S/E shall conduct a pre-job conference with any affected Unions and the Building Trades Council prior to commencing work. The C/S/E shall notify the Building Trades Council ten days in advance of all such conferences. All work assignments should be disclosed by the C/S/E at a pre-job conference held in accordance with industry practice. Any formal jurisdictional dispute raised through a PLA must be raised at the pre-job conference upon disclosure of the work assignments. Should there be any formal jurisdictional dispute raised, the Prime Contractor shall be promptly notified. If the C/S/E intends to change the work assignment after the pre-job conference or to make an assignment of work not previously known, the C/S/E must notify the affected Unions prior to the commencement of Project Work.
6. The Prime Contractor and C/S/Es shall request workers in writing from affected Union(s) and (if necessary to meet Targeted Hiring Requirements) Alternative Referral Sources.

7. The Prime Contractor and its C/S/Es shall maintain proof of transmittal of the written requests for workers to relevant Union hiring halls and Alternative Referral Sources. Upon request by AC Transit, or its designated representative, copies shall be provided within 10 calendar days of request.

8. The Prime Contractor and its C/S/Es shall make available to AC Transit, or its designated representatives, records and information that AC Transit deems relevant to monitoring and enforcement of the provisions of any PLA and this Policy.

9. The Prime Contractor and its C/S/Es shall cooperate fully and promptly with any inquiry or investigation AC Transit or its designated representatives deem necessary in order to monitor compliance with the provisions of any PLA and this Policy.

10. The Prime Contractor and its C/S/Es shall submit to AC Transit a verified statement of the number of journeypersons and apprentices who worked on the BRT Project, their classifications and the hours worked (Per California Labor Code 1777.5(e)) within 60 calendar days after concluding work on the BRT Project.

11.03 UNION RESPONSIBILITIES

A. AC Transit shall ensure that any PLA includes the following commitments from Unions:

1. The Unions shall ensure that its dispatchers properly process written requests for Targeted Workers.

2. The Unions shall refer workers targeted under U.S. Executive Order 11246, requested through written requests, on a priority basis to the extent consistent with relevant collective bargaining agreements.

3. The Unions shall facilitate, encourage, and assist Disadvantaged Workers in commencing and progressing in joint labor/management apprenticeship programs.

B. The Unions shall respond to AC Transit requests regarding retention and progress through the apprenticeship program of new apprentices on the BRT Project, to the extent allowed by law.

END OF CONSTRUCTION CAREERS POLICY
SECTION 007373

FEDERAL REQUIREMENTS

PART 1 - FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

1.01 INCORPORATION OF FTA TERMS

This contract may be financed in part by the Federal Transit Administration (FTA). Accordingly, federal requirements apply to this contract. In the event that those requirements are revised during the performance of this contract, the Contractor shall incorporate those revised provisions mandated by the FTA. The following provisions are Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, as revised, and as may be revised, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract document. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any AC TRANSIT requests that would cause AC TRANSIT to be in violation of the FTA terms and conditions. To the extent the Contract provisions required by the FTA, and State law are inconsistent, the Contractor is responsible for complying with the more comprehensive or stricter requirements.

1.02 BUY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.. General waivers are listed in 49 C.F.R. § 661.7. Under 49 C.F.R. § 661.7(b) and (c), a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

All Bidders must submit the appropriate Buy America certification to AC TRANSIT with their Bids, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier Subcontractors.

1.03 CARGO PREFERENCE REQUIREMENTS

The Contractor agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime
Administration, Washington, DC 20590 and to AC TRANSIT (through the Contractor in the case of a subcontractor's bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.

1.04 FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301.10, which provide that recipients and sub recipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this Section in all Subcontracts that may involve international air transportation.

1.05 SEISMIC SAFETY

The Contractor agrees that any new building or additions to an existing building will be designed and constructed in accordance with the standards for seismic safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and with the certification of compliance issued on the project.

1.06 ENERGY CONSERVATION

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

1.07 CLEAN WATER AND AIR REQUIREMENTS.

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq., and the Clear Air Act, as amended, 42 U.S.C. 7401 et. seq. The Contractor agrees to report each violation to AC TRANSIT and understands and agrees that AC TRANSIT will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in part or in whole with federal assistance provided by the FTA.

1.08 LOBBYING

Comply, and assure the compliance of each third party contractor at any tier and each sub-recipient at any tier, with U.S. Department of Transportation regulations, "New Restrictions on Lobbying,: 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352. Contractor shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or
employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to AC TRANSIT. Contractor shall ensure that all of its Subcontractors under this Contract shall certify the same. Prior to execution of this Agreement, Contractor shall submit the “Certification Regarding Lobbying,” included in the contract documents. AC TRANSIT is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors.

1.09 ACCESS TO RECORDS AND REPORTS

Contractor agrees to provide the District, the FTA Administrator or its authorized representatives, including any PMO Contractor, access to the Contractor’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of final payment under this Contract and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the District, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 CFR 200.333.

1.10 FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract (Form FTA MA 2 dated October, 1995) between the District and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to comply shall constitute a material breach of this contract. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

1.11 TERMINATION / RESOLUTION OF DISPUTES

A. Termination for Convenience of the District

The District, by written notice, may terminate this contract, in whole or in part, whenever the District determines that such termination is in its best interests. Any termination under this provision shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. After receipt of said notice, Contractor shall stop work on this contract on the date and to the extent specified in said notice, terminate all applicable orders and subcontracts, and complete all work not terminated by said notice. After receipt of said notice, Contractor shall submit to the District its termination claim setting forth Contractor’s actual, direct, and unavoidable costs incurred which cannot be canceled as a result of said termination together with such information as may be required by the District to evaluate the claim. The determination of the District on
the claim shall be final subject only to an appeal pursuant to the dispute resolution procedures set forth herein.

B. Termination for Default

1. In the event that the Contractor breaches the terms or violates the conditions of the contract and does not within ten (10) calendar days after receipt from the District of a notice of default (or, in the case of a default that cannot be remedied within ten (10) calendar days, to commence to cure said default within said ten (10) calendar days and thereafter to diligently pursue said cure until the default is remedied), the District may in its discretion terminate the contract, or such portion thereof, as the District determines to be most directly affected by the default.

2. The term “default” for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this contract; abandonment, assignment, delegation or subletting of this contract without approval of the District; bankruptcy or appointment of a receiver for Contractor’s property; failure to perform services or other required acts within the time specified for the contract or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of the contract in bad faith.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the convenience of the District.

C. Termination for Force Majeure

The performance of work under this contract may be terminated by the District, in its discretion, upon application therefore by the Contractor and based upon unforeseen causes beyond the control and without the fault or negligence of the Contractor such as Acts of God which render impossible the Contractor’s performance under the contract. An “Act of God” shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense against.

D. Disputes

Performance During Dispute - Unless otherwise directed by the District, Contractor shall continue performance under the Contract while matters in dispute are being resolved. Further, the District shall pay Contractor for any undisputed work performed by Contractor prior to or during the resolution of the matters in dispute.

E. Alternative Dispute Resolution/Mandatory Arbitration

1. In the event that any controversy, claim or dispute between the District and the Contractor arising out of or related to this Contract, or the breach hereof, that has not been resolved by informal discussions and negotiations, either party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy claim or dispute. During the thirty (30) days following said written notice, the parties shall meet, confer and negotiate in good faith to resolve the dispute. Either party may, during said thirty (30) day period, request the utilization of the services of a
professional mediator, and the other party or parties to this dispute shall cooperate with such request and share the reasonable costs of such mediator.

2. Mandatory and Binding Arbitration

a. In the event that any controversy, claim or dispute between the District and the Contractor arising out of or related to this contract, or the breach hereof, cannot be settled or resolved amicably by the parties during the thirty (30) day period of good faith negotiations provided for above, the either party or any party hereto may submit said controversy, claim or dispute for binding arbitration before a single neutral arbitrator in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Rules"); provided, however, that notwithstanding any provisions of such Rules, the parties to the arbitration shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided in Title III of Part 4 (commencing with Section 1985) of the California Code of Civil Procedure, as and to the extent that the arbitrator deems fair and reasonable. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including but not limited to whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein.

b. Any party desiring arbitration shall serve on the other party or parties and the San Francisco Office of the American Arbitration Association, in accordance with the aforesaid Rules, its Notice of Intent to Arbitrate ("Notice"). The parties shall select a single, neutral arbitrator who is generally familiar with the factual and legal issues that relate to this Contract and the dispute to be resolved by arbitration. In the event that the parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing and it shall not be necessary to petition a court to compel arbitration.

c. The parties to the arbitration shall share equally all costs of the arbitration, including the fee of the neutral arbitrator, and each party shall bear its own costs. The arbitrator shall have the authority, in accordance with the provisions of this Contract, to award to the prevailing party its costs, including its share of the arbitration costs, and reasonable attorneys' and expert witness fees and expenses.

d. If a controversy, claim or dispute arises between the parties which is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the parties, or either of them, and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, said third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; provided, however, that any such third party shall be a party to an agreement with either of the parties which provides for the arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided
for herein or, if not, shall consent to arbitration as provided for hereunder.

e. All arbitration proceedings shall be held in Oakland, California.

f. The Notice of the demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

g. Waiver of Remedies for any Breach

In the event that the District elects to waive its remedies for any breach by the Contractor of any covenant, term, or condition of this Contract, such waiver by the District shall not limit the district's remedies for any succeeding breach of that or any other term, covenant, or condition of this Contract.

1.12 DAVIS-BACON ACT REQUIREMENTS

A. Minimum Wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

2. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate,
the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

3. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination.

   a. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

      (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

      (ii) The classification is utilized in the area by the construction industry; and

      (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

   b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

   c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
The wage rate (including fringe benefits where appropriate) determined pursuant to Subsections (A)(4)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

B. Withholding

AC TRANSIT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, AC TRANSIT may, after written notice to the Contractor, sponsor, applicant, or District, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

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

2. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to AC TRANSIT. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S.
Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

a. Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5 and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

b. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (C)(2)(a) of this Section.

c. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

3. The Contractor or Subcontractor shall make the records required under paragraph (C)(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or District, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

1. Apprentices

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

2. **Trainees**

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

3. Equal Employment Opportunity

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

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

F. Subcontracts

The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any Subcontractor or lower Subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

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

H. Compliance

With Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility

1. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or
2. No part of this Contract shall be subcontracted to person or firm ineligible for an award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


1.13 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

A. Overtime

Neither the Contractor nor its Subcontractors may permit any laborer or mechanic in any workweek in which he or she is employed on such work under this Contract to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (A) of this Section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this Section, in the sum of $20 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this Section.

C. Withholding for Unpaid Wages and Liquidated Damages

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

D. Subcontracts

The Contractor shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this Section.

E. Payrolls and Basic Records

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers
1.14 COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

1.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

1.16 FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR CLAIMS; CIVIL OR CRIMINAL FRAUD

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

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance provided by FTA, it is further agreed that the above clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.
assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the
Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C.
§ 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

1.17 PRIVACY ACT

The following requirements apply to Contractor and any of its employees that may administer
any system of records on behalf of the Federal Government under any contract:

A. The Contractor agrees to comply with, and assures the compliance of its employees with,
the information restrictions and other applicable requirements of the Privacy Act of 1974,
5 U.S.C. §552a. Among other things, the Contractor agrees to obtain the express consent
of the Federal Government before the Contractor or its employees operate a system of
records on behalf of the Federal Government. The Contractor understands that the
requirements of the Privacy Act, including the civil and criminal penalties for violation of
that Act, apply to those individuals involved, and that failure to comply with the terms of the
Privacy Act may result in termination of the underlying contract.

B. The Contractor also agrees to include these requirements in each subcontract to
administer any system of records on behalf of the Federal Government financed in whole
or in part with Federal assistance provided by FTA.

1.18 CIVIL RIGHTS REQUIREMENTS

A. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section
303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of
49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee
or applicant for employment because of race, color, creed, national origin, sex, age, or
disability. In addition, the Contractor agrees to comply with applicable Federal law
implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity

The following equal employment opportunity requirements apply to this Contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil
§ 5332, the Contractor agrees to comply with all applicable equal employment
opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations,
“Office of Federal Contract Compliance Programs, Equal Employment
Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement
Executive Order No. 11246, “Equal Employment Opportunity,” as amended by
Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal
Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable
Federal statutes, executive orders, regulations, and Federal policies that may in
the future affect construction activities undertaken in the course of the Project.
During the performance of this contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Contractor’s commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempt by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such
provisions will be binding upon each Subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. **Age**

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

3. **Disabilities**

   In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Access Requirements for Individuals with Disabilities**

   The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Contractor also agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101, et seq., and 49 U.S.C. § 322; § 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; § 16 of the Federal Transit Act, as amended; 49 U.S.C. App. § 612; and the following federal regulations, including any amendments thereto:

   a. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;


i. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and

j. Any other implementing federal regulations and requirements.

5. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

1.19 SUSPENSION AND DEBARMENT

The prospective lower tier participant certifies, by submission of their bid or submittal, that neither it nor its "principals" [as defined at 2 C.F.R. § 180.995] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this submittal.

1.20 ENVIRONMENTAL PROTECTION


1.21 RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited
to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 13423, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

1.22 PROMPT PAYMENT OF SUBCONTRACTORS

A. In accordance with the California Revised Statutes, section 34-221(g), the agency’s solicitation and/or contract documents, the successful submitter is required to promptly pay its subcontractors, subconsultants, or suppliers within seven (7) calendar days of receipt of each progress payment from the agency. No contract terms and conditions between the successful submitter and its subcontractors, subconsultants, or suppliers may alter the rights of any subcontractor, subconsultant, or supplier to receive prompt and timely payment as provided herein.

B. Any reduction of retention by the Agency to the Successful Submitter shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work. The prompt payment provisions of 49 CFR Part 26 also require the Successful Submitter to ensure the prompt and full payment of retainage monies to subcontractors or subconsultants at such time as the work of the subcontractor or subconsultant is complete and the Agency has accepted the work and paid the Successful Submitter for the work performed and accepted. Retention shall be paid no later than 30 days after such payment is issued by the Agency.

C. Any diversion by the Successful Submitter of payments received for work performed on the contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for a declaration of breach of the contract with the Submitter. If the Successful Submitter fails to make payments in accordance with these provisions, the Agency may take any one or more of the following actions, and the Successful Submitter agrees that the Agency may take such actions:

1. Hold the Successful Submitter in default under this contract
2. Withhold future payments, including retention, until proper payment has been made to subcontractors or suppliers in accordance with these provisions

1.23 AMERICANS WITH DISABILITIES ACT (ADA)

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

END OF SECTION 007373