

Los Angeles County
Metropolitan Transportation Authority

Division 8 and Central Maintenance Facility (CMF) Bus Hoists Replacement

IFB No. C1230

ISSUED: 11.06.23



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- * All Articles, Subarticles, or portions of the Contract noted by an asterisk (*) shall be included in (flow-down to) all Subcontracts of any tier.

SECTION 1 – LETTER OF INVITATION

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Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

November 6, 2023

ATTENTION: Prospective Bidder

SUBJECT: INVITATION FOR BIDS (IFB) FOR IFB No. C1230,

Los Angeles County Metropolitan Transportation Authority (METRO) has established a contracting opportunity to provide services including labor, material, and equipment to install new bus hoists at Division 8 and Central Maintenance Facility (CMF) as outlined in the Summary of Work Section 01 11 00 of the Specifications. The resultant Contract, if awarded, will be federally funded and is subject to fiscal year funding.

You are hereby invited to submit to the METRO a bid to furnish all of the labor, materials, and any other related items required for the performance of Contract No. IFB No. C1230. **An original, Two (2) copies and one (1) digital USB flash drive of all bids must be submitted in sealed envelopes and delivered by hand or mail to the address below. Bids must be received by METRO's 9th Floor receptionist no later than 2 p.m. on 12/11/23.** Bids received after that time will not be considered. The only acceptable evidence to establish the time of receipt is the date/time stamp imprinted upon the Bid package by the date/time recorder at the 9th floor procurement reception desk. A public bid opening will be held in the 9th Floor Wilshire conference room shortly thereafter.

Los Angeles County
Metropolitan Transportation Authority (METRO)
One Gateway Plaza
Los Angeles, CA 90012-2952
9th Floor Receptionist
IFB No. C1230

Drawings are not available for review on the METRO's website. The complete IFB documents Drawings and Specifications are available for review on the Internet at <https://www.dropbox.com/sh/fjo80hdnjbira3b/AABtWhiapzJ5r-0gyGw0qEOja?dl=0>.

All communications in connection with this IFB, shall be provided as follows:

- By U.S. Mail, FedEx, UPS, or courier
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012-2952
Attention: Rafael Vasquez, Principal Contract Administrator
IFB No. C1230
- By Phone to (213) 418 - 3036
Los Angeles County
Metropolitan Transportation Authority
- By FAX to (213) 922 1004
Attention: Rafael Vasquez, Principal Contract Administrator
IFB No. C1230

- By e-mail to:
vasquezr@metro.net

Diversity & Equal Opportunity, Marco Garcia, & Phone
Number: (213) 418-3124

Ethics or Lobbyist Registration Information, (213) 922-2900

Pre-Qualification Department, (213) 922-4130

A Virtual Pre-Bid Conference will be held on Thursday, November 16, 2023, at 9:30 A.M.
Access link will be sent through an email invite directly to plan holders using the information submitted to METRO's Vendor Portal website for this solicitation. A worksite walk-through will be arranged following the Pre-Bid Conference. Visits to the worksite require prior approval by the METRO. Visitors must be accompanied by a METRO representative. **(Note that the METRO does not pay for parking or validate tickets)**

The METRO reserves the right to reject any or all bids, to waive informalities or irregularities to the extent permitted by law in any bid received, and to be the sole judge of the merits of the respective bids received. The award, if made, will be made to the lowest-priced responsive and responsible bidder.

This is not an exclusive contract and the METRO expressly reserves the right to contract for services and goods such as those referenced herein through other contractors.

Issued by:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY



Rafael Vasquez
Principal Contract Administrator

LETTER OF INVITATION SUPPLEMENT (CONSTRUCTION)

The following paragraph(s) apply to this procurement:

All bidders must possess the proper license at the time of Contract award. A California State Contractor's License Classification **A** is required of the prime bidder. All subcontractors must possess the appropriate licenses for each specialty subcontracted.

LETTER OF INVITATION SUPPLEMENT (RC-FTA)

FOR RC-FTA FUNDED CONTRACTS:

Bidders/Proposers are hereby notified that:

This project is funded in whole or in part with US Department of Transportation (DOT) funds and will comply with LACMTA's Race Conscious Disadvantaged Business Enterprise (RC DBE) Program requirements. LACMTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any federal-assisted contract or in the administration of its DBE program or the requirements of 49 Code of Federal Regulations (CFR) Part 26, as amended.

☐ A. LACMTA has determined that this solicitation is a race neutral **"Small Business Enterprise Set-Aside"** project. Pursuant to the LACMTA DBE Program Race-Neutral SBE Set-Aside Policy and in compliance with 49 CFR Section 26.39 "Fostering Small Business Participation":

1. Bidders/Proposers are hereby notified that bids or proposals for this FTA funded contract shall only be considered from certified SBE firms in accordance with LACMTA SBE certification requirements.
2. Bidder/Proposer must be certified by LACMTA as an SBE at the time of bid or proposal due date to be eligible for a set-aside contract award. Any firm seeking to be certified as an SBE shall comply with LACMTA's SBE certification process detailed in LACMTA's website at <http://metro.net/connect>
3. Bidder/Proposer must perform a commercially useful function (CUF) during the performance of the contract. An SBE is presumed to be performing a CUF when it performs and exercises responsibility for at least thirty percent (30%) of the total cost of the contract work with its own workforce. Metro encourages SBE Primes to consider joint venture opportunities with other SBEs firms. However, should an SBE choose to joint venture with a non-SBE, the SBE partner shall perform a CUF. Currently, instruction for counting and calculating SBE credit is included in the Instructions to Bidders/Proposers. As referenced in the instructions, Metro will only credit SBE participation, for firms performing a CUF.
4. Bidder/Proposer shall provide LACMTA, as part of its bid/proposal, a complete list (including names and addresses) of all subcontractors (SBE and non-SBE) who will perform any portion of the contract work. Instructions to Bidders/Proposers provide the SBE Set-Aside Bid/Proposal Forms that must be completed and submitted by all Bidders/Proposers at time of bid or proposal due date.

- ☒ B. LACMTA established a “**Race Conscious Disadvantaged Business Enterprise**” (RC DBE) contract goal for this project in the percentage of:

Twenty Percent (20 %) of the Total Contract Price

For a Bidder/Proposer to be considered responsive to the RC DBE goal, they must:

1. Meet or exceed the DBE goal at the time of bid/proposal submittal. If the RC DBE goal is not met at the time of bid/proposal submittal, Bidder/Proposer must submit Good Faith Efforts (GFE) documentation with its bid/proposal. Bidder/Proposer determined to have not adequately documented GFE will be deemed non-responsive to the RC DBE goal. Bidders/Proposers are referred to the DBE Instructions to Bidders/Proposers for additional GFE requirements.
2. Bidder/Proposer shall provide Metro, as part of its bid/proposal, a complete list (including names and addresses) of all subcontractors (DBE and non-DBE) who will perform any portion of the required scopes of work. Bidders/Proposers shall include the scope of work and dollar amount(s) committed to each subcontractor.
3. RC DBE contract goal(s) applies to all federal DBE groups, which includes: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, Subcontinent Asian Americans, and Women (including Caucasian Women)
4. DBE Instructions to Bidders/Proposers provide guidelines on how DBE commitments will be counted toward the goal and designates the DBE Commitment Forms that must be completed and submitted by all Bidders/Proposers by the bid/proposal due date.
5. DBEs must perform a commercially useful function (CUF) during the performance of the contract. A DBE is presumed to be performing a CUF when it performs and exercises responsibility for at least thirty percent (30%) of the total cost of the contract work with its own workforce. Metro encourages Primes to consider joint venture opportunities with DBE firms. The DBE partner(s) shall perform a CUF. Currently, instruction for counting and calculating DBE credit is included in the Instructions to Bidders/Proposers. As referenced in the instructions, Metro will only credit DBE participation for firms performing a CUF.
6. The level of DBE participation Bidder/Proposer commits to in its bid/proposal becomes the Bidder's/Proposer's DBE contract commitment. The DBE commitment will be listed in the Special Provisions of the contract and shall be enforced by Metro. After award, DBE commitments shall apply to contract options, changes and/or modifications. While the overall goal is 30% DBE, Metro will monitor DBE commitments for each task order issued throughout the contract term, as described in the Contract Compliance Manual (Federal), General Conditions and Special Provisions of the contract.
7. All DBE firms must be certified under the California Unified Certification Program (CUCP) by the bid/proposal due date. A List of Certified DBE Firms is attached for your convenience, and may be used to assist with outreach efforts. An additional resource is the online CUCP database inclusive of certified DBEs from all certifying agencies participating in the CUCP. Access the CUCP database from the

Department of Transportation, Civil Rights, Business Enterprise Program website at:
<http://www.dot.ca.gov/hq/bep>.

- Click on the link in the left menu titled Disadvantaged Business Enterprise (DBE);
- Click on Search for a DBE Firm
- Click on Click here To Access DBE Query Form
- Searches can be performed by one or more criteria
- Follow instructions on the screen
- “Civil Rights Home,” and “Caltrans Home” links are located at the top of the query form

C. Contractor Development and Bonding Program (CDBP)

Applicability: This applies to (i) all Metro contracts requiring bonds and (ii) all subcontracts where the prime contract includes a bonding requirement.

Metro has launched a one year pilot Bonding Assistance Pilot Program entitled the Contractor Development and Bonding Program (CDBP). The Program is designed to provide technical and administrative assistance to Disadvantaged Business Enterprise (DBE) firms as well as providing the maximum opportunity to expand their bonding capacity on Metro construction prime contracts and subcontracts. Under the Program, Metro will provide a bond guarantee to qualified prospective contractors and subcontractors looking to increase their bonding capacity. As a result, prospective contractors and subcontractors interested in performing work on Metro projects, but unable to secure the necessary bonding to bid/propose on public works projects, may be eligible to do.

A prospective contractor or subcontractor who participates in the CDBP will receive contractor support services, including education on the surety process, referrals to qualified resources (such as brokers), development of underwriting criteria, establishment of controls of program funds, and other support services designed to assist DBE firms.

For information on Metro’s CDBP, please contact Merriwether and Williams Insurance Services at (213) 258-3000 or online at <http://www.imwis.com/>.

☐ D. DBE Contracting Outreach and Mentoring Plan (COMP) is required for this Project

1. At a minimum, Bidders/Proposers shall mentor a total of **(XX firms)** for Protégé development as part of the SBE/DVBE Contracting Outreach and Mentoring Plan (COMP).
2. Bidder/Proposer must submit, as part of its bid/proposal, a DBE Contracting Outreach and Mentoring Plan (COMP) evidencing how it will achieve its listed commitments through the utilization of DBE firms for the project. Bidder/Proposer shall include in its plan creative strategies and innovative non-traditional approaches to include DBEs in all phases of subcontracting, inclusive of a mentor protégé development approach. The DBE COMP will be reviewed and approval by Metro.

3. Bidders/Proposers shall host at least one outreach event with the DBE and small business community and stakeholders. Bidder/Proposer shall submit with its bid/proposal an assessment of the event(s) in the executive summary of the DBE COMP and describe plan to follow-up with DBE firms after contract award to meet the DBE commitment. The outreach event shall be held at least fifteen (15) days prior to the bid/proposal due date. Bidders/Proposers are required to notify the Diversity & Economic Opportunity Department (DEOD) assigned Contract Compliance Officer of their DBE outreach event(s). Metro may attend as an observer but is not obligated to attend. Bidders/Proposers are responsible for their own outreach to the DBE and small business community. Metro is willing to assist Bidders/Proposers in their outreach efforts by posting event(s) advertisements to Metro outreach calendar of events.
4. Metro expects Bidders/Proposers to develop a subcontracting approach and implement initiatives, that would include processes and procedures for outreach, prompt and expedited payment for DBEs, provide technical assistance initiatives, implement mentor protégé development plan, create opportunities for joint venturing, teaming and partnering with DBE firms in the ordinary course of its business/teaming strategy to exceed the stated goals. Metro is interested in hearing creative strategies and innovative non-traditional approaches to include DBEs in all phases of subcontracting. The Contracting Outreach and Metro Protégé Approach shall be included with forms submitted as required.

- ☐ E. LACMTA has not established a **“Race Conscious Disadvantaged Business Enterprise (RC DBE)”** contract goal for this project.

It is LACMTA's policy to provide equal opportunity for DBE firms to compete on its federally-assisted contracts. The successful Bidder/Proposer shall utilize DBE firms when opportunities are available during the performance of the contract. DBE participation obtained when a contract goal is not established is counted as RN participation.

LIST OF CERTIFIED FIRMS (DISCLAIMER)

(DBE Instructions to Bidders/Proposers and Forms Document 068 – Attachment I)

LIST OF DBE CERTIFIED FIRMS

(Supplemental Instructions to Bidders/Proposers)

238910, 238290, 236210, 238190, 238210, 238990, 811310, 423120, 423610, 423830

Run Date: 10/9/23

DISCLAIMER:

Offerors are hereby given notice and advised that the list of certified Disadvantaged Business Enterprises (DBE) contained herein is made available as a outreach resource for offeror's CONVENIENCE ONLY. Metro explicitly expresses that the listing shall not be deemed to be an endorsement of these firms nor shall there be any implied warranty regarding the suitability of these firms to perform work on Metro projects. The certification process does not qualify a firm's capability to perform. To verify current certification status, at least 72 hours prior to bid/proposal due date or for additional information regarding DBE certification eligibility requirements, please contact the Diversity & Equal Opportunity Department (DEOD) Hotline (213) 922-2600, facsimile (213) 922-7660. Metro does not assume any liability for the accuracy, completeness, or inadvertent omission of certified [firms. www.Metro.net](http://www.Metro.net) For additional information regarding DBE certifications, please go to www.californiaucp.org <<http://www.californiaucp.org>>

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
238910 - Site Preparation Contractors (237 firms)										
6 RIVERS CONSTRUCTION, INC.	ZANE E JR	GRANT	200 REDWOOD GROVE RD	HOOPA	CA	95546	530-515-7563	6riversconstruction@gmail.com	Native American	Male
A.B. HASHMI, INC.	AHMAD	HASHMI	13066 DEER CANYON CT.	SAN DIEGO	CA	92131	760-672-8059	info@abhashmi.com	Subcontinent Asian American	Male
Accurate Asphalt & Concrete Inc.	Deacon	Markey	867 Carolina Street	Imperial Beach	CA	91932	619-303-1829	accurateasphalt2@gmail.com	Asian-Pacific American	Male
Accurate Earthworks, Inc.	Kamal	Singh	501 Cesar Chavez, Ste 108b	San Francisco	CA	94124	628-219-4131	denis@accurateearthworks.com	Subcontinent Asian American	Male
Action Cleanup Environmental Services, Inc	Arsenio	Hernandez	9144 Rose Street	Bellflower	CA	90706	310-864-2418	ahernandez@action-cleanup.com	Hispanic American	Male
AD Improvements, Inc.	Robert	Acosta	12252 Woodruff Ave.	Downey	CA	90241	562-803-6134	robert@adimprovements.com	Hispanic American	Male
Advantage Demolition & Grading, Inc	Cesar	Salas Ramirez	19819 BLYTHE ST	WINNETKA	CA	91306	951-436-6808	cesar@adgsocal.com	Hispanic American	Male
AHTNA DESIGN-BUILD, INC.	CRAIG	OROURKE	3200 EL CAMINO REAL, SUITE 240	IRVINE	CA	92602	714-824-3471	corourke@ahtna.net	Native American	Male
Alaniz Associates Corp.	Manuel	Pestana	21334 E. Cloverton St.	Covina	CA	91724	714-955-2493	chris@alanizassociates.com	Hispanic American	Male
Alexander Santamaria	Alexander	Santamaria	785 Lincoln Ave	San Jose	CA	95126	408-500-6635	alexander@santamaria-concrete.com	Hispanic American	Male
ALFARO GENERAL ENGINEERING	Michel	Alfaro	2240 BONNEY CT., 2351 SUNSET BLVD. SUITE 170-338	ROCKLIN	CA	95765	916-276-9627	malfaro@alfaroengineering.com	Hispanic American	Male
ALLEN GILL CONSTRUCTION, INC.	Allen	Gill	22099 PALO WAY	PALO CEDRO	CA	96073	530-547-1112	tgill@allengillconstruction.com	Native American	Male
Aloha Construction Services, Inc.	Rosemarie U	Kanehe	40335 WINCHESTER ROAD #E152	TEMECULA	CA	92591	760-402-0710	rose@alohaconstructions.com	Native American	Female
ALTA SERVICES, INC	MARIO	AROZ	369 E. BLAINE STREET	CORONA	CA	92879	951-393-6950	mario@altacontracting.com	Hispanic American	Male
Alvarez And Shaw, Inc.	Chase	Alvarez	2101 Alpine Blvd, STE C	Alpine	CA	91901	619-277-9013	calvarez@alvarezandshaw.com	Hispanic American	Male
AMERICA PACIFIC CONSTRUCTION, INC.	ASHISH	SEGHAL	7161 CITRUS VALLEY AVENUE	EASTVALE	CA	92880	559-577-9999	apconstruction09@gmail.com	Subcontinent Asian American	Male

Amerivet Contracting	Drew	Simpson	1706 Hoover Ave	National City	CA	91950	858-232-0809	drew@vetcontracting.com	Black American	Male
ANTHONY'S GRADING & PAVING	ANTHONY	TEJEDA	10769 WOODSIDE AVENUE, SUITE 111	SANTEE	CA	92071	619-334-6167	paving_agp@yahoo.com	Hispanic American	Male
ARIES CONSTRUCTION CORPORATION	DAYAMAMD	BETTADAPURA	1701 E. EDINGER AVE., SUITE A9	SANTA ANA	CA	92705	714-361-2911	ariesccorp@gmail.com	Subcontinent Asian American	Male
AUXILIUM CONSTRUCTION RESOURCES	EZRA	HERNANDEZ	758 S. HOLLENBECK AVENUE #A	COVINA	CA	91723	626-966-9186	auxcr@aol.com	Hispanic American	Male
AVA K EARLY	AVA	EARLY	6641 STONEY DR	REDDING	CA	96002	530-365-5848	akearly@sbcglobal.net	Caucasian	Female
AXNER EXCAVATING, INC.	JULIE	BARNES	2900 OLD OREGON TRAIL	REDDING	CA	96003	530-222-0539	juliet@axnerexcavating.com	Caucasian	Female

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Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
Banaga Construction, Inc	FRANK	BANAGA	13307 Jonathan Park Lane	Poway	CA	92064	619-922-8570	frank@kiteclimbers.com	Hispanic American	Male
Bayside Engineering Construction Inc.	Luis	Rivero	2534 State St, Suite 201	San Diego	CA	92101	760-272-7308	lorge.rivero@baysideec.com	Hispanic American	Male
BCL Solutions, LLC	Brianne	Peterson	5419 Ridge Rd	Cheyenne	WY	82009	307-258-6324	bpeterson4719@gmail.com	Caucasian	Female
BEAR EXCAVATION	DANIEL	FREUND	11508 Pinehurst Drive	Lakeside	CA	92040	619-258-0877	bearex134@gmail.com	Asian-Pacific American	Male
BEE LINE CONCRETE CUTTING, INC.	John	Rios	1994 Sanguinetti Lane	STOCKTON	CA	95205	209-931-3600	beeline.concrete@aol.com	Hispanic American	Male
BELLAGIO CONSTRUCTION AND LANDSCAPING ENG	EDWARD A.	CUADROS	15204 E. ANNADALE	SANGER	CA	93657	559-217-8295	bellagiolands@aol.com	Hispanic American	Male
BELMONTES CONCRETE SERVICES, INC.	BELMONTE	RICARDO	98 W. Jackson Street, Suite #202	Hayward	CA	94544	510-261-8439	belmontesconcrete@gmail.com	Hispanic American	Male
BERNAL BUILDERS, INC.	MANUEL	BERNAL	3343 DURANT ST	SAN DIEGO	CA	92113	619-540-9618	bernalbuildersinc@gmail.com	Hispanic American	Male
BERT W SALAS, INC.	BOB E.	SALAZ	11203 CA-67	Lakeside	CA	92040	619-562-7711	bsalaz@bertsalasinc.com	Hispanic American	Male
Bertco, Inc.	Adalberto	Garcia	1485 Bayshore Blvd., #390	San Francisco	CA	94124	650-993-6093	bert@bertcoinc.com	Hispanic American	Male
Bess Testlab Inc	Martha	Bohorquez	2463 Tripaldi Way	Hayward	CA	94545	408-988-0101	martha@besstestlab.com	Hispanic American	Female
BLANCO CONSTRUCTION	LEONARDO	BLANCO	19320 Dallas Ave.	Riverside	CA	92508	951-250-6692	lawym2004@aol.com	Hispanic American	Male
BOUTHILLIERS CONSTRUCTION INC	JAMIE N.	BOUTHILLIER	1571 SOUTH MAIN ST	WILLITS	CA	95490	707-459-4041	wecandigit@onemain.com	Caucasian	Female
Bravo Pacific, Inc.	EDWARD	MARMOLEJO	11818 FAIRWAY DR	YUCAIPA	CA	92399	909-915-8391	bravopacific@hotmail.com	Hispanic American	Male
BRICE ENGINEERING LLC	Jamie	Oakley	3700 Centerpoint Drive, Ste 8223	Anchorage	AK	99503	907-277-2743	dsmith@briceeng.com	Native American	Female
Brice Environmental Services Corporation	Craig	Jones	3700 Centerpoint Drive Suite 800	Anchorage	AK	99503	907-952-0100	dsmith@briceenvironmental.com	Native American	Male
BRINO BUILDERS, INC.	FERNANDO	ALVAREZ	1490 KOSTNER DRIVE	SAN DIEGO	CA	92154	619-864-5568	office@brinobuilders.com	Hispanic American	Male
BUENA VISTA LANDSCAPE, INC	ANGEL	GOMEZ	1472 N HARDING ST.	ORANGE	CA	92867	714-771-2563	b.v.landscape@pacbell.net	Hispanic American	Male
Burke Construction	Michael J.	Burke	4421 Tennessee Drive	Shingle Springs	CA	95682	530-676-1009	burkebid@gmail.com	Native American	Male

BWW & COMPANY, INC	BOBBY	WILSON	301 9TH STREET, SUITE 100	REDLANDS	CA	92374	909-268-8516	b-w-w@live.com	Black American	Male
C & S Civil LLC	Travis	Coleman	3060 Soda Bay Rd	Lakeport	CA	95453	707-489-9599	travis.candscivil@yahoo.com	Native American	Male
C. I. CONTRACTORS, INC.	STUART	JACQUES	229 E WHITNEY RD STE 200	Anchorage	AK	99501	907-561-8807	stuart@cei-alaska.com	Native American	Male
C.R. GANN DEMOLITION, INC.	LINDA S.	BROYLES	123 E 9TH STREET	UPLAND	CA	91786	405-269-3578	raycoequipt@gmail.com	Caucasian	Female
C.W. CROSSER CONSTRUCTION, INC	Yu-Tien	Chao	1250 N. LAKEVIEW AVE, SUITE J	ANAHEIM	CA	92807	714-366-5386	ycho91765@gmail.com	Asian-Pacific American	Male
CAL PRIME INC	Kelly	Hudson	10101 MICHELE AVE	BAKERSFIELD	CA	93312	661-679-6818	kellyhudson@calprimeinc.com	Caucasian	Female
Caplinger Construction Inc	Cheri J.	Caplinger	15924 North Cajon Blvd.	Devore Heights	CA	92407	909-880-6200	liavshackelford7@gmail.com	Native American	Female
CARLOS J. ROMERO GRADING AND PAVING CONTRACTORS, INC	CARLOS	ROMERO	79 LISA LANE	HOLLISTER	CA	95023	408-763-5800	info@cirgradingandpaving.com	Hispanic American	Male
Caso Enterprises LLC	Christian	Caso	400 Continental Blvd Suite 600	El Segundo	CA	90245	310-612-1538	christian@lbdsiteservices.com	Hispanic American	Male
CATS EXCAVATING INC	Stephen H	Groves	1944 54TH STREET	SAN DIEGO	CA	92105	619-264-4125	catsexcavating@catsge.com	Black American	Male
CBI International Group, Inc.	Wanda Janet	Allison	1954 AIRPORT ROAD SUITE 215	CHAMBLEE	GA	30341	404-315-9889	iallison@buzzcbi.com	Caucasian	Female
CE GREEN INC.	Carole E.	Green	7545 BALDWIN DAM RD. UNIT B	FOLSOM	CA	95630	916-365-4925	carole@cegreeninc.com	Caucasian	Female
Cen-Cal Paving, Inc.	Kayla	Dutra	9445 Highway 41	Lemoore	CA	93245	559-924-1900	info@cencalpaving.com	Native American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
CENTRAL ENVIRONMENTAL, INC.	Shane	Durand	229 E WHITNEY RD	ANCHORAGE	AK	99501	907-561-0125	lisa@cei-alaska.com	Other Minority	Female
Cindy Trump Inc	Cindy	Trump	625 S. MOUNTAIN VIEW	LA HABRA	CA	90631	562-697-2286	wegrindasphalt@aol.com	Caucasian	Female
CK ENGINEERING	KEVIN	AUSTIN	27482 POWDER COURT	MENIFEE	CA	92584	951-395-1950	ckearthwork@gmail.com	Hispanic American	Male
CLEAR CREEK CONSTRUCTION INC.	ADAM	HARDEN	10402 DAYSTAR WAY	PALO CEDRO	CA	96073	530-547-4938	clearcreekadam@gmail.com	Native American	Male
COLEMAN ENVIRONMENTAL ENGINEERING INC	TRACY A	COLEMAN	85 E. Hwy. 20, PO	Upper Lake	CA	95485	707-275-9016	tcoleman2009@hotmail.com	Native American	Male
COMMUNITY TREE SERVICE, INC	Adolfo	Garcia	831 WALKER STREET	WATSONVILLE	CA	95076	831-763-2391	communitytreeservice320@gmail.com	Hispanic American	Male
CONTERA CONSTRUCTION CORP.	CRISTY LEE	VARELA	28545 OLD TOWN FRONT ST., SUITE 201	TEMECULA	CA	92590	951-695-2800	jason@varelacompanies.com	Caucasian	Female
CONTRACTOR SERVICES GROUP, INC.	Shelli	Moreda	3960 INDUSTRIAL BLVD SUITE 500	WEST SACRAMENTO	CA	95691	916-371-7303	shelli@csg-web.com	Caucasian	Female
Cox Construction Solutions, LLC	Shelly	Cox	291 S Main St Suite M	Yuma	AZ	85364	928-482-5580	shelly.cox@ccsgroupusa.com	Caucasian	Female
CRIMSON MARIE COMPANY, INC	SARAH LYNN	THACKER	11876 EABY RD	PHELAN	CA	92371	760-963-7692	sarah@crimsonmariecompany.com	Caucasian	Female
DAVID ENGINEERING CONSTRUCTION	Oscar	David	6344 NUGGET DRIVE	FORESTHILL	CA	95631	530-367-3508	odavid@ftcnet.net	Black American	Male
DBE CONSTRUCTION, INC.	Frederick	Thomas	10011 BRIDGEPORT WAY, SW 1500- 374	PIERCE	WA	98499	253-255-6379	fredrick@dbeconstructioninc.com	Black American	Male
DBR INVESTMENTS INC	Brian	Drake	1120 Sycamore Avenue, Suite 2D	Vista	CA	92081	760-297-5070	tyke@dbngeneng.com	Native American	Male
DE LA FUENTE CONSTRUCTION, INC.	JORGE DIAZ DE LA	FUENTE	3025 Beyer Blvd E Suite 101	San Diego	CA	92154	619-512-5505	jdiaz@dlfci.com	Hispanic American	Male
DEEP FOUNDATION SERVICES, INC.	LYNN M.	PERRY	100 HOLLYWOOD AVE	LOS GATOS	CA	95030	408-656-7668	lynn@deepfoundationservices.com	Caucasian	Female
DeLaFuente Excavation Inc.	Albert	De La Fuente	7885 Eastgate Court	Riverside	CA	92506	951-642-0103	delafuenteexcavation@aol.com	Hispanic American	Male
DEPENDABLE PETROLEUM PRODUCTS INC.	Christopher N.	McCarty	25 Berlam	Rancho Santa Margarita	CA	92688	949-500-7779	chris@dpp-inc.com	Black American	Male
DESIGN BUILD ENGINEERING CONTRACTORS, INC.	GABRIEL	NEVAREZ	2210 SOLEDAD CANYON RD, UNIT D	ACTON	CA	93510	817-928-5458	gnevarez@dbecontracting.com	Hispanic American	Male
DI Build, LLC	Allison	Schmitt	7055 Clare Rd	Shawnee	KS	66226	913-406-8478	aschmitt@dibuild.com	Caucasian	Female
Dillard Trucking, Inc.	Patricia	Dillard	P O Box 579	Byron	CA	94514	925-634-6850	patriciad@dillardenv.com	Caucasian	Female
Dirt Dynasty Inc.	JASON	ALURCON	4110 MEADOW OAKS DRIVE	VALLEY SPRINGS	CA	95252	209-623-1141	estimating@dirtdynastyinc.com	Hispanic American	Male
DISABLED AMERICAN VETERAN ENTERPRISES TRUCKING & SWEEPING, I	SEAN	REED	PO BOX 975	TULARE	CA	93275	559-370-5756	davetrucksweep@gmail.com	Native American	Male
Diverscape, Inc.	Vicki	Moralez	21730 BUNDY CANYON ROAD	WILDOMAR	CA	92595	951-245-1686	estimating@diversifiedlandscape.com	Caucasian	Female
Diversified Production Services, Inc.	Gustavo	Davila	3720 Skypark Drive, 33rd Floor Penthouse	Torrance	CA	90505	310-991-4462	gdavila@dpsila.com	Hispanic American	Male
DM CONTRACING INC	DAVID	MAGANA	1065 N HARBER DR	COLTON	CA	92324	909-824-7071	dave@dmengineeringinc.com	Hispanic American	Male
DON H MAHAFFEY DRILLING CO	ASHLEY MAHAFFEY	TULLIUS	1800 SOUTH ALAMEDA STREET	COMPTON	CA	90221	310-668-2030	ashley@mahaffeydrilling.com	Hispanic American	Female
Down Under Inc.	Arturo	Silva	1136 E. Valencia Drive	Fullerton	CA	92831	714-521-5393	arts@util-locate.com	Hispanic American	Male
DREAMBUILDER CONSTRUCTION CORP	ANURAG	SINGH	550 Porter Way	PLACENTIA	CA	92870	714-646-3697	alex.singh@dreambuildercorp.com	Subcontinent Asian American	Male

DV CONSTRUCTION & LANDSCAPING INC.	Wendy T.	Vo	12641 HOOVER STREET	GARDEN GROVE	CA	92841	832-419-7993	hoa.w.vo@gmail.com	Asian-Pacific American	Female
DW General Engineering Contractor Corporation	David	Wilson	255 Bowen Ln	Dixon	CA	95620	707-640-0797	wilson@dwgeneralengineer.com	Black American	Male
E. JASPER WRKG. (DEMO) & TRKG	nul LYNN	JASPER	9328 S. VERMONT AVE.	LOS ANGELES	CA	90044	323-754-9877		Black American	Female
EAGLE ROCK INDUSTRIES	Mark	Serrano	2872 YGNACIO VALLEY ROAD	WALNUT CREEK	CA	94598	925-524-3004	estimating@eaglerock.us	Hispanic American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
EASTSIDE IRON CO	Delanie	Delmas	2677 SUNSET ROAD	BISHOP	CA	93514	760-920-2130	delanie_eastsideiron@yahoo.com	Caucasian	Female
Emmett Valley Construction Inc	JESSE	EMMETT	9662 W. Kearney Blvd.	Fresno	CA	93706	559-275-4335	jesse@movendirt.com	Hispanic American	Male
Eric's Backhoe Service, Inc.	ERIC	SERRANO	4780 Maryhill Road	ACTON	CA	93510	661-269-2222	serranohe@aol.com	Hispanic American	Male
FAST TRACK ENGINEERING	Gilbert	Torres	5835 W. Vine Ave.	Visalia	CA	93291	559-731-6608	fstrackinc@gmail.com	Hispanic American	Male
FFKM ENGINEERING CONSTRUCTION, INC.	Frew	Kotisso	28462 CAMINO DEL ARTE DR	VALENCIA	CA	91354	626-345-4225	frew.kotisso@ffkmengineering.com	Black American	Male
FOREFRONT DEEP FOUNDATIONS INC	Jackie L.	Bird	120 Newport Center	NEWPORT BEACH	CA	92660	949-264-1598	info@forefrontdeepfoundations.com	Caucasian	Female
G & F Concrete Cutting, Inc.	Rita M.	Vigil-Ferguson	13653 Alondra Blvd.	Santa Fe Springs	CA	90670	562-229-0227	rvf@gfconcretecutting.com	Hispanic American	Female
G F GARCIA AND SONS, INC	ALEC F.	GARCIA	1749 Toro Creek Road	Morro Bay	CA	93442	805-995-3548	office@gfgsi.com	Hispanic American	Male
Gama Contracting Services, Inc.	JOSE	DUENAS	1835 FLORADALE AVE	SOUTH EL MONTE	CA	91733	626-442-7200	leticia@gamacsi.com	Hispanic American	Male
Garden of Eden Landscapes, Inc.	Philip	Teixeira	6021 Grassland Dr	Castro Valley	CA	94552	510-512-6055	office@groundforcecenterprises.com	Hispanic American	Male
GATES ENTERPRISES, INC	JOE	GATES	2102 BUSINESS CENTER DRIVE, SUITE 146	IRVINE	CA	92612	310-592-5810	jgates.gei1@gmail.com	Black American	Male
GENERAL ENGINEERING CONSTRUCTION CO.	Kelly	Ortiz	4709 EVORA ROAD	BAY POINT	CA	94565	925-362-3648	kelly.generalengineering@yahoo.com	Caucasian	Female
GLOBAL ROAD SEALING, INC	Tri	La	10832 DOROTHY AVE	GARDEN GROVE	CA	92843	714-893-0845	grs@globalroadsealing.com	Asian-Pacific American	Male
GOLDEN SUN CONSTRUCTION, INC	MEILING	YIP	312 HAZEL DRIVE	CORONA DEL MAR	CA	92625	949-380-9797	meilingyip63@gmail.com	Asian-Pacific American	Female
Golden West Construction Services, LLC	Christina	Parker	445 S. Figueroa Street 31st Floor, 31st Floor	Los Angeles	CA	90071	213-537-3835	christina@goldenwestfuel.com	Hispanic American	Female
GR Sundberg, Inc.	Garth R.	Sundberg	5211 BOYD ROAD	ARCATA	CA	95521	707-825-6565	bettina@grsinc.biz	Native American	Male
GRAND BRIDGE INC	Jose	Gonzalez	2208 W. Beechwood Avenue	Fresno	CA	93711	559-433-5919	smourtada@grandbridgeinc.com	Hispanic American	Male
Ground Control Inc.	Jae	Shin	1485 Bayshore Blvd #102	San Francisco	CA	94124	415-508-8589	jae@groundci.com	Asian-Pacific American	Male
HAMMERHEAD DRILLING, LLC	Rafael	Gallardo	304 Belle Ct	El Dorado Hills	CA	95762	707-332-0966	hammerheaddrilling@gmail.com	Hispanic American	Male
Harbor Environmental Group, Inc.	Adela	Miller	591 W. Explorer Street	Brea	CA	92821	714-349-1317	amiller@harborenvirogroup.com	Hispanic American	Female
Harris Development Corporation	Robert	Harris	2743 E. Shaw ave. Ste. 103	Fresno	CA	93710	559-575-3000	rharriscorp@gmail.com	Black American	Male
HEIR & SON CONSTRUCTION, INC	SUKHDEV SINGH	HEIR	1180 SANBORN ROAD	YUBA CITY	CA	95993	530-415-4777	heirandson@comcast.net	Subcontinent Asian American	Male
Highground Excavating & Tree Service	Alvaro	Villasenor	1930 HWY 49	Placerville	CA	95667	530-903-3390	info@highgroundtreeservice.com	Hispanic American	Male
HILLSIDE DRILLING, INC.	Lamont	Jay	539 S. 11TH STREET	RICHMOND	CA	94804	510-234-6532	cheryl@hillsidedrilling.com	Caucasian	Female
HOFER CORPORATION	SCOTT	HOFER	5662 OTAY VALLEY ROAD	SAN DIEGO	CA	92154	619-661-6053	hofercorp@yahoo.com	Native American	Male
Hufford Construction	Joseph	Hufford	72 HUFFORD ROAD	ORICK	CA	95555	707-488-2602	donnahufford@gmail.com	Native American	Male
INDIAN CONSTRUCTION INC	JAY	SHACKELFORD	15924 N. CAJON BLVD.	DEVORE HEIGHTS	CA	92407	909-880-6200	jayshackelford7@gmail.com	Native American	Male
INDIAN HEAD ENTERPRISES	VIRGIL DWAYNE	LONG	2926 CRAIG AVENUE	OROVILLE	CA	95966	530-403-5794	lhenterprises@outlook.com	Native American	Male

INTERIOR DEMOLITION INC	GEORGE	MOLINA	2621 HONOLULU AVE	MONTROSE	CA	91020	818-249-4932	maria@interiordemolition.net	Hispanic American	Male
INTERWEST PACIFIC, LTD.	Jack	Nickolaisen	990 HIGHLAND DR. STE. 212	SOLANA BEACH	CA	92075	858-259-2062	jack@interwestpacific.com	Hispanic American	Male
IRONLIFE INC	Nicholas	Martinez	1375 W RIALTO AVE	SAN BERNARDINO	CA	92410	909-888-2400	nick@ironlifecorp.com	Hispanic American	Male
J & H Engineering General Contractors, Inc.	Amy	McMullen	4065 MISSION OAKS BLVD UNIT B	CAMARILLO	CA	93012	805-987-8414	amy@jandheng.com	Caucasian	Female

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
J. C. Palomar Construction, Inc.	Jose	Diaz	2627 S. MAIN STREET	SANTA ANA	CA	92707	714-754-6440	joec@jcpalomar.com	Hispanic American	Male
J. CARDENAS INC	Javier	Cardenas	14455 PARK AVE, SUITE C	VICTORVILLE	CA	92392	760-243-6384	jcardenasinc@gmail.com	Hispanic American	Male
J.J.R. Construction	Carlos	Raposo	1120 Ninth Avenue	San Mateo	CA	94402	650-343-6109	jjrconstruction@aol.com	Hispanic American	Male
JARRETT FOUNDATIONS, INC	Julie	Cuneo	4518 WINTERS STREET	MCCLELLAN	CA	95652	916-371-8760	julie@jarrettfoundations.com	Caucasian	Female
JEFFERSON STATE HIGHWAYS, INC	Josh	Latham	1573 marigold way	redding	CA	96003	530-604-9801	jstatehighways@gmail.com	Hispanic American	Male
Jet Drilling, Inc.	William	Hinton	2656 SAINT LOUIS AVENUE	SIGNAL HILL	CA	90755	562-988-2849	clarke@jetdrill.com	Hispanic American	Male
JNA Builders, Inc.	JOSEPH	ANTONIO	445 S. Figueroa St., Suite 3100	Los Angeles	CA	90071	888-315-1283	jnantonio@jnabuilders.com	Asian-Pacific American	Male
JRG SERVICES	Onofre	Garza	7964 ARJONS DRIVE STE. A	SAN DIEGO	CA	92126	858-566-7007	jrgarza@jrgarzaconstruction.com	Hispanic American	Male
JSL MASTERY PAVING INC	SULEMA	LIMON	1656 PYRAMID AVE	VENTURA	CA	93004	805-293-9251	sulema@jslmasterypaving.com	Hispanic American	Male
Kapel Construction Inc.	Lance	Robbins	691 PONY EXPRESS WAY, LOT 31	BURNT RANCH	CA	95527	530-629-3300	lrobbins@kapelconstruction.com	Native American	Male
Kelagoon Construction Management & Consultant	Kelvin	Alexis	14880 SHETLAND LANE	FONTANA	CA	92336	909-660-1343	kelagoon@gmail.com	Black American	Male
L & D Excavation LLC	Larry	Ojeda	1317 Riverfront Drive	Bullhead City	AZ	86442	928-758-8549	landexcavation@gmail.com	Hispanic American	Male
LA TERRA CONSTRUCTION SERVICES	Cynthia L.	Goldstein	5016 Eagle Rock Blvd, SUITE 1	Los Angeles	CA	90041	213-248-5422	cynthia@laterraconstruction.com	Hispanic American	Female
LARRANAGA TRUCKING, INC.	FERNAND	LARRANAGA	2206 N. EAST STREET	ALTURAS	CA	96101	530-233-3785	lrcvictoria14@gmail.com	Hispanic American	Male
LINDCO, INC	Linda	Kerlee	653 BRUNKEN AVE	SALINAS	CA	93901	209-883-9221	linda@lindco-inc.com	Caucasian	Female
LONGS DIRECTIONAL BORING, INC	Kathleen	Long	1476 BODIE PLACE	NORCO	CA	92860	951-817-0111	longsdirectionalboring@yahoo.com	Caucasian	Female
M & S ENVIRONMENTAL LANDSCAPES, INC	Michael	Smith	12192 MACS ROAD	REDDING	CA	96003	530-241-1418	shelley@mandsenviron.com	Hispanic American	Male
M B J Consultants, Inc.	MONROE	BARNES	30 W THIRD STREET 4M	CINCINNATI	OH	45202	513-631-9600	clipp@mbjconsultants.com	Black American	Male
M J AVILA COMPANY, INC.	Mary Jo	Avila	7258 W. Rialto Ave.	FRESNO	CA	93723	559-276-1258	marvjoa@mjavila.com	Hispanic American	Female
M. E. AVILA CONSTRUCTION CORPORATION	MICHAEL	AVILA	7655 Morro Road	ATASCADERO	CA	93422	805-462-1801	kellie@avilaconstruction.net	Hispanic American	Male
MACHADO & SONS CONSTRUCTION, INC	Michael	Machado	1000 S. KILROY ROAD	TURLOCK	CA	95380	209-632-5260	mike@machadoandsons.com	Hispanic American	Male
MARTIN GENERAL ENGINEERING INC	TRANQUILINO	MARTIN	12485 QUICKSILVER DRIVE	RANCHO CORDOVA	CA	95742	916-355-8101	dmonson@martingeneral.net	Hispanic American	Male
MARTINI DRILLING CORP.	Darin	Martini	15571 CHEMICAL LANE	HUNTINGTON BEACH	CA	92649	714-715-2715	martinidrilling@yahoo.com	Hispanic American	Male
MASS X INC.	JENNIFER	FOSTER	2524 N. FORDHAM AVENUE	FRESNO	CA	93727	559-294-1075	massx6@hotmail.com	Caucasian	Female
MATHEWS GENERAL ENGINEERING & CONSTRUCTION INC.	Acie	Mathews	16775 FORTY NINER TRL	LATHROP	CA	95330	209-650-3614	mathewsgc@gmail.com	Black American	Male
Mayfield Environmental Engineering	James	Mayfield	412 N Bellflower Blvd, Unit 118	Long Beach	CA	90814	310-880-9647	ceo@mayfieldenvironmental.net	Native American	Male
MC CULLOUGH CONSTRUCTION, INC.	HUGH MACK	MCCULLOUGH	57 ALDERGROVE ROAD	ARCATA	CA	95521	707-825-1014	chelseyrios@mcculloughconstructioninc.com	Native American	Male
MCALLEN SIGNAL AND BORING	Anabel	Aguayo	2821 HAWK COURT	MALLEN	TX	78504	956-662-9418	jmars@mcallsignalandboring.com	Hispanic American	Female

MCO Engineering	David	Miclea	739 Bryant St	San Francisco	CA	94107	916-953-3231	m-coengineering@gmx.com	Hispanic American	Male
Mill City Environmental Corporation	Brian L.	Chapman	116 John Street	Lowell	MA	01852	978-654-6741	bchapman@millcityenv.com	Black American	Male
ML2 Earth Works, LLC	Michael	Lovato	6109 Kaibab Ct	Pinetop	AZ	85935	928-245-5797	marilyn.lovato@gmail.com	Hispanic American	Male
Montgomery Construction Services, Inc.	CLIFFORD	MONTGOMERY	123 Worthington Street, #205	Spring Valley	CA	91977	619-578-2538	patriciaa@montcsi.com	Black American	Male

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Moreno Engineering, Inc.	David J.	Moreno	9155 Archibald Ave, Ste 110	Rancho Cucamonga	CA	91730	909-476-0010	david@morenoengineeringinc.com	Hispanic American	Male
MOTHERLODE CONCRETE CONSTRUCTION	GLENN	FOSTER, JR.	90 GOLD DUST TRAIL	SUTTER CREEK	CA	95685	209-223-2663	motherlodeconcrete@att.net	Native American	Male
MRG Concrete Cutting	Manny	Ruvalcaba Guzman	1024 Knollwood Drive	Newbury Park	CA	91320	661-607-6839	mrgconcretecutting@yahoo.com	Hispanic American	Male
MRG Concrete Cutting	Manny	Ruvalcaba Guzman	1024 Knollwood Drive	Newbury Park	CA	91320	661-607-6839	mrgconcretecutting@yahoo.com	Hispanic American	Male
MZB Engineering and Construction Incorporated	Humayun	Aziz	1192 Athlone Ln	Corona	CA	92882	949-254-4792	humayun.aziz@mzbinc.com	Subcontinent Asian American	Male
NEW HORIZON DEMOLITION / N.H. HAULING	LUIS	PENA	13254 MACLAY STREET	SYLMAR	CA	91342	818-838-3454	nhdemo4all@yahoo.com	Hispanic American	Male
New Vision Commercial Builders	Derrick	Amos	210 W. Century Blvd	Los Angeles	CA	90003	310-722-1763	derrick@newvision.build	Black American	Male
NEWLAND ENTITIES, INC	ROBERT	CERVANTES	500 OLIVE STREET	MARYSVILLE	CA	95901	530-755-1178	rcervantes@newlandentities.com	Hispanic American	Male
OBS Engineering, Inc.	Wilmoth	Lewis	1555 Yosemite Avenue, Suite 2	San Francisco	CA	94124	415-875-9902	admin@obs-engineering.com	Black American	Male
OLIVER ENGINEERING CONSTRUCTION	AARON	OLIVER	3961 PERCH CIRCLE	WILLITS	CA	95490	707-671-6442	oliverconst.eng@gmail.com	Native American	Male
ON GRADEV-DITCH EXCAVATING, LLC	FRANKI R. MORALES	MACEDO	16286 Pine Ave	Fontana	CA	92335	909-213-3638	ongradevditch@yahoo.com	Hispanic American	Male
Ornnell Fire Sprinkler, Inc.	Louis	Ornelas	802 E 29th St.	San Bernardino	CA	92404	909-783-3817	ornnell909fire@aol.com	Hispanic American	Male
Pari & Gershon, Inc.	Romena	Jonas	2101 Geer Road, Suite 405	Turlock	CA	95382	408-941-5968	rjonas@pgiinc.net	Caucasian	Female
PAVE-RITE CONSTRUCTION, INC.	IRENE	DANIEL	972 RED GUM LN	NIPOMO	CA	93444	805-929-6854	fidaniel@charter.net	Hispanic American	Female
Perez Asphalt Construction	Kelly	Edwards	5602 Harpy Eagle Avenue	Bakersfield	CA	93306	661-487-4870	kelly@perezasphalt.com	Hispanic American	Male
Peridot Construction	Dawna	Baldi	53753 Ridge Rd	Yucca Valley	CA	92284	951-204-9126	dawna@peridotengineering.com	Hispanic American	Female
PETROSIUS CONSTRUCTION, INC	Joseph	Petrosius	1110 NORTH CAIN STREET	VISALIA	CA	93292	559-733-4388	petrosius@lycos.com	Native American	Male
PG Cutting Services, Inc.	Juan	Garcia	109 S Main Street, Unit 201	Lake Elsinore	CA	92530	951-245-6464	belinda.garcia@pgcutting.com	Hispanic American	Male
PNF CONSTRUCTION, INC.	RODNEY ALLEN	SPENCER	725 6TH STREET	MARYSVILLE	CA	95901	909-638-2215	irbconstructioninc@gmail.com	Black American	Male
POLO Engineering, Inc.	Jennifer	Polo	30758 Sloan Canyon Rd	Castaic	CA	91384	310-486-2065	jennifer@poloengineeringinc.com	Hispanic American	Female
PONCIANO CONSTRUCTION INC	Peter	Ponciano	525 S. Grade Rd	Alpine	CA	91901	619-328-6381	pete@poncianoconstruction.com	Asian-Pacific American	Male
Professional Concrete Sawing Inc.	David	Scott	P.O. Box 3348	Merced	CA	95344	209-722-2226	davidscott@gvni.com	Black American	Male
PTM General Engineering Services, Inc.	Elizabeth	Mendoza Mcrae	5942 Acorn St.	Riverside	CA	92504	951-710-1000	elizabeth@ptm-eng.com	Hispanic American	Female
QA CONSTRUCTORS	LUIS QUINTO	ALLENDE	19060 LAUREL DRIVE	LOS GATOS	CA	95033	408-210-5508	quinto@accorp.com	Hispanic American	Male
QUIMU CONTRACTING, INC.	MIGUEL	QUIROZ	5830 Dixon Ave West	DIXON	CA	95620	707-693-0289	quimu@sbcglobal.net	Hispanic American	Male
R Rhodes Construction Inc	Mitzi	Page	1745 Park St	Paso Robles	CA	93446	805-610-1675	ryanrhodes@rrhodesconstruction.com	Caucasian	Female
R&S Construction Management Inc.	Teera	Nuntaworanuch	1555 Burke Ave Ste I	San Francisco	CA	94124	415-872-9935	teera@rscminc.com	Hispanic American	Male
RAC Construction & Engineering, Inc.	Ruben	Claudio	5811 Barbarossa Ct	San Diego	CA	92115	760-497-6668	rclaudio@racconstruction.biz	Hispanic American	Male

RBT ELECTRIC, INC	RYAN	TITTSWORTH	187 W. ORANGETHORPE AVE #101	PLACENTIA	CA	92870	800-661-5006	ryan@rbt-electric.com	Black American	Male
RCJ & ASSOCIATES, INC	RICKY C.	JOHNSON, SR	1709 V STREET	SACRAMENTO	CA	95818	916-399-4852	ricky@rcjandassociates.com	Black American	Male
RDZ CONTRACTORS, INC.	Pedro	Rodriguez	PO BOX 760	NIPOMO	CA	93444	805-458-5252	rdzcontractors@gmail.com	Hispanic American	Male
RE CHAFFEE CONSTRUCTION	Ronnie	Chaffee	7987 SAGE ST	PHELAN	CA	92371	760-403-5456	ronnie@rechaffee.com	Hispanic American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
REYCO ENGINEERING INC.	Joe	Duran	10903 BOULDER CANYON RD	RANCHO CUCAMONGA	CA	91737	626-922-2455	reyna0duran@gmail.com	Hispanic American	Male
REYNA'S ENGINEERING INC	Griselda	Reyna	3310 GRAND AVE	SAN MARCOS	CA	92078	951-616-4332	lolleelevi@yahoo.com	Hispanic American	Female
RISING SUN COMPANY	MARLENE	SARIO	1180 SPRUCE RD.	EXETER	CA	93221	559-804-8312	msario@yahoo.com	Caucasian	Female
RMT LANDSCAPE CONTRACTORS, INC	Julie	Briggs	421 PENDLETON WAY	OAKLAND	CA	94621	510-568-3208	julie@rmtlandscape.com	Hispanic American	Male
Roadway Construction Inc.	Reza	Mohaghegh-Yardi	50 CALIFORNIA ST., SUITE 1500	SAN FRANCISCO	CA	94111	925-575-1342	rezayazdi@roadwayconstruction.com	Subcontinent Asian American	Male
Robert Thomas Jones	ROBERT T.	JONES	149 DONNA AVENUE	BAKERSFIELD	CA	93304	661-319-3090	robert.jones6127@yahoo.com	Black American	Male
ROC Equipment LLC	Vanessa	Lucido	2065 West Parkway Blvd	Salt Lake City	UT	84119	801-214-6126	vanessa@rocequipment.com	Caucasian	Female
ROCK STRUCTURES CONSTRUCTION COMPANY	ANTONIO T.	PAREDES	11126 SILVERTON CT.	CORONA	CA	92881	951-371-1112	rockstructures@sbcglobal.net	Hispanic American	Male
Rockin R Grading & Excavating, Inc.	Robin	Costa	9637 RODDEN RD	OAKDALE	CA	95361	209-495-9521	robin@rockinrinc.com	Caucasian	Female
ROLL'N ROCK CONSTRUCTION INC	Bonnie	Heile	5527 Truck Village Drive	MOUNT SHASTA	CA	96067	530-925-1408	rollnrockcon@gmail.com	Caucasian	Female
ROSCO CORPORATION	Ross	Mayfield III	7401 Lorene Rd.	REDWOOD VALLEY	CA	95470	707-485-4320	roscoinmendo@hotmail.com	Native American	Male
S. CHAVES CONSTRUCTION, INC.	Terri	Chaves	11545 LOS OSOS VALLEY ROAD, STE C3	SAN LUIS OBISPO	CA	93405	805-543-9340	terri@schavesconstruction.com	Hispanic American	Female
S.C.S.C. Inc.	BRIAN	CORSO	1180 N KRAEMER PL	ANAHEIM	CA	92806	714-920-8771	brian@serviceconstruction.com	Hispanic American	Male
SAFE2CORE, INC.	ISABEL CRISTINA	POSADA	3801 CHARTER PARK CT, Suite A	San Jose	CA	95136	408-266-7000	cristina@safe2core.com	Hispanic American	Female
Sagebrush Trucking LLC	Joanna	Lyons-Antley	2960 Maywood Dr, Unit #12	Klamath Falls	OR	97603	541-205-6998	sagebrushtrucking@gmail.com	Caucasian	Female
SAILROCK CONSTRUCTORS INC.	Courtney	Statham	113 BRIGHT POPPY	IRVINE	CA	92618	949-378-3440	courtney@sailrockinc.com	Hispanic American	Female
SAUREN CONSTRUCTION INC.	STEVEN	MAYS	300 DUTCH RAVINE LANE	NEWCASTLE	CA	95658	916-414-0444	steve@saureninc.com	Black American	Male
SAWMAN CONCRETE CUTTING INC	Alfonso	Salazar	11584 woodcock ave	San Fernando	CA	91340	818-406-1421	alsawman@gmail.com	Hispanic American	Male
SCHOTKA CONSTRUCTION INC	DIANE	SCHOTKA	5555 NAPA VALLEJO HWY	AMERICAN CANYON	CA	94503	707-396-2736	dschotka@aol.com	Caucasian	Female
SDAC lining Group 'LLC	SAMUEL	ADAMS	1485 Bayshore BLVD suit 381	San Francisco	CA	94124	415-963-1153	samuela@sdadamscorp.com	Black American	Male
Seamair Construction, Inc.	Patrick Greg	Phelan	205 SUBURBAN WAY #2	SAN LUIS OBISPO	CA	93401	805-439-4362	info@seamairinc.com	Hispanic American	Male
Servitek Electric, Inc	Geoff	Reyes	385 S Lemon Ave #E243	Walnut	CA	91789	626-227-1650	greyes@servitekelectric.com	Asian-Pacific American	Male
SIERRA ENGINEERING & ENVIRONMENTAL SERVICES LLC	JOHN	YANGUBA	7144 FAIR OAKS BLVD, SUITE 1A	CARMICHAEL	CA	95608	504-505-5598	joyang1971@gmail.com	Black American	Male
SIERRA EXCAVATING, LLC	JUAN	SANCHEZ	356 S GEORGE WASHINGTON BLVD	YUBA CITY	CA	95993	530-671-6782	sierraexcavating@aol.com	Hispanic American	Male
SITWORKS CONSTRUCTION, INC	KENT	DESENA	3634 BICKERSTAFF ST	LAFAYETTE	CA	94549	925-284-1437	kdesena@linkzone.com	Asian-Pacific American	Male
SNLM Landscape Inc.	Emmanuel	Mungoma	1401 W. 123rd Street	Los Angeles	CA	90047	213-298-8589	snlmengineering@gmail.com	Black American	Male
SOLID CONSTRUCTION, INC	DAN	RICH	3017 MILDRED LN	BAKERSFIELD	CA	93314	661-829-1637	queenie_chief2003@yahoo.com	Native American	Male
South Coast Sweeping, Inc.	KIM	SARMIENTO	2332 TRAILS END	FALLBROOK	CA	92028	760-535-6800	kssouthcoast@roadrunner.com	Caucasian	Female
STONY CREEK GENERAL ENGINEERING	Luke	Andrews	5321 COUNTY RD 206	ORLAND	CA	95963	530-526-3191	luke@scgeinc.com	Native American	Male
SuKan, Inc.	Suzanne	Desatoff	18412 FARIJARDO STREET	ROWLAND HEIGHTS	CA	91748	626-854-9467	sukanusa@gmail.com	Caucasian	Female

T-Rex Demolition Inc	Manuel	Ibarra	14044 CLARK ST.	BALDWIN PARK	CA	91706	626-257-3861	trexdemolitioninc@trexdemo.com	Hispanic American	Male
Team Reliant, Inc.	Mark	Ricardo	4710 Gettysburg Avenue	Chino	CA	91710	714-397-8048	mark@teamreliant.com	Hispanic American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
Terra West Construction Incorporated	Luis	Garcia	1030 Gettysburg Avenue, Suite 107	Clovis	CA	93612	559-252-1356	estimating@terrawestconstruction.com	Hispanic American	Male
Thomas Land Clearing Co.	Willie	Thomas	2170 W. Esther Street	Long Beach	CA	90813	562-436-6025	tlc.demo@verizon.net	Black American	Male
TIPCO ENGINEERING, INC	KEVIN	TIPTON	425 E REDONDO BEACH BLVD	GARDENA	CA	90248	310-515-6549	tipcoinc@aol.com	Black American	Male
TITAN ENGINEERING, INC.	Juan	Parra	36529 CREEKWOOD COURT	MURRIETA	CA	92562	951-600-7079	peter.parra@titanengineeringinc.com	Hispanic American	Male
TOURE' ASSOCIATES ENVIRONMENTAL ENGINEERING INC	T'SHAKA	TOURE'	1485 BAYSHORE BLVD SUITE 427-MS158	SAN FRANCISCO	CA	94124	559-470-5586	tshaka@toureinc.com	Black American	Male
Transtar Pipeline, Inc.	CYNTHIA S.	BRITO	10467 Roselle Street	San Diego	CA	92121	858-453-0744	info@transtarpipeline.com	Hispanic American	Male
Trench Pro	Michael	Martin	20800 Old River Rd	Sacramento	CA	95691	360-721-0265	mmartin@trenchpro-corp.com	Black American	Male
Tri Span, Inc.	Joe	Araiza	591 W. EXPLORER STREET	BREA	CA	92821	714-257-9680	loea@trispainc.com	Hispanic American	Male
Tungsten Engineering Contractors	Heather	Hellickson	18214 Wedge Parkway, Suite 2044	Reno	NV	89511	775-622-2279	heather.hellickson@tungstennv.com	Caucasian	Female
Tyrrell Resources, Inc	Cheryl L.	Tyrrell	1243 High St	Auburn	CA	95603	530-243-8733	tyrrellresources@sbcglobal.net	Caucasian	Female
U. H. Services Group, LLC	Rafael	Valdes	152 Harbour Town Crt.	New Orleans	LA	70131	504-458-5320	ray@uhservicesgroup.com	Hispanic American	Male
Underground Support Services, LLC	Stephanie	Teetes	7907 Roundrock Rd	Dallas	TX	75248	972-971-0875	steetes@undergroundsupportservices.com	Caucasian	Female
UNITED GENERAL CONSTRUCTION, INC.	CRISTEN	MASON	13440 WHITEWATER DR	POWAY	CA	92064	623-810-0028	officeugc@yahoo.com	Black American	Male
UNIVERSAL CONSTRUCTION AND ENGINEERING	ALFONSO	MONTES	77725 Enfield Lane, Suite 210	Palm Desert	CA	92211	760-200-3100	alfonso@universalconstructioneng.com	Hispanic American	Male
Valle Grande Construction	Luis	Valle	10025 De Soto Ave. #118	Chatsworth	CA	91311	818-624-5576	valleluis@hotmail.com	Hispanic American	Male
VOBECKY ENTERPRISES, INC.	Marie Bianca	Vobecky	134 NORTH VERMONT AVE.	GLENDORA	CA	91741	626-818-7402	bianca@vobecky.com	Black American	Female
WALLACE STRUCTURES	ERIC	WALLACE	2515 TAWNDALE LN	HYDESVILLE	CA	95547	707-834-4992	wallacestr@aol.com	Hispanic American	Male
WC DRILLING, INC.	Elizabeth	Lamont	1350 Willow Ave	Hercules	CA	94547	510-245-0556	elamont@wcdrilling.com	Native American	Female
WDTConstruction, Inc	Keith	Dixon	19819 Blythe St	Winnetka	CA	91306	310-930-5130	wdtconst@gmail.com	Black American	Male
WHITE BEAR CONSTRUCTION, INC.	AMANDA	HOY	941 County Rd 260	ALTURAS	CA	96101	530-233-4875	ahoywhitebear@outlook.com	Native American	Female
WILLIAMS TUNNELING INDUSTRIES INC	Edison	Williams	16306 CASCADE CAVERNS LN	HOUSTON	TX	77044	832-388-6327	ewilliams@wiltun.com	Black American	Male
WILLIE DIXON TRUCKING	WILLIE	DIXON	1264 W. 132ND STREET	GARDENA	CA	90248	310-532-6897		Black American	Male
WILLOW HAWK INC	JAMES	AMMON	2562 SOUTH FORK ROAD	SALYER	CA	95563	530-739-3828	willowhawkinc@gmail.com	Native American	Male
WK McLellan Company	Rita	Miller	254 SEARS POINT ROAD	PETALUMA	CA	94954	415-720-4701	ritam@wkmclellan.com	Caucasian	Female
238290 - Building Equipment Contractors (25 firms)										
ALVAREZ QUALITY CONSTRUCTION, INC	JOSE	ALVAREZ	921 DELAWARE ST	IMPERIAL BEACH	CA	91932	619-906-1417	awp11254@hotmail.com	Hispanic American	Male
B & R Project Management	Barbara	Coleman	7192 S. Perth Street	Aurora	CO	80016	303-304-2098	bcoleman@brprojectmgmt.com	Caucasian	Female
CE GREEN INC.	Carole E.	Green	7545 BALDWIN DAM RD. UNIT B	FOLSOM	CA	95630	916-365-4925	carole@cegreeninc.com	Caucasian	Female
D2 (Squared) Industrial Services, LLC	Patrick	Young	217 Bateman Drive	Central Point	OR	97502	541-664-3010	gretl.pineda@asrcindustrial.com	Native American	Male

Diverse Industrial Solutions, LLC	Rochelle	Johnson	180 JOHNSON LN	CLARKSBURG	PA	15725	724-388-0154	diversesol@outlook.com	Black American	Female
Excelsior Elevator Corporation	Lina	Rough	1961 BLAIR AVE	SANTA ANA	CA	92705	949-757-1688	lina@excelsiorelevator.com	Asian-Pacific American	Female
Fe Steel Company	Jared	Shultz	525 E. Seaside Way #1906	Long Beach	CA	90802	951-970-3785	festeelcompany@gmail.com	Black American	Male

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FEBRUARY ENTERPRISES, INC.	Frank	Benavidez	2531 W 62ND CT. UNIT A	DENVER	CO	80221	303-429-5457	fbenavidez@febent.com	Hispanic American	Male
G & M Backhoe Service, Inc	Laura J.	Griffin	4235 WALNUT AVE	CHINO	CA	91710	909-464-1417	gandmchino@gmail.com	Caucasian	Female
H & F Constructors, LLC	Freddie	Hanns	PO Box 201433, Suite 293	Denver	CO	80220	720-620-4791	h_fconst@yahoo.com	Black American	Male
Harris Hoisting	Tana	Harris	1320 Underwood Ave	San Francisco	CA	94124	415-913-0143	tana@harrishoisting.com	Black American	Female
INTEGRATED MARINE SERVICES, INC.	LARRY	SAMANO	2320 MAIN STREET	CHULA VISTA	CA	91911	619-429-0300	ls@imships.com	Hispanic American	Male
JORDIM INTERNATIONAL, INC.	Jorge	Penaranda	12502 SW 78 STREET	MIAMI	FL	33183	305-273-7441	jordimint@aol.com	Hispanic American	Male
MULTITECH GROUP, INC	Ora	Joiner	6603 Parkside Ct.	Arlington	TX	76016	817-496-5500	ojoiner@multitechgroupinc.com	Black American	Female
OMNI ELEVATOR COMPANY, INC	Margaret	Bess	3722 ASHLEY WAY	OWINGS MILLS	MD	21117	410-363-4222	heribe@aol.com	Black American	Female
PINGUELO CONSTRUCTION, INC.	FRANK	PINGUELO	4171 SUISUN VALLEY ROAD, SUITE G	FAIRFIELD	CA	94534	707-864-3003	pingueloconstruction@yahoo.com	Hispanic American	Male
PLB INNOVATIONS, LLC	Tammy	Rose	PO BOX 83	PENDLETON	IN	46065	317-448-0857	plbinnovations@gmail.com	Caucasian	Female
Steelman Build & Construction, Inc.	Aisha	Thompson	523 N. Indian Hill Blvd.	Claremont	CA	91711	909-610-3210	aisha@steelmanbuild.com	Black American	Female
SunWest Engineering Constructors, Inc.	Pamela	Lawrence	4780 CHEYENNE WAY	CHINO	CA	91710	888-588-8737	plawrence@sunwestengineering.com	Caucasian	Female
The Aaron Group, Inc.	Michel	Turpeau	1266 SPRING PARK DRIVE	ATLANTA	GA	30311	404-622-4308	admin@aarongroup.us	Black American	Male
Tri-County Drilling, Inc.	Sheryl Peterson	Duddie	9631 CANDIDA STREET	SAN DIEGO	CA	92126	858-271-0099	shervlp@tcdrilling.com	Caucasian	Female
US ATM Network, Inc.	Kimberly	McKinley	1229 Green Meadow Road	Carbondale	CO	81623	970-379-4559	kmckinley@usatmnet.com	Hispanic American	Female
Vic Thompson Company	Christine	Norton	3751 New York Avenue, Suite 140	Arlington	TX	76014	817-557-5600	dtalbert@vtc.us.com	Caucasian	Female
Woods Commercial Door, Inc.	Jamie C.	Woods	710 East Parkridge Ave Suite 100	Corona	CA	92879	951-427-5822	jamie@woodscommercialdoor.com	Caucasian	Female
Yolanda's Construction Administration & Traffic Control, Inc.	Yolanda	Jones	280 NEWHALL ST	SAN FRANCISCO	CA	94124	415-647-2682	yjones@ycat-c.com	Black American	Female
236210 - Industrial Building Construction (131 firms)										
A & J's Construction Company	Alvaro	Magana	9500 7th Street, Suite U	Rancho Cucamonga	CA	91730	909-941-9797	a1unitedconstruction@gmail.com	Hispanic American	Male
A F M ENVIRONMENTAL INC.	ALFRED J.	HARDWICK	752 NORTHPORT DR., SUITE C	WEST SACRAMENTO	CA	95691	916-997-7520	afmenviro@aol.com	Black American	Male
ACCURATE CONSTRUCTION COMPANY INC	ANTHONY	CHACON	555 W ALLEN AVE, SUITE #4	SAN DIMAS	CA	91773	909-592-4455	achacon@accuratecci.com	Hispanic American	Male
ALAMEDA CONSTRUCTION SERVICES, INC.	Kevin	Ramsey	2528 EAST 125TH STREET	COMPTON	CA	90222	310-635-3277	kramsey@alamedaconstruction.com	Black American	Male
ALVAREZ QUALITY CONSTRUCTION, INC	JOSE	ALVAREZ	921 DELAWARE ST	IMPERIAL BEACH	CA	91932	619-906-1417	awp11254@hotmail.com	Hispanic American	Male
Anco Iron & Construction Inc.	Hector	Colina	1286 Underwood Ave.	San Francisco	CA	94124	415-822-3931	anco6737@sbcglobal.net	Hispanic American	Male
Anil Verma Associates, Inc.	Anil	Verma	521 5th Ave, 17th Floor	New York	NY	10175	213-624-6908	anilv@anilverma.com	Subcontinent Asian American	Male
APR CONSTRUCTION, INC.	Eric	Scarborough	3916 MURRAY HILL RD	LA MESA	CA	91941	619-247-7327	eric@aprconstruction.com	Black American	Male
ARS Construction Services, Inc.	Robert	Puga	20963 Lamberton Ave.	Long Beach	CA	90810	323-636-1771	robertpuga@concutint.com	Hispanic American	Male
ARTIFEX INDUSTRIES INC	MANUEL	RAMOS	3547 SOUTH HIGUERA ST., SUITE F	SAN LUIS OBISPO	CA	93401	805-547-9800	manny@artifex7.com	Hispanic American	Male

ASG CONSTRUCTION INC	Armand G	Gonzales	21363 LASSEN ST STE 108, Suite 108	CHATSWORTH	CA	91311	818-758-2490	mercy@asgci.com	Hispanic American	Male
ASSOCIATED CONSTRUCTION SERVICES GROUP	Darrel	Sauceda	8531 WELLSFORD PLACE, UNIT E	SANTA FE SPRINGS	CA	90670	562-464-0880	darrel@acsgroup-usa.com	Hispanic American	Male
ATELIER DEVELOPMENT COMPANY, INC.	CURTIS I.	RO	300 NORTH LAKE AVE, 12TH FLOOR	PASADENA	CA	91101	626-792-5450	cro@atelierdevelopment.com	Asian-Pacific American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
Axiom Group	Esteban	Torres	200 N. San Fernando Road, Suite 314	Los Angeles	CA	90031	323-612-6343	esteban@axiomcm.com	Hispanic American	Male
BAINES GROUP INC	MICHAEL	BAINES	562 14TH ST	OAKLAND	CA	94612	510-238-4669	bainesgroupinc1110@sbcglobal.net	Black American	Male
Ballard Construction, Inc.	Sherron	Ballard	904 N. La Brea Ave., Suite 5	Inglewood, CA	CA	90302	818-744-8923	ballardconstruction@hotmail.com	Black American	Female
BAY TECH ENGINEERING, INC.	Angelo	Kalaveras	1350 Van Dyke Avenue, #201, Suite 20	San Francisco	CA	94124	415-760-6100	angelok@baytechengineering.com	Asian-Pacific American	Male
BC SCHMIDT CONSTRUCTION, INC.	Carrie A.	Schmidt	411 Main St	Colusa	CA	95932	530-473-5423	cs@bcschmidt.com	Caucasian	Female
Bells Automotive Dealer LLC	Yvonne	Bell Tumblin	3652 E. Moonlight Street	Ontario	CA	91761	909-202-9204	yvonne@pbsconstructioncompany.com	Black American	Female
BELMONT WEST, INC.	Michael	Jurado	2367 GEODE LANE	CARLSBAD	CA	92009	619-507-7875	michael.jurado@belmontwest.com	Hispanic American	Male
BITECH CONSTRUCTION CO., INC.	BENJAMIN BYONG	KIM	7371 WALNUT AVENUE	BUENA PARK	CA	90620	714-521-1477	bitechconstruction@gmail.com	Asian-Pacific American	Male
Bravo Pacific, Inc.	EDWARD	MARMOLEJO	11818 FAIRWAY DR	YUCAIPA	CA	92399	909-915-8391	bravopacific@hotmail.com	Hispanic American	Male
Bruce Anderson Enterprises, Inc.	Andres	Aguilar	1662 W McFadden Ave	Santa Ana	CA	92704	714-656-7421	andrewaguilar450@gmail.com	Hispanic American	Male
C. I. CONTRACTORS, INC.	STUART	JACQUES	229 E WHITNEY RD STE 200	Anchorage	AK	99501	907-561-8807	stuart@cei-alaska.com	Native American	Male
CENTRAL ENVIRONMENTAL, INC.	Shane	Durand	229 E WHITNEY RD	ANCHORAGE	AK	99501	907-561-0125	lisa@cei-alaska.com	Other Minority	Female
Chidan Inc	Francis	Ezewiro	302 East Carson Street, Suite 206	Carson	CA	90745	424-445-1979	chidan16@yahoo.com	Black American	Male
CININ Construction & Management	CARLOS	DILLON	5720 MONROE AVENUE	SOUTH GATE	CA	90280	562-881-2185	cdillon343@aol.com	Hispanic American	Male
CITIZEN PROPERTIES INC	SHANNON	SHEEHAN	1238 S RIDGELEY DR	LOS ANGELES	CA	90019	323-938-1960	shannon@citizenproperties.com	Caucasian	Female
CMTS, LLC	K. HEZEKIAH	HARRIS	8500 N Stemmons Fwy, Ste. 6077	Dallas	TX	75247	214-637-6200	hharris@cmtslc.com	Black American	Male
COLEMAN CONSTRUCTION	Sharon	Coleman	1973 W 48TH STREET	LOS ANGELES	CA	90062	323-295-5484	scoleman@colemancon.com	Black American	Female
ConstructiCON Corp	LEE	PHAM	21060 Homestead Rd., STE 100	Cupertino	CA	95014	888-242-4664	luan@cicbuilder.com	Asian American	Male
CONSTRUCTION CONTRACT MANAGEMENT	LISA	DAVIS	41 DEL ORO LAGOON	NOVATO	CA	94949	707-763-5600	lisagdavis@hotmail.com	Caucasian	Female
CONSTRUCTION MANAGEMENT SOLUTIONS	Robyn	Coates	114 W. COLORADO BLVD.	MONROVIA	CA	91016	626-639-2813	robyn@thecmsolution.com	Caucasian	Female
CONSTRUCTION PERFORMANCE BUILDERS	TERRENCE G.	OSUGA	1361 S. WINCHESTER BLVD., SUITE 103	SAN JOSE	CA	95128	408-874-0370	tosuga@cpt4cm.com	Asian-Pacific American	Male
Consult Construction Corporation	Shiva	Mudaliyar	4623 Maytime Lane	Culver City	CA	90230	310-404-3065	shiva@consultcc.com	Subcontinent Asian American	Male
Cooper Zietz Engineers, Inc.	Herbert	Frickle	6400 SE Lake RD Ste 270	Portland	OR	97222	503-652-9090	licensing@akana.us	Native American	Male
CPM LOGISTICS, LLC	ABBIGAIL ANN	BROWN	5506 THORNHILL DRIVE	OAKLAND	CA	94611	510-255-1523	abbigail@cpmlogistics.net	Caucasian	Female
Craft Construction & Development, Inc.	Kenny T.	Fujii	1350 W. 228th St., Unit 1	Torrance	CA	90501	310-876-7233	hiones@craftconstruct.com	Hispanic American	Male
CREATIVE BUILDS CORPORATION	RODOLFO	FARBER	925 B STREET, SUITE 601	SAN DIEGO	CA	92101	619-269-1320	rodolfo@creativebuildsusa.com	Hispanic American	Male
CWES, INC.	MICHAEL	WILLIAMS	3065 N. SUNNYSIDE, #101	FRESNO	CA	93727	559-346-1251	miwms@calwes.com	Black American	Male
CYBER PROFESSIONAL SOLUTIONS CORP.	JOAQUIN	CAMPOS	3441 MAIN STREET, SUITE 104	CHULA VISTA	CA	91911	619-498-4819	admin@cyberpsc.com	Hispanic American	Male

DBR INVESTMENTS INC	Brian	Drake	1120 Sycamore Avenue, Suite 2D	Vista	CA	92081	760-297-5070	tyke@dbrogeneng.com	Native American	Male
Diversified Production Services, Inc.	Gustavo	Davila	3720 Skypark Drive, 33rd Floor Penthouse	Torrance	CA	90505	310-991-4462	gdavila@dpsila.com	Hispanic American	Male
DOD CONSTRUCTION	Charoletta	Dickerson	3501 Edison Hwy	Bakersfield	CA	93307	661-366-8000	derrickd@dodconstruction.com	Black American	Male
ECA INCORPORATED	null DANIEL	FRANCISCO, JR.	PO BOX 178507	SAN DIEGO	CA	92177	858-565-4322	dan@ecaincorporated.com	Asian-Pacific American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
ERA.CO.INC	ENRIQUE	AVILA	319 WILLARD AVE.	RICHMOND,	CA	94806	510-830-5955	mich1064@aol.com	Hispanic American	Male
Fasone Construction Inc.	Jeanette	Fasone	9124 Norwalk Blvd	Santa Fe Springs	CA	90670	562-948-3349	jeanette@fasonegbc.com	Hispanic American	Female
FAYNSOD CONSTRUCTION COMPANY INC	Yosi	Faynsod	526 W. Arbor Vitae Street	INGLEWOOD, CA	CA	90301	310-699-9500	faynsodinc@gmail.com	Hispanic American	Male
Fernandez Project Services, Inc.	Darrell	Fernandez	3041 Santa Carlotta Street	La Crescenta	CA	91214	626-260-6448	darrell.fernandez@fpscpm.com	Hispanic American	Male
Francison Consulting Inc.	Philip	Shehadeh	10009 Artesia Blvd	Bellflower	CA	90706	949-877-6848	nabil@francisonconsulting.com	Hispanic American	Male
GECMS, Inc	Bruce A	Giron	1485 Bayshore Blvd, #222	San Francisco	CA	94124	510-229-3918	bagiron@gironcms.com	Black American	Male
GLOBAL ENGINEERING SOLUTIONS, INC.	LALEH	ZARGARINEJAD	6700A ROCKLEDGE DRIVE, SUITE 301	BETHESDA	MD	20817	301-216-2871	lalehz@theges.com	Caucasian	Female
GRACE BUILDERS INTERNATIONAL	DARIUS	MCGEE	4854 PRESIDIO DRIVE	LOS ANGELES	CA	90043	323-732-4800	dariusmcgee@gmail.com	Black American	Male
Grahovac Construction Company, Inc.	Gina M.	Grahovac Franklin	8418 LA MESA BLVD	LA MESA	CA	91942	619-466-6693	ginaf@grahovacconst.com	Caucasian	Female
HASKELL & HASKELL ENGINEERING & CONSTRUCTION SERVICES, INC.	SHAVON	HASKELL	17510 ELLEN ST	KNIGHTS FERRY	CA	95361	209-881-3500	hhengcon@caltel.com	Caucasian	Female
HOFFER CORPORATION	SCOTT	HOFFER	5662 OTAY VALLEY ROAD	SAN DIEGO	CA	92154	619-661-6053	hofercorp@yahoo.com	Native American	Male
HOLLOWAY CONSTRUCTION INC	BRANDON	HOLLOWAY	13101 13th Road West	Hanford	CA	93230	559-585-0368	brandon@hollowayconstructioninc.net	Hispanic American	Male
IMAQ TECHNOLOGY, LLC	A	Cetina	840 K ST STE 200	ANCHORAGE	AK	99501	907-302-0750	acetina@stmnc.net	Other Minority	Male
INDIAN CONSTRUCTION INC	JAY	SHACKELFORD	15924 N. CAJON BLVD.	DEVORE HEIGHTS	CA	92407	909-880-6200	jayshackelford7@gmail.com	Native American	Male
Intelligent Development Inc	Philip	Hawkins	1100 Meloday Lane, Ste 138	Roseville	CA	95678	530-320-4775	philip@phadb.com	Black American	Male
Interior Plus Inc	Stephen	Munoz	12000 Slauson Ave, Unit 20	Santa Fe Springs	CA	90670	562-464-6950	martha@interiorplusinc.us	Hispanic American	Male
Interior Plus Inc	Stephen	Munoz	12000 Slauson Ave, Unit 20	Santa Fe Springs	CA	90670	562-464-6950	martha@interiorplusinc.us	Hispanic American	Male
IPI CONSTRUCTION	LONG	NGUYEN	14673 PARTHENIA ST, STE 200	PANORAMA CITY	CA	91402	818-786-8433	long@ipicorp.us	Asian-Pacific American	Male
JACOB CONSTRUCTION AND DESIGN, INC	JACOB	PICKERING	2436 BROAD STREET STE A	SAN LUIS OBISPO	CA	93401	805-460-6940	jacobpickering@jacobcd.com	Asian-Pacific American	Male
JAMES FLETCHER CONSTRUCTION INC	JAMES	FLETCHER	609 DATE AVENUE	CHULA VISTA	CA	91910	619-405-9316	fletcherconstruction5106@gmail.com	Native American	Male
ICI CHAVEZ CONSTRUCTION, INC	Marilupe	Chavez	115 S Gold Canyon St	Ridgecrest	CA	93555	760-375-2802	marilupe@icichavez.com	Hispanic American	Female
JCMS, Inc.	Goutam	Jois	1741 Whitehorse-Mercerville Rd.	Mercerville	NJ	08619	609-631-0700	compliance@jcms.com	Subcontinent Asian American	Male
Jeff Oviedo and Associates, Inc.	Jeffrey	Oviedo	260 Newport Center Drive, Suite 100	NEWPORT BEACH	CA	92660	949-251-0702	joviedo@joagroup.com	Hispanic American	Male
JP ELECTRIC COMPANY	JUN	PASION	1614 1/2 N. HARVARD AVENUE	LOS ANGELES	CA	90027	323-661-8605	jpelectric@sbcglobal.net	Asian-Pacific American	Male
JT CORRAL CONSTRUCTION	John	Corral	568 EL PINTADO RD.	DANVILLE	CA	94526	925-575-0377	colonel.papa@att.net	Hispanic American	Male
JUST CONSTRUCTION, INC.	Hector A	Romero	3103 MARKET STREET	SAN DIEGO	CA	92102	619-702-7220	leonor@justconstructioninc.com	Hispanic American	Male
KAL ARCHITECTS, INC.	Rita	Kalwani	12-J MAUCHLY DRIVE	IRVINE	CA	92618	949-450-8420	rkalwani@kalarchitects.com	Asian-Pacific American	Female
Kelagoon Construction Management & Consultant	Kelvin	Alexis	14880 SHETLAND LANE	FONTANA	CA	92336	909-660-1343	kelagoon@gmail.com	Black American	Male

LA SALLE SOLUTIONS, LLC	DENNIS R. LA	SALLE, II	900 F STREET, SUITE 128	SAN DIEGO	CA	92101	619-501-2645	lasalle.business.solutions@gmail.com	Hispanic American	Male
LANDAVAZO BROS. INC.	Derrick P.	Landavazo	29280 Pacific Street	HAYWARD	CA	94544	510-581-7104	cjohnson@landavazoconcrete.com	Hispanic American	Male
LG GENERAL CONTRACTORS, INC.	JOE	GUAJARDO	3512 53RD STREET	SACRAMENTO	CA	95820	916-452-0971	lgcontractorsinc@gmail.com	Hispanic American	Male
LOS ALAMOS CONSTRUCTION, INC	RUBEN D.	MARTINEZ	1983 S. DOGWOOD AVE	EL CENTRO	CA	92243	760-791-8824	rdmartinez1@att.net	Hispanic American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
Luster National, Inc.	Emily	Luster	1701 WESTWIND DRIVE, SUITE 117	Bakersfield	CA	93301	661-869-0157	church@luster.com	Black American	Male
M B J Consultants, Inc.	MONROE	BARNES	30 W THIRD STREET 4M	CINCINNATI	OH	45202	513-631-9600	clipp@mbjconsultants.com	Black American	Male
M J AVILA COMPANY, INC.	Mary Jo	Avila	7258 W. Rialto Ave.	FRESNO	CA	93723	559-276-1258	maryjoa@mjavila.com	Hispanic American	Female
Martha Bowers, Inc.	Martha	Bowers	12406 FOX HOLLOW COURT	BAKERSFIELD	CA	93312	661-399-6556	bci@bciconstruction.com	Caucasian	Female
Mirack Construction, Inc.	Anthony	Cortabitarte	1801 S. Jentilly Lane, Suite D-18	Tempe	AZ	85281	480-309-8987	accounting@mirack.net	Hispanic American	Male
MISSION CONSTRUCTORS, INC.	JAIME	GONZALEZ	195 BAYSHORE BLVD.	SAN FRANCISCO	CA	94124	415-282-8453	jaime@missionconst.com	Hispanic American	Male
Modern RX Construction LLC	Christopher	Martinez	4347 Lynd Ave	Arcadia	CA	91006	305-607-3821	modernrx@gmail.com	Hispanic American	Male
Montez Group	Oscar	Zavaleta	249 Onondaga Avenue, ONE AVENUE OF THE PALMS, #407	SAN FRANCISCO	CA	94112	415-350-7044	ozavaleta@montezgroup.com	Hispanic American	Male
Morales Contracting Services	Antonio	Morales	807 W Front St	Covina	CA	91722	626-856-3646	mcs@moralescontracting.com	Hispanic American	Male
NBA Engineering, Inc.	Natalie	Alavi	897 HYDE STREET	SAN FRANCISCO	CA	94109	415-202-9840	natalie@nbaeng.com	Caucasian	Female
NexGen Design Builders, Inc	Sara	Bekr	580 broadway st ste 205, Suite 205	Laguna Beach	CA	92651	949-419-4145	sara.bekr@nexgendb.com	Caucasian	Female
OZZCORP INC	WILLIAM	JAUREGUL	1716 SHOSHONE DRIVE	BISHOP	CA	93514	760-920-7076	will@ozzcorpinc.com	Hispanic American	Male
PacRim Engineering, Inc.	Peter	Liu	70 S. Lake Ave, Suite 820	Pasadena	CA	91101	323-763-8700	rpf@pacrimengineering.com	Asian-Pacific American	Male
Panacea, Inc.	Hsin H.	Chou	14905 PARAMOUNT BLVD., SUITE H	PARAMOUNT	CA	90723	562-860-2869	hchou@panenv.com	Asian-Pacific American	Male
PEACHTREE TELECOMMUNICATIONS INTERNATIONAL LLC	SANDRA KAY	STEWART	11465 JOHNS CREEK PKWY, SUITE 100	JOHNS CREEK	GA	30097	770-242-1970	kaystew@peachtreetelecom.com	Caucasian	Female
Perrilliat Enterprises, Inc.	STEWART	PERRILLIAT	2811 Adeline Street, Suite 219	Oakland	CA	94608	408-750-4334	stewart@pe-construction.com	Black American	Male
PINGUELO CONSTRUCTION, INC.	FRANK	PINGUELO	4171 SUISUN VALLEY ROAD, SUITE G	FAIRFIELD	CA	94534	707-864-3003	pingueloconstruction@yahoo.com	Hispanic American	Male
Precedo Management Inc	Alioune	Dioum	9124 W 24th Street	Los Angeles	CA	90034	949-648-0456	aliounedioum27@gmail.com	Black American	Male
ProjectSpan, Inc.	Nellie	Torres	197 Waverly Avenue	Brooklyn	NY	11205	718-389-1025	ntorres@projectspan.com	Hispanic American	Female
Quality Control Construction	Fredrick D	Mackay	2029 Durant Ave.	Oakland	CA	94603	510-671-1429	fmackay@qualitycontrolconstruction.com	Black American	Male
RAC Construction & Engineering, Inc.	Ruben	Claudio	5811 Barbarossa Ct	San Diego	CA	92115	760-497-6668	rclaudio@racconstruction.biz	Hispanic American	Male
RBT ELECTRIC, INC	RYAN	TITTSWORTH	187 W. ORANGETHORPE AVE #101	PLACENTIA	CA	92870	800-661-5006	ryan@rbt-electric.com	Black American	Male
Reign Source	Erika	Horn	21913 Long Trot Dr	Escondido	CA	92029	619-339-4107	erika.horn@reignsource.com	Caucasian	Female
RELIABLE MONITORING SERVICES, INC.	Rick	Mendoza	2698 JUNIPERO AVE. #105-107	SIGNAL HILL	CA	90755	800-760-1822	rmendoza@rmslifesafety.com	Hispanic American	Male
RES & Associates Consulting Engineers INC	Rolando	Sotelo	21821 Denise Lane	SANTA CLARITA	CA	91390	661-373-0584	rolando@res-associates.com	Hispanic American	Male
REYCO ENGINEERING INC.	Joe	Duran	10903 BOULDER CANYON RD	RANCHO CUCAMONGA	CA	91737	626-922-2455	reyna0duran@gmail.com	Hispanic American	Male
RICHARD C. HONORE CONSTRUCTION INC	RICHARD C.	HONORE	2198 CLEAR SPRINGS RD	BREA	CA	92821	714-529-5654	richard@rchconstruction.net	Hispanic American	Male
Roadfox Transportation, Inc.	Roderick	Rohadfox	3017 Bolling Way NE, Unit 140	Atlanta	GA	30305	404-604-6257	rod@constructioncontrol.biz	Black American	Male

ROBERTSON CONSTRUCTION	CHARLES	ROBERTSON	2164 AMANDA WAY	SACRAMENTO	CA	95822	916-879-6087	robertsonconstruction@live.com	Black American	Male
RUBECON BUILDERS INC.	Ruben	Santana	3450 Third Street, Bldg. 1B	SAN FRANCISCO	CA	94124	415-206-7740	office@rubecon.com	Hispanic American	Male
SafeworkCM	Rebecca	Jones	1 Jenner, Suite 230	Irvine	CA	91364	818-716-0384	rebeccaaj@safeworkinc.com	Caucasian	Female
SILVA SUPPLY	Rosalie	Silva	13939 POWAY ROAD #7	POWAY	CA	92064	858-883-2423	rsilva@silvagc.com	Hispanic American	Female

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
SJD&B, Inc.	Simon	Jeon	20451 Valley Blvd	Walnut	CA	91789	909-481-0001	admin@sidandb.com	Asian-Pacific American	Male
SPEEDWAY CONSTRUCTORS, INC	William	Forero	2565 CHALCEDONY ST	SAN DIEGO	CA	92109	619-819-7565	williamf@speedwayci.com	Hispanic American	Male
Star 1 MS, Inc.	Graciela J	Miranda	5425 Sulphur Drive	MIRA LOMA	CA	91752	800-554-3585	contact@star1ms.com	Hispanic American	Female
STL FABRICATION, INC.	Ruben	Ramirez	10207 Elm Avenue	FONTANA	CA	92335	909-357-3553	stl@stlfabrication.com	Hispanic American	Male
Summit CM, Inc.	Ken	Rice	2300 Clayton Rd Ste 1380	Concord	CA	94520	925-363-5560	grace.sarmiento@summitcm.com	Asian-Pacific American	Male
Suulutaag, Inc	John	Hurd	4300 B STREET, SUITE #405	ANCHORAGE	AK	99503	707-427-3209	winona.beesing@suulutaag.com	Native American	Female
TEC Management Consultants, Inc.	Pamela	Coffey	510 S LA BREA AVENUE	INGLEWOOD	CA	90301	800-509-1542	kfuller@teccm.com	Black American	Male
Technion Contractors TCI, Inc.	Fran	Amkraut	7618 Jellico Avenue	NORTHBRIDGE	CA	91325	818-345-0540	office@technioncontractors.com	Caucasian	Female
TEEHEE ENGINEERING INC	DEBORAH	HAMILTON	1050 CALLE CORDILLERA, SUITE 101	SAN CLEMENTE	CA	92673	760-967-1412	dhamilton@teeheeengineering.com	Native American	Female
THE NICKERSON COMPANY	VERNON	NICKERSON	8939 S SEPULVEDA BLVD, STE 526	LOS ANGELES	CA	90045	310-916-3036	vernon@thenickersoncompany.com	Black American	Male
TK Government Contractor, Inc.	Tae Sung	Kwon	38121 25th Street E, Apt W-103	Palmdale	CA	93550	213-247-7216	james@tkgi.com	Asian-Pacific American	Male
Townsend Management, Inc.	ZAMIR	ZURAEK	P.O. BOX 24442	SAN FRANCISCO	CA	94124	415-285-9009	zamir_zuraek@tmi-cm.com	Asian-Pacific American	Male
Trademark Contractors Inc.	Gabe	Escalera	10115 Stoneham St.	Bakersfield	CA	93314	661-858-3300	jeff@trademark-us.com	Native American	Male
TRI-R GENERAL CONTRACTORS, INC	RAUL	RUIZ	22175 FISHER STREET	PERRIS	CA	92570	951-657-1129	trgicmail@aol.com	Hispanic American	Male
TRUE CHAMPIONS INC.	Brent	Lain	5234 CUSHMAN PL STE 200	SAN DIEGO	CA	92110	619-276-6999	truechampions.net">tci>truechampions.net	Hispanic American	Male
TRUTEC ENGINEERING, INC.	TERRY	KIM	6970 ARAGON CIR, SUITE 4	BUENA PARK	CA	90620	714-639-9162	jo.kim@truteceng.com	Asian-Pacific American	Male
Utility Construction Company, Inc.	Suzette	Nickum	8435 E Baseline Rd, Ste 106	Mesa	AZ	85209	480-654-3100	bill@utilityconstructionco.com	Caucasian	Female
Valle Grande Construction	Luis	Valle	10025 De Soto Ave. #118	Chatsworth	CA	91311	818-624-5576	valleluis@hotmail.com	Hispanic American	Male
Veterans Construction and Design Inc	Randy	Lewis	755 Encino Drive	Morgan Hill	CA	95037	408-593-6359	rlewis@veteranscd.com	Native American	Male
VOBECKY ENTERPRISES, INC.	Marie Bianca	Vobecky	134 NORTH VERMONT AVE.	GLENDORA	CA	91741	626-818-7402	bianca@vobecky.com	Black American	Female
W JOHN GRAY CONSTRUCTION	DAVINA	GRAY	1751 HWY 36	HYDESVILLE	CA	95547	707-768-1760	ldqrgray@aol.com	Native American	Male
YERBA BUENA ENGINEERING & CONSTRUCTION	MIGUEL	GALARZA	1340 EGBERT AVENUE	SAN FRANCISCO	CA	94124	415-822-4400	mgalarza@yerba-buena.net	Hispanic American	Male
238190 - Other Foundation, Structure, and Building Exterior Contractors (67 firms)										
A & J MECHANICAL HVAC INC	Raul	Gonzalez	345 7TH AVENUE	NEW YORK	NY	10001	212-279-2175	aimechanicalhvac@aol.com	Hispanic American	Male
A & S CEMENT CONTRACTORS INC.	Raymundo Sergio	Madrigal	8140 Monroe Ave.	STANTON	CA	90680	714-220-2694	michael@ascement.net	Hispanic American	Male
Alro Custom Drapery Installation Inc	Mar Y Sol	Alvarado	485 N WHISMAN RD STE 400, Suite 1	Mountain View	CA	94043	650-319-5211	mar@alroinc.com	Hispanic American	Male
ALVAREZ QUALITY CONSTRUCTION, INC	JOSE	ALVAREZ	921 DELAWARE ST	IMPERIAL BEACH	CA	91932	619-906-1417	awp11254@hotmail.com	Hispanic American	Male
AMERICAN STEEL UNITED INC.	Avery	Steele	P.O.BOX 45444	LOS ANGELES	CA	90045	818-614-0255	averysteele@ymail.com	Black American	Male
BLANCO CONSTRUCTION	LEONARDO	BLANCO	19320 Dallas Ave.	Riverside	CA	92508	951-250-6692	lawym2004@aol.com	Hispanic American	Male

BORG FENCE	JULIE	BORG	50 CONTRACTORS STREET	LIVERMORE	CA	94551	925-455-9620	julieborg@borgfence.com	Caucasian	Female
Brown Steel Fabrication Inc.	Steven	Brown	8218 Deloach Way	Elk Grove	CA	95624	916-416-6645	info@brownsteelfabrications.com	Black American	Male
CAL PRIME INC	Kelly	Hudson	10101 MICHELE AVE	BAKERSFIELD	CA	93312	661-679-6818	kellyhudson@calprimeinc.com	Caucasian	Female

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Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
CALI CONCRETE	GUSTAVO	VALDERAMMA	117 MUGSY AVENUE	BAKERSFIELD	CA	93307	661-398-8143	rosa@caliconcrete.com	Hispanic American	Male
COMMAND PERFORMANCE CONSTRUCTORS, INC.	PRISCILLA	HERNANDEZ	3346 OLIVE AVENUE	SIGNAL HILL	CA	90755	562-997-9410	jim@cpconstructors.com	Hispanic American	Male
DE LA FUENTE CONSTRUCTION, INC.	JORGE DIAZ DE LA	FUENTE	3025 Beyer Blvd E Suite 101	San Diego	CA	92154	619-512-5505	jdiaz@dlfci.com	Hispanic American	Male
DEEP FOUNDATION SERVICES, INC.	LYNN M.	PERRY	100 HOLLYWOOD AVE	LOS GATOS	CA	95030	408-656-7668	lynn@deepfoundationservices.com	Caucasian	Female
DTS & FABRICATION INC	Roselinda	DeLaRosa	612 Hitchcock Ave	SHAFTER	CA	93263	661-630-5403	roselinda@dtsfabrication.com	Hispanic American	Male
El Camino Construction & Engineering Corp	MIGUEL	GUAJARDO	2001 W 14th Street	Long Beach, California	CA	90813	562-983-8811	miguel@elcaminoconeng.com	Hispanic American	Male
Excel Concrete construction inc.	Sean	Mills	28441 RANCHO CALIFORNIA RD STE 206	TEMECULA	CA	92590	760-578-9841	myadmin@excelccinc.com	Hispanic American	Male
Foundation Soil Stabilization Inc	Eric	Quiles	3496 BUSKIRK AVE SUITE 105	PLEASANT HILL	CA	94523	925-494-0300	eg@fssinc24.com	Hispanic American	Male
GENISA IRON INC.	Gladis	Martinez	3812 W. Victory Blvd.	Burbank	CA	91505	818-588-3006	estimating@genisairon.com	Hispanic American	Female
GEOSTRUCTURAL ENGINEERING INC	Andre Stephen	Hawks	25A Crescent Dr #185	Pleasant Hill	CA	94523	707-322-3507	andre.hawks@geostructuralengineering.com	Hispanic American	Male
Golden West Construction Services, LLC	Christina	Parker	445 S. Figueroa Street 31st Floor, 31st Floor	Los Angeles	CA	90071	213-537-3835	christina@goldenwestfuel.com	Hispanic American	Female
GRAND BRIDGE INC	Jose	Gonzalez	2208 W. Beechwood Avenue	Fresno	CA	93711	559-433-5919	smourtada@grandbridgeinc.com	Hispanic American	Male
Harris Development Corporation	Robert	Harris	2743 E. Shaw ave. Ste. 103	Fresno	CA	93710	559-575-3000	rharriscorp@gmail.com	Black American	Male
HOFER CORPORATION	SCOTT	HOFER	5662 OTAY VALLEY ROAD	SAN DIEGO	CA	92154	619-661-6053	hofercorp@yahoo.com	Native American	Male
Interior Plus Inc	Stephen	Munoz	12000 Slauson Ave, Unit 20	Santa Fe Springs	CA	90670	562-464-6950	martha@interiorplusinc.us	Hispanic American	Male
Interior Plus Inc	Stephen	Munoz	12000 Slauson Ave, Unit 20	Santa Fe Springs	CA	90670	562-464-6950	martha@interiorplusinc.us	Hispanic American	Male
JNA Builders, Inc.	JOSEPH	ANTONIO	445 S. Figueroa St., Suite 3100	Los Angeles	CA	90071	888-315-1283	inantonio@inabuilders.com	Asian-Pacific American	Male
Juan Carlos Gonzalez	JUAN CARLOS	GONZALEZ	6201 Brentwood Blvd	Brentwood	CA	94513	925-550-6273	gwmcarlos@gonzalezwelding.com	Hispanic American	Male
LG GENERAL CONTRACTORS, INC.	JOE	GUAJARDO	3512 53RD STREET	SACRAMENTO	CA	95820	916-452-0971	lgcontractorsinc@gmail.com	Hispanic American	Male
M. E. AVILA CONSTRUCTION CORPORATION	MICHAEL	AVILA	7655 Morro Road	ATASCADERO	CA	93422	805-462-1801	kellie@avilaconstruction.net	Hispanic American	Male
MACHADO & SONS CONSTRUCTION, INC	Michael	Machado	1000 S. KILROY ROAD	TURLOCK	CA	95380	209-632-5260	mike@machadoandsons.com	Hispanic American	Male
MADOLE CONSTRUCTION CO INC	Sean	Madole	397 US HIGHWAY 395	WASHOE VALLEY	NV	89704	775-737-4415	seanm@madoleconstruction.com	Native American	Male
MARK WALLACE MASONRY	MARK	WALLACE	1795 INDUSTRIAL DRIVE	AUBURN	CA	95603	530-885-7852	mark@markwallacemasonry.com	Hispanic American	Male
MCO Engineering	David	Miclea	739 Bryant St	San Francisco	CA	94107	916-953-3231	m-coengineering@gmx.com	Hispanic American	Male
Montgomery Construction Services, Inc.	CLIFFORD	MONTGOMERY	123 Worthington Street, #205	Spring Valley	CA	91977	619-578-2538	patriciaa@montcsi.com	Black American	Male
NATIONAL POOLS INC	Luis C.	Quirarte	15439 Monte St	Sylmar	CA	91342	818-367-9340	cynthia@nationalpoolsconstruction.com	Hispanic American	Male
Performance Paving	Robert	Bonnell	701 W. Manchester Ave. Suite #200	Inglewood	CA	90301	424-702-5384	cammie@alphaengineeringcontractors.com	Hispanic American	Male
PMR ASSOCIATES WELDING & FABRICATION INC	PAMELA	RICHARDSON	6810 Indiana Ave	Long Beach	CA	90805	323-524-2228	pmrweldandfab3@gmail.com	Black American	Female

PONCIANO CONSTRUCTION INC	Peter	Ponciano	525 S. Grade Rd	Alpine	CA	91901	619-328-6381	pete@poncianoconstruction.com	Asian-Pacific American	Male
PYLON CG INC	Carlos	Reyes	445 HAMILTON AVE, SUITE 1102	WHITE PLAINS	NY	10601	914-358-6403	creyes@pyloncg.com	Hispanic American	Male
Quin Coatings, Inc	Jeezal	Quintana	2856 E Muncie Ave	Fresno	CA	93720	559-360-5399	quincoatings@gmail.com	Hispanic American	Female
REEDS CONSTRUCTION	DENNIS	REED	22245 Main Street, SUITE 104	Hayward	CA	94564	510-757-5636	reedsons7@aol.com	Black American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
RJC CONTRACTING, INC	Kristi	Carpenter	4710 E. FALCON DRIVE, SUITE 106	MESA	AZ	85215	480-357-0868	kristi@rjcontracting.com	Caucasian	Female
Robert Thomas Jones	ROBERT T.	JONES	149 DONNA AVENUE	BAKERSFIELD	CA	93304	661-319-3090	robert.jones6127@yahoo.com	Black American	Male
S & L FENCE CO	Richard	Castillo	1096 FULTON AVE	SUNNYVALE	CA	94089	408-745-7021	sales@slfence.com	Hispanic American	Male
San Diego Steel Solutions	Rodolfo E	Dominguez	579 ENTERPRISE ST	ESCONDIDO	CA	92029	760-489-9990	accounting@sdssteelsolutions.com	Hispanic American	Female
Semper Fi Rebar Corp	Kellen	Concepcion	4550 Graywood Ave	Long Beach	CA	90808	808-206-2262	admin@semperfirebar.com	Asian-Pacific American	Male
SGV Enterprises, Inc	Erik Jose	Swift	615 LAS TUNAS DR, SUITE J	ARCADIA	CA	91007	626-330-8866	erik@sgventerprises.com	Hispanic American	Male
SIGNS & DECAL CORP	Abdulrasul	Khalfan	410 MORGAN AVENUE	BROOKLYN	NY	11211	718-486-6400	tazzim@signsanddecal.com	Subcontinent Asian American	Female
SJD&B, Inc.	Simon	Jeon	20451 Valley Blvd	Walnut	CA	91789	909-481-0001	admin@sidandb.com	Asian-Pacific American	Male
SKILLIE CONSTRUCTION SUPPLY AND SERVICES	STEPHANIE G	SKILLIE	6073 CALIFORNIA PACIFIC ROAD	ELMIRA	CA	95625	707-515-9353	skillieconst@gmail.com	Native American	Female
SOCAL WELDING INC	Jose	Estrada	13992 Carol Ln	Perris	CA	92570	909-213-6110	socalweldinginc@gmail.com	Hispanic American	Male
South Bay Steel Erectors	JESUS	MONDRAGON	27624 Concord Ln	Menifee	CA	92585	310-947-6826	jesus.mondragon@southbaysteel.com	Hispanic American	Male
SRK Engineering	Sherry	Kirkpatrick	2615 Auto Park Way, #105	Escondido	CA	92029	760-294-4012	skirkpatrick@srkeng.com	Asian-Pacific American	Female
Star 1 MS, Inc.	Graciela J	Miranda	5425 Sulphur Drive	MIRA LOMA	CA	91752	800-554-3585	contact@star1ms.com	Hispanic American	Female
STL FABRICATION, INC.	Ruben	Ramirez	10207 Elm Avenue	FONTANA	CA	92335	909-357-3553	stl@stlfabrication.com	Hispanic American	Male
STS, INC	Janet	Garland	3241 FITZGERALD ROAD, STE. 1	RANCHO CORDOVA	CA	95742	916-858-0488	janetg@stscorp.biz	Caucasian	Female
Tahlequah Rebar Inc.	Stephanie	Martinez	2750 n bellflower blvd, suite 210E	long beach	CA	90815	562-394-6018	stephanie@tqrebar.com	Hispanic American	Female
THE LOREN GROUP LTD	Bethanne	Mashburn	807 West 20th Street	Wilmington	DE	19802	256-622-2298	beth@thelorengrp.com	Caucasian	Female
TRUE CHAMPIONS INC.	Brent	Lain	5234 CUSHMAN PL STE 200	SAN DIEGO	CA	92110	619-276-6999	tci@truechampions.net	Hispanic American	Male
VAL-E-WEST CONSTRUCTION INC	Ernest	Valdez	1372 N. NIELSON STREET	GILBERT	AZ	85234	480-264-3909	esvaldez@valwestconst.com	Hispanic American	Male
VEI SOLUTIONS, INC.	Tranquillino Ryan	Ventura	105 W ADAMS STREET, SUITE 2940	CHICAGO	IL	60603	312-985-6840	certifications@veisolutions.com	Hispanic American	Male
w c brown welding inc	WINSTON	BROWN	14643 Hawthorne Avenue	Fontana	CA	92335	909-823-6000	info@wcbrownwelding.com	Black American	Male
WCW INC	Jesse	Mejia	23900 Gilmer Rd.	Perris	CA	92570	951-323-0446	jessemejia1@gmail.com	Hispanic American	Male
WEST PACIFIC CONCRETE INC	Anthony	Sanchez	6453 FAIRFIELD STREET	LOS ANGELES	CA	90022	323-674-6170	westpacificconcrete@gmail.com	Hispanic American	Male
WILEY CONSTRUCTION COMPANY, INC.	HARVESTER	WILEY	310 VIA DEL NORTE	OCEANSIDE	CA	92058	760-967-0982	wiley@wileyconstruction.com	Black American	Female
Willie Graham Portable Welding Services	Willie	Graham	4716 Black Stallion Avenue	N. Las Vegas	NV	89031	702-324-5049	weldingmatters@aol.com	Black American	Male
WILLOW HAWK INC	JAMES	AMMON	2562 SOUTH FORK ROAD	SALYER	CA	95563	530-739-3828	willowhawkinc@gmail.com	Native American	Male
Youman Welding	Veronica	Youman	5258 CALICO AVE	PICO RIVERA	CA	90660	562-972-9541	youmanwelding@gmail.com	Black American	Female
238210 Electrical Contractors and Wiring Installation (211 Firms)										
3P Construction, Inc.	Nayeli	Pelayo	28782 Goetz Rd	Menifee	CA	92587	909-569-9197	estimating@3pconst.com	Hispanic American	Male

4 POINT POWER	LOUIS	HERRERA	1313 N. MILPITAS BLVD #161	Milpitas	CA	95035	408-529-8250	louis@4pointpowerinc.com	Hispanic American	Female
55Geeks LLC	Sahar	Osman	4781 E Gettysburg Ave, Suite 109	FRESNO	CA	93726	855-554-3357	sahar@55geeks.com	Caucasian	Female
75 ELECTRIC, INC.	ALONSO	RIVAS	5542 ORANGE AVENUE, UNIT E	CYPRESS	CA	90630	562-728-3861	service@75electrical.com	Hispanic American	Male

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Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
77 Construction Services, Inc.	Monica	Gocan	3461 Topeka St	Carlsbad	CA	92010	206-599-9126	mngocan@77electricalservices.com	Caucasian	Female
Abigail Electric Inc.	Oscar C.	Gomez	3111 W. Ramona Rd Apt H	Alhambra	CA	91803	323-691-0466	ogomez@abigailelectric.com	Hispanic American	Male
ABT PRODUCTS & SERVICES, LTD.	Lisa S.	Horchos	37 Newtown Rd.	Plainview	NY	11803	631-421-1500	lhorchos@abt-products.com	Caucasian	Female
AC-DC ELECTRIC	OSCAR L.	HIGA	13326 YUCATAN PLACE	CERRITOS	CA	90703	562-926-5737		Asian-Pacific American	Male
ACM Artistic Neon	CARLOS	MORALES, SR.	1411 S. Rimpau Ave Suite 207	Corona	CA	92879	951-272-4881	acmlighting@sbcglobal.net	Hispanic American	Male
ADVANCED COMMUNICATION & TECHNOLOGY	TIMOTHY	JONES	15424 HAWTHORNE BLVD, SUITE 203	LAWNDALE	CA	90260	310-258-1750	support@1800fixphone.com	Black American	Male
Advanced Enterprises Inc	Beatrice	Pino	5796, S	FRESNO	CA	93706	559-268-2861	bea@electricalpowersourceinc.com	Hispanic American	Female
AFSANEH ENTERPRISES, INC.	AFSANEH	RAJAB	9910 IRVINE CENTER DRIVE	IRVINE	CA	92618	949-333-1007	srajab@bcsconsultants.com	Caucasian	Female
AJK Communications	Kiran	Kaur	13825 Bentley Place Suite A	Cerritos	CA	90703	562-942-1400	kirank@ajkcommunications.com	Subcontinent Asian American	Female
Alfaro Communications Construction, Inc.	Hugo	Alfaro	15614 S. Atlantic Ave	Compton	CA	90221	310-669-8949	mavra.acc@gmail.com	Caucasian	Male
ALISON SERVICE COMPANY	MICHAEL A.	BANDAS	11122 COTTONWOOD AVE.	HESPERIA	CA	92345	760-949-2184	accounting@alisonserviceco.com	Hispanic American	Male
ALL IN ONE ELECTRIC	Steven E.	Bacon	24740 MEADVIEW AVENUE	NEWHALL	CA	91321	661-255-5315	aioelectric@sbcglobal.net	Asian-Pacific American	Male
All Phase Electrical Incorporated	Carlos	Najarro	56 Burr Ave	San Francisco	CA	94134	415-533-6327	karen@apelectricalsf.com	Hispanic American	Male
ALVAREZ QUALITY CONSTRUCTION, INC	JOSE	ALVAREZ	921 DELAWARE ST	IMPERIAL BEACH	CA	91932	619-906-1417	awp11254@hotmail.com	Hispanic American	Male
AMA TRAFFIC LOOPS, INC.	ALLAN	ALVARO	5954 CARTER CT	CHINO	CA	91710	909-287-3027	amatrafficloops@gmail.com	Asian-Pacific American	Male
Ample Electric Inc.	Jose	Diaz	1000 Railroad Ave	Winters	CA	95694	530-795-9913	jdiaz@ampleelectric.com	Hispanic American	Male
AR ELECTRIC, INC.	ALEX	ROJANO	718 E. EDNA PLACE SUITE D	COVINA	CA	91723	626-331-6111	alex@areinc.co	Hispanic American	Male
Atwood Hay Inc.	GLENDA	ATWOOD-HAY	321 ALTA VISTA AVE	Roseville	CA	95678	916-257-2747	glenda@atwoodhay.com	Caucasian	Female
Atwood Hay Inc.	GLENDA	ATWOOD-HAY	321 Alta Vista Avenue	Roseville	CA	95678	916-257-2747	glenda@atwoodhay.com	Caucasian	Female
Aurora Electric Inc.	Veronica	Rose	154-09 146TH AVENUE, SUITE # 2	JAMAICA	NY	11434	718-656-7413	ifuentes@auroraelectric.org	Caucasian	Female
AVA ENVIRONMENTAL INC	Antonio	Verduzco	829 WEST COMPTON BOULEVARD	COMPTON	CA	90220	310-505-4202	avaenvironmental@yahoo.com	Hispanic American	Male
AXC Innovations INC.	Anh Thu	Doan	1305 N H St. Ste A #310	Lompoc	CA	93436	805-222-6160	ad@axcinnovations.com	Asian-Pacific American	Female
AXIS INSTALLATION INC	Kristine	Clarke	333 NE 8 ST	HOMESTEAD	FL	33030	786-678-9304	icwuscher@gmail.com	Caucasian	Female
B & S Construction, Inc.	John Bae	You	326 S. Westlake Ave., #103	Los Angeles	CA	90057	213-251-9600	johnyoupico@gmail.com	Asian-Pacific American	Male
BARNES ELECTRIC	RODNEY	BARNES	501 S. HOWARD STREET	CORONA	CA	92879	562-833-5372	belect@sbcglobal.net	Black American	Male
BARNES, GREGORY L	Gregory	Barnes	1215 REVERE AVENUE	SAN FRANCISCO	CA	94134	415-261-4401	electric415@outlook.com	Black American	Male
BAY TECH ENGINEERING, INC.	Angelo	Kalaveras	1350 Van Dyke Avenue, #201, Suite 20	San Francisco	CA	94124	415-760-6100	angelok@baytechengineering.com	Asian-Pacific American	Male
Beci Electric, Inc	Rebecca	Anderson	8108 Capwell Drive	OAKLAND	CA	94621	510-635-1477	rebecca@becielectric.com	Caucasian	Female

BIRDI & ASSOCIATES, INC.	Moninder S.	Birdi	555 W 5TH STREET, SUITE 3100	LOS ANGELES	CA	90013	213-550-4250	mbirdi@birdi-inc.com	Subcontinent Asian American	Male
BLUE CABLE, INC.	Juan Pablo	Escalante	7306 COLDWATER CANYON AVE, #10	NORTH HOLLYWOOD	CA	91605	818-559-5454	helinda@bluecable.com	Hispanic American	Male
Brambila & Kelley, Inc.	Juan	Brambila	3295 Shelby Pl.	Fairfield	CA	94534	707-239-7806	john@ibec-inc.com	Hispanic American	Male
BROWN'S ENTERPRISES, INC	TIMOTHY	BROWN	10955 GOLDEN WEST DRIVE, SUITE B	HUNT VALLEY	MD	21031	410-661-5537	kbrown@brownscomm.com	Black American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
BRYANT ELECTRIC AND DATA	MICHAEL	BRYANT	4352 RUEDA DRIVE	SAN DIEGO	CA	92124	619-990-8040	ntimeb@gmail.com	Black American	Male
BUILDING INTEGRATORS AND SOLUTIONS CORPORATION	Enrique	Santiago	16919 YUKON AVENUE, #14	TORRANCE	CA	90504	310-600-1474	esantiago@biscorp.us	Hispanic American	Male
CABLEMASTERS	JAY	NAKAMOTO	2271 W. 205TH STREET SUITE 103	TORRANCE	CA	90501	310-783-0081	jaynakamoto@cable-masters.com	Asian-Pacific American	Male
California Professional Engineering, Inc.	VAN	NGUYEN	19062 San Jose Avenue	LA PUENTE	CA	91748	626-810-1338	van@cpengineeringinc.com	Asian-Pacific American	Male
CALSOUTH ELECTRIC, INC	Michael	Espinoza	2514 JAMACHA RD, STE 502-158	EL CAJON	CA	92019	619-881-7394	mespinoza@calsouthelectric.com	Hispanic American	Male
CASTRO ELECTRIC	EDWARD JOHN ANTHONY	CASTRO	11616 LAKESIDE AVENUE	LAKESIDE	CA	92040	619-561-6122	castroelectric@cox.net	Hispanic American	Male
CES CONSULTING, LLC.	Avtar	Singh	4245 Sigler Road	Warrenton	VA	20187	571-402-9174	kbarakam@ces-consultingllc.com	Subcontinent Asian American	Male
Cesar Lucas	Cesar	Lucas	5402 Cherokee Way	Antioch	CA	94531	925-813-8188	lucas.electrical@outlook.com	Hispanic American	Male
CLE Electric, Inc.	JANELLE	URSIC	1500 240th St	HARBOR CITY	CA	90710	310-533-9533	janelle@clepower.com	Caucasian	Female
COMFORT MASTERS HVAC & ELECTRICAL INC	RAFAEL PITA	HERNANDEZ	26865 AVENIDA TERRAZA	SANTA CLARITA	CA	91350	866-342-9301	cmgcontractor1@gmail.com	Hispanic American	Male
Core Electrical Services Inc	Christopher	Perez	3250 Dutton Ave, Suite B	Santa Rosa	CA	95407	707-687-5083	terri@core-elect.com	Black American	Male
CUSTOM QUALITY ELECTRIC, INC	RYAN	SCOTT	1722 S. GRAND AVE	SANTA ANA	CA	92705	714-541-0404	customqualityelectric@msn.com	Black American	Male
CYBER PROFESSIONAL SOLUTIONS CORP.	JOAQUIN	CAMPOS	3441 MAIN STREET, SUITE 104	CHULA VISTA	CA	91911	619-498-4819	admin@cyberpsc.com	Hispanic American	Male
D.B. ELECTRIC, INC.	DAVID	FERNANDEZ	7696 Hall Ave	Eastvale	CA	92880	951-427-3400	db.bids@db-electricinc.com	Hispanic American	Male
DANIELLE'S APPROACH LLC	Danielle	Kubes	311 W NORFOLK AVE, SUITE 200	NORFOLK	NE	68701	402-649-3075	dapproachllc@gmail.com	Caucasian	Female
DELGADO ELECTRIC, INC.	MARY	DELGADO	145 JONQUIL LANE	HOLLISTER	CA	95023	408-630-9496	maryjodelgado@delgadoelectricinc.com	Hispanic American	Male
DGX Security LLC	Bryant	Austin	840 Bergen Avenue	Jersey City	NJ	07306	201-370-4761	sal@dgxsecurity.com	Black American	Male
Digital Technologies, Inc.	Daniel R	Villarreal	760 S. ROCHESTER AVE, SUITE E	ONTARIO	CA	91761	909-563-8703	dvillarreal@digitaltechnologies-inc.com	Hispanic American	Male
DRISCOLL ELECTRIC INC	Derek	Driscoll	1109 W. 156TH ST.	COMPTON	CA	90220	310-940-9640	driscollelectric@yahoo.com	Black American	Male
DYNAMIC CONTRACTING SERVICES, INC.	DARIO	CASIM	241 WEST 35TH STREET, STE. L	NATIONAL CITY	CA	91950	619-585-8888	jundynamic@aol.com	Asian-Pacific American	Male
DYNAMIC GENERATOR SERVICE INC	DARREN	MANAGRUM	24707 South Bird Rd	TRACY	CA	95304	209-650-0085	dm@dynamicgeneratorservice.com	Black American	Male
EARL Security, Inc.	Lynn C.	Chen	2445 San Gabriel Blvd #A	Rosemead	CA	91770	626-285-9178	lynn.chen@earl-security.com	Asian-Pacific American	Female
EIDIM GROUP, INC.	Andrew	Bang	6905 Oslo Cir. STE J, STE J	BUENA PARK	CA	90621	562-777-1009	andy@eidim.com	Asian-Pacific American	Male
EJO Ventures LLC	Edward	Odom, IV	612 Hangar Lane, Ste 223	Nashville	TN	37217	615-347-2173	ej@ejoventures.net	Black American	Male
ELECTRIC AND DIGITAL SERVICE INC.	LINDA	KOUNG	717 NOGALES STREET	CITY OF INDUSTRY	CA	91748	626-581-0418	lkoung@edselectrical.com	Asian-Pacific American	Female
Electric Kingdom Power Solutions	ANGEL	MCFARLAND	7514 GIRARD AVE, SUITE 1729	LA JOLLA	CA	92037	279-200-1897	ekpowersolutions@outlook.com	Black American	Male
Electrical Service Plus, Inc.	Rodolfo	Hernandez	837 W Lambert Rd.	Brea	CA	92821	714-213-8301	bhernandez@electricalserviceplus.com	Asian-Pacific American	Male
Electro Motive Force, Inc.	Carlos X.	Galvan	14250 Central Ave, Unit A	Chino	CA	91710	909-464-8090	cgalvan@emffire.com	Hispanic American	Male

ELECTRONIC & TELECOM SYSTEMS INC	Steven	Cabaj	10225 BARNES CANYON RD, SUITE A110	SAN DIEGO	CA	92121	858-999-5348	scabaj@etssys.com	Hispanic American	Male
Enso Building Solutions	Joel	Pereda	155 N Lake Ave, Suite 854	Pasadena	CA	91101	714-254-5117	joel@enso2.net	Hispanic American	Male
EXPRESS ENERGY SERVICES, INC	Donald	Rivers	10610 HUMBOLT ST	LOS ALAMITOS	CA	90720	714-650-8870	docrivers@exp-energy.com	Hispanic American	Male
F Hernandez Electric, Inc.	Maria G.	Monroy	1859 Florence Ave	Dinuba	CA	93618	559-267-3912	mmonroy@f-helectric.com	Hispanic American	Female

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
Fernandez Project Services, Inc.	Darrell	Fernandez	3041 Santa Carlotta Street	La Crescenta	CA	91214	626-260-6448	darrell.fernandez@fpscpm.com	Hispanic American	Male
FIGURES COMMUNICATIONS AND ELECTRIC LLC	Jerry	Figures	3009 BELHEAVEN ST	BAKERSFIELD	CA	93004	661-978-4056	figuresce@gmail.com	Black American	Male
FIRSTLINK COMMUNICATIONS INC	Edgard	Dominguez	7030 ALAMITOS AVE. STE. A	SAN DIEGO	CA	92154	619-407-7270	angelica.d@firstlinkcomm.com	Hispanic American	Female
FIVE-O ELECTRIC	ROBERT	DELAURA	2324 CAMELBACK DRIVE	ANTIOCH	CA	94509	925-234-0647	kaiu3@att.net	Native American	Male
Fosco Electric, Inc.	Alex	Ramirez	27936 Lost Canyon Road, Suite 204	Santa Clarita	CA	91387	818-322-6116	aramirez@foscoelectric.com	Hispanic American	Male
FOUR ACE ELECTRICAL SERVICES CO	Leonardo	Velasquez	3723 FAR NIENTE WAY	SACRAMENTO	CA	95834	916-419-4626	bernadette@fouraceelectrical.com	Asian-Pacific American	Male
FUEL FACILITY MANAGEMENT INC	Janet	Hoose	650 SW 34TH SUITE 202	FORT LAUDERDALE	FL	33315	561-662-0305	janethoose@bellsouth.net	Caucasian	Female
FULLER ELECTRIC	Earl C.	Restine, Jr	1018 CUDAHY PLACE_SUITE B	SAN DIEGO	CA	92110	619-276-5411	earlr@fullerelectric.com	Hispanic American	Male
G&G Electric, Inc.	GILBERTO	CHAVEZ	1525 QUADRILLE COURT	RIVERSIDE	CA	92503	951-776-8099	gilbertochavez@gg-electric.com	Hispanic American	Male
GECTWO Inc.	Tyson	Schilz	1545 W El Segundo Blvd	Gardena	CA	90249	310-283-2074	tyson@gec2.com	Native American	Male
GENERAL ENGINEERING CONSTRUCTION CO.	Kelly	Ortiz	4709 EVORA ROAD	BAY POINT	CA	94565	925-362-3648	kelly.generalengineering@yahoo.com	Caucasian	Female
Global Diversified Voltage Services	David	Collins	7020 Hayvenhurst Ave, Unit L	Los Angeles	CA	91406	818-383-6161	dcollins@gdvoltage.net	Black American	Male
Global Installation and Maintenance, Inc.	William	Jackson	760 E Debra Ln	Anaheim	CA	92805	714-619-5225	william@globalelectric.us	Black American	Male
GLOBAL ROAD SEALING, INC	Tri	La	10832 DOROTHY AVE	GARDEN GROVE	CA	92843	714-893-0845	grs@globalroadsealing.com	Asian-Pacific American	Male
Global World Technology, LLC	JOHANNE S	DZIDZIENYO	6930 Carroll Ave. Suite 503	Takoma Park	MD	20912	301-270-1077	jd@globalworldtechnology.com	Black American	Male
GLOBENET TELECOMMUNICATIONS, LLC	David L.	Middleton	210 TITUS LANE	PINEVILLE	SC	29468	828-320-3291	dlmittleton@globenetusa.net	Black American	Male
GM RENOVATIONS, INC	Gregory	Montoya	3758 BETA ST	SAN DIEGO	CA	92113	619-838-5598	greg@gmrenovationsco.com	Hispanic American	Male
Grand Electric & Construction, Inc.	Samuel	Lee	133 Tanforan Avenue	San Bruno	CA	94066	650-588-5678	sam@grandelec.com	Asian-Pacific American	Male
GRAY ENTERPRISES PLUS INC	Denise	Gray	938 EAST SWANN CREEK RD. SUITE 131	PRINCE GEORGES	MD	20744	443-823-4339	dgray@gep-assoc.com	Black American	Female
GREENTECH ELECTRIC SOLUTIONS INC	MANUEL	CORINAS	12333 Saratoga Sunnyvale Rd, Suite M	SARATOGA	CA	95070	408-280-1180	manuel@greentechelectricinc.com	Hispanic American	Male
H. K. ELECTRICAL, INC.	ELIZA	KHATCHERIAN	17428 LAHEY STREET	GRANADA HILLS	CA	91344	818-831-8800	eliza@hkelectricalinc.com	Caucasian	Female
HARRELL ELECTRIC	JAMES	HARRELL, SR.	5427 VIA ALBERCA	RIVERSIDE	CA	92507	951-787-0390	harrellent@sbcglobal.net	Native American	Male
HERCA TELECOMM SERVICES, INC.	Hector	Castellon	18610 BECK STREET	PERRIS	CA	92570	951-940-5941	hector.castellon@hercatelecomm.com	Hispanic American	Male
HI-VOLTAGE SPLICING CO., INC.	Michael	Ortiz	755 EL PINTADO ROAD	DANVILLE	CA	94526	925-838-7979	kelly@hi-voltagesplicing.com	Hispanic American	Male
HIGHBALL SIGNAL, INC.	Miguel	Mejia	1871 N GAFFEY ST, #C	SAN PEDRO	CA	90731			Hispanic American	Female
ICENOGL CONSTRUCTION MANAGEMENT, INC.	MARIA C.	ICENOGL	70 OTIS STREET	SAN FRANCISCO	CA	94103	415-349-8297	maria@icenoglecm.com	Asian-Pacific American	Female
IMAQ TECHNOLOGY, LLC	A	Cetina	840 K ST STE 200	ANCHORAGE	AK	99501	907-302-0750	acetina@stmnc.net	Other Minority	Male
IMPERIAL ELECTRIC SERVICE	Windell	Pascascio	5861 E. Platt Avenue, 107	Fresno	CA	93727	559-374-6484	windell@imperialelectricservice.com	Black American	Male

In The Light Electric Electric, Inc	Vivian	Radford	20 Copps Hill St	Laguna Niguel	CA	92677	909-319-1125	rad4ic@gmail.com	Hispanic American	Female
Industrial Battery Services Inc	Francisco	Recoder	673 JULIGA WOODS ST	RICHMOND	CA	94804	510-412-5980	ibsrecoder@aol.com	Hispanic American	Male
INDUSTRIAL ELECTRICAL SERVICE	DAVID	VILLALVAZO	8710 MURIETTA AVENUE	PANORAMA CITY	CA	91402	818-395-6658	davidvillalvazo@sbcglobal.net	Hispanic American	Male
ITECH SOLUTION	Miguel	Plascencia	2064 flintcrest dr	San Jose	CA	95148	408-832-8150	miguel@itechsolution.com	Hispanic American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
J A ELECTRIC	Jose S	Avila	542 S ALTHEA AVE	RIALTO	CA	92376	909-841-7485	ja_electric@att.net	Hispanic American	Male
J. KIM ELECTRIC, INC	Tina	Kim	842 W. Las Palmas Dr.	FULLERTON	CA	92835	714-525-1855	jkimelectric@gmail.com	Asian-Pacific American	Male
Jakez Electric Inc.	Hugo	Jaquez	1625 Santa Venetia St 2207	Chula Vista	CA	91913	619-841-5928	hugo@jakezelectricinc.com	Hispanic American	Male
Jerrys All Phase Electric	Jerry	White	5919 Condon Ave	LOS ANGELES	CA	90043	213-422-9537	jerry@jerrysallphaseelectric.com	Black American	Male
JM FIBER OPTICS, INC.	Kenneth	Rivera	13941 RAMONA AVE., SUITE A	CHINO	CA	91710	909-628-3445	krivera@jmfiberoptics.com	Hispanic American	Male
JP ELECTRIC COMPANY	JUN	PASION	1614 1/2 N. HARVARD AVENUE	LOS ANGELES	CA	90027	323-661-8605	ipelectric@sbcglobal.net	Asian-Pacific American	Male
Kaave Electric Company	Emmanuel	Mariano	174 ROUNDTABLE DRIVE	San Jose	CA	95111	760-822-0924	jeanalyn@kaaveelectric.com	Asian-Pacific American	Male
Kambrian Corporation	Cathy	Hsieh	2707 E. VALLEY BLVD. #312	WEST COVINA	CA	91792	626-964-4445	mgmt@kambrian.com	Asian-Pacific American	Female
KELEUSMATIC TECHNOLOGIES, INC	Michael	Yu	7650 Johnson St	Pembroke Pines	FL	33024	954-543-5701	michael.yu@keleusmatic.com	Asian-Pacific American	Male
KNIGHT ELECTRIC	CROSHEN K.	WALTON	3153 KEMBERLY LANE	JAMUL	CA	91935	619-303-4067	bkeithwalton@aol.com	Black American	Male
KPA CONSTRUCTORS INC.	Karl	Percell	40 N ALTADENA DR STE 206	PASADENA	CA	91107	626-658-8165	info@kpaconstructors.com	Black American	Male
LEKOS ELECTRIC INC	Terri	Lekos	1370 PIONEER WAY	EL CAJON	CA	92020	619-447-7661	terriekos@gmail.com	Caucasian	Female
Los Angeles Signal Construction, Inc.	Christopher	Morales	155 N. EUCLA	SAN DIMAS	CA	91773	909-599-2201	accounting@lasignal.com	Hispanic American	Male
LUMINOS GLOBAL INC	Nissim	Cohen Sabban	750 DESIGN CT. SUITE 111	CHULA VISTA	CA	91911	619-781-8650	nissim@luminosglobal.com	Hispanic American	Male
LXSONS LLC	Julie Ann	Lopez	18731 Dylan St	Porter Ranch	CA	91326	818-307-9982	alopez@lxsons.com	Hispanic American	Female
M & J ENGINEERING, P.C.	MAQSOOD	MALIK	2003 JERICHO TURNPIKE	NEW HYDE PARK	NY	11040	516-821-7309	mmalik@mjengineers.com	Subcontinent Asian American	Male
MARIN BRAVO ELECTRIC, INC.	PEDRO	MARIN	1248 SOUTH LYON STREET	SANTA ANA	CA	92705	714-245-2450	pmarin@marinbravo.com	Hispanic American	Male
MASTEK INC	Miguel	Soto	5701 S. EASTERN AVE, SUITE 145	COMMERCE	CA	90040	626-999-3035	masoto@mastek-inc.com	Hispanic American	Male
MATZENAUER ELECTRIC, INC	DIANA	TOWNE	12115 LAKESIDE AVE	LAKESIDE	CA	92040	619-390-4570	diana@matzenauer.com	Caucasian	Female
Maximum Electric	JOE	SAUSEDA	392 WEST LARCH RD. 8	TRACY	CA	95304	510-863-2077	soniasauseda@att.net	Hispanic American	Male
MCALLEN SIGNAL AND BORING	Anabel	Aguayo	2821 HAWK COURT	MCALLEN	TX	78504	956-662-9418	jmars@mcallensignalandboring.com	Hispanic American	Female
McKee and Company Electric	NAI	SAELAW	594 Monterey Blvd.	San Francisco	CA	94127	415-825-5461	accounting@mckeeelectric.com	Asian-Pacific American	Male
MEGAVOLT ELECTRICAL SERVICES	JUAN	HERNANDEZ	17073 KINGSBURY STREET	GRANADA HILLS	CA	91344	818-832-7045	xuhua01@yahoo.com	Hispanic American	Male
MEL ELECTRIC, INC.	EBONY	LOPEZ	902 ENTERPRISE WAY STE G	NAPA	CA	94558	707-666-2976	ebony@melectricinc.com	Black American	Female
Mendoza Business Enterprises, Inc.	Peter	Mendoza	1460 E. Cooley Drive, Suite 101	Colton	CA	92324	951-900-4287	accounting@mbemex.com	Hispanic American	Male
Mongoose Electric Incorporated	Elizabeth	Gong	2564 Seaboard Ave	San Jose	CA	95131	408-460-9094	info@mongooseelectric.com	Asian-Pacific American	Female
Montel Technologies, LLC	Ray	Montelongo	333 W. Ohio St. Ste 101	Chicago	IL	60654	815-966-1267	ap@monteltech.com	Hispanic American	Male
MOOR ELECTRIC, INC	Dwayne	Henry	5505 STEVENS WAY #740504	SAN DIEGO	CA	92114	619-250-0380	info@moorelectric-sd.com	Black American	Male

Morgner Technology Management	Monique	Morgner Lukeman	1880 CENTURY PARK E, SUITE 1402	LOS ANGELES	CA	90067	323-900-0030	mmorgner@morgnerco.com	Hispanic American	Female
MX Construction, Inc.	Tiffany	Amezcu	720 South Frontage Road, Suite 106	Nipomo	CA	93444	805-723-5201	tiffany@mxconc.org	Caucasian	Female
My Electrician Inc.	Brian	Alston	25415 Tradewinds Dr	Menifee	CA	92585	800-342-6885	info@myelectricalguy.com	Black American	Male
NATIVE AMERICAN ELECTRIC, INC.	DANIEL	SILVAS	43415 CASTLE CANYON ROAD	SAN JACINTO	CA	92583	909-908-7570	nae@naelectric.net	Native American	Male

Company Name	Owner First	Owner Last	Physical Address	City	State	Zip	Phone	Email	Ethnicity	Gender
Navjoy Consulting Services, Inc.	Navin	Nageli	7340 East Caley Avenue, Suite 100W	Centennial	CO	80111	720-399-4402	kgreene@navjoyinc.com	Subcontinent Asian American	Male
Net Electric, Inc	Nathan E.	Tyler	3803 Broadway, Suite 2	Oakland	CA	94611	866-334-2400	info@netelectric.biz	Black American	Male
NexLyte, Inc.	Nathan	Niles	201 King of Prussia Rd, Suite 650	Radnor	PA	19087	215-628-2640	nathan.niles@nexlytete.com	Black American	Male
NORCAL GENERAL CONSTRUCTION CORP	KENNY	PHAN	751 Mabury Rd	San Jose	CA	95133	408-886-0335	info@norcalcorp.com	Asian-Pacific American	Male
NORTHERN INDUSTRIAL ELECTRIC	DORI	CRAMER	2435 RADIO LANE	REDDING	CA	96001	530-246-2366	nie01@sbcglobal.net	Caucasian	Female
Novoa Electric, Inc.	Carlos	Novoa	1137 Sandhurst Ln, PMB 120	La Verne	CA	91750	310-220-9380	carlos@novoelectricinc.com	Hispanic American	Male
OPTIMA ENERGY, INC.	YOUNG	CHANG	17306 Roseton Ave	Artesia	CA	90701	310-320-0611	young@opnrg.com	Asian-Pacific American	Male
Pacific Corridor Constructors, Inc.	Tomomori	Kamimura	1173 Tesoro Pl	Vista	CA	92081	310-261-1968	tkamimura@constructpacific.com	Asian-Pacific American	Male
PACIFIC ELECTRIC CONTRACTING, INC.	FRANK J.	CAMACHO, JR.	330 PHELAN AVE	SAN JOSE	CA	95112	408-293-8102	bids@pacific-electric.net	Hispanic American	Male
PEACHTREE TELECOMMUNICATIONS INTERNATIONAL LLC	SANDRA KAY	STEWART	11465 JOHNS CREEK PKWY, SUITE 100	JOHNS CREEK	GA	30097	770-242-1970	kaystew@peachtreetelecom.com	Caucasian	Female
PEGASUS LV, LLC.	La Mar	Owens	4132 S. RAINBOW #272	LAS VEGAS	NV	89103	702-734-2787	pegasuslv@hotmail.com	Black American	Male
PERIMETER SECURITY GROUP LLC	Brenda	Blood	N. 7488 Government Way	Dalton Gardens	ID	83815	208-772-1700	hjackson@perimetersecuritygroup.com	Caucasian	Female
PHASE 3 COMMUNICATIONS INC	Nicolas	Dezubiria	3091 MONTEREY ROAD	SAN JOSE	CA	95111	408-946-9011	ryusi@p3com.net	Hispanic American	Male
POLAR ELECTRICAL COMPANY	AARON	HAN	855 SOFT WIND RD. APT #4	VISTA	CA	92081	760-215-5560	polarelectricusa@gmail.com	Asian-Pacific American	Male
Power4ward LLC	Antonio	Ameen	37107 Stratford St	Indio	CA	92203	228-383-2031	antonioa@power4ward.com	Black American	Male

SECTION 2 – CONTRACT DOCUMENTS

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LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

CONTRACT NO. IFB NO. C1230

FIRM FIXED PRICE CONTRACT

BETWEEN

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

AND

(NAME OF CONTRACTOR TO BE FILLED IN AT TIME OF AWARD)

TO BE FILLED IN AT TIME OF AWARD

EFFECTIVE DATE

CONTRACT NO: IFB NO. C1230

(NAME OF CONTRACTOR TO BE FILLED IN AT TIME OF AWARD)

- c. Diversity & Economic Opportunity Department Contract Compliance Manual (RC-FTA)
- d. Construction and Demolition Debris Recycling and Reuse Policy
- e. Energy and Sustainability Policy
- f. Environmental Policy
- g. Water Use and Conservation Policy
- h. Drug & Alcohol-Free Work Environment Policy
- i. Public contract Code Section 9204
- j. Public contract Code Section 20104

C. An Amendment or Change to this Contract shall take its precedence from the term it amends. All other documents and terms and conditions shall remain unchanged.

ARTICLE II: DEFINITIONS

Capitalized terms, abbreviations and symbols used in this Contract are defined in the Article in the General Conditions entitled GLOSSARY OF TERMS. Additional terms may be defined in the Special Provisions or the Statement of Work.

ARTICLE III: WORK TO BE PERFORMED

Contractor shall perform the Work as is more fully described in the Statement of Work, to provide services to supply, install new bus hoists at Division 8 and Central Maintenance Facility (CMF). (see Exhibit **TBD**).

ARTICLE IV: COMPENSATION

A. Contract Price

In consideration of the Contractor's full performance of the Work, and in accordance with the terms of the Contract, Metro will pay the Contractor the Contract Price of \$_____ as provided in this Article and in the Contract Document entitled Compensation and Payment Provisions.

[add if the Firm Fixed Price is paid on a Payment Schedule]

[If Retention Scheduled is applicable, reference it here, and insert the retention schedule as an Exhibit]

B. Payment Schedule

Except as otherwise expressly provided, the Contract Price shall be paid to the Contractor based upon the **[insert either – (following Payment Schedule:) or (Payment Schedule attached hereto as Exhibit ____.)]**

[If, applicable, insert the Payment Schedule]

[For construction, the Payment Schedule may be derived from the Schedule of Quantities and Prices from the Bid Forms as submitted by the Contractor]

- C. Applications for Progress Payments [i.e., billing milestones/monthly progress payments, this is a negotiated term]

All Applications for Progress Payments shall be electronically submitted to Metro at accountspayable@metro.net.

- D. Final Payment

The Application for Final Payment shall be labeled "FINAL" and submitted to Metro at accountspayable@metro.net.

- E. Effective January 1, 2009, Metro started payment of invoices via Electronic Funds Transfer (EFT) which guarantees faster payments and is a more secure and efficient way to make payments. If you have not already done so, you will be required to sign up for EFT, unless you request a waiver in writing. Please call (213) 922-6811, then press option # 7 for EFT forms.

ARTICLE V: CONTRACT TERM AND PERIOD OF PERFORMANCE

The Effective Date of this Contract is (insert date). The Period of Performance of this Contract shall begin on [insert either the Effective Date or the date set forth in the Notice to Proceed] (hereinafter "Commencement Date"). Contractor shall complete all Work under the Contract within [] calendar days after the Commencement Date, unless this Contract is terminated earlier or extended by Metro, in writing, as provided in the Contract.

ARTICLE VI: AVAILABILITY OF FUNDS

Funding for this Contract is based upon the availability of funds determined by Metro's fiscal budget, which runs from July 1 through June 30 of each fiscal year. If funding is not approved for any subsequent fiscal year during which this Contract is in effect, Metro will issue a stop work notice.

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ARTICLE VII: ENTIRE AGREEMENT

This Contract includes this Form of Contract, all other Contract Documents incorporated pursuant to Article I herein, and all Attachments and other documents incorporated herein by inclusion or by reference, and constitutes the complete and entire agreement between Metro and Contractor and supersedes any prior representations, understandings, communications, agreements or proposals, oral or written.

CONTRACTOR NAME
PHYSICAL ADDRESS
EMAIL ADDRESS
PHONE NUMBER

LOS ANGELES COUNTY
METROPOLITAN
TRANSPORTATION AUTHORITY

STEPHANIE N. WIGGINS
CHIEF EXECUTIVE OFFICER

BY: _____

SIGNATURE OF AUTHORIZED OFFICIAL

BY: _____
(PRINT OR TYPE NAME)

TITLE

DATE

TAX ID NO.: _____

DATE

APPROVED AS TO FORM
DAWYN R. HARRISON
INTERIM COUNTY COUNSEL

BY: _____
DEPUTY

EXHIBIT **TBD** – INSURANCE REQUIREMENTS

REGULATORY REQUIREMENTS

RR-01 ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

B. Metro Administrative Code

Contractor warrants and represents that it has read and understands Title 4, Procurement, and Title 5, Ethics, of the Metro Administrative Code (hereinafter "Administrative Code" - available at [www.metro.net/images/MTA Administrative Code Enactment.pdf](http://www.metro.net/images/MTA_Administrative_Code_Enactment.pdf)), and will comply with each and every one of those requirements in accordance with their terms to the extent that they are applicable to contractors doing business with Metro. All definitions used in the Administrative Code are hereby incorporated herein as though fully set forth.

Without reducing or affecting its obligation to comply with any and all provision of the Administrative Code, as applicable, Contractor specifically warrants, represents and covenants that it will:

1. Comply with:
 - a. Chapter 5-20, Contractor Code of Conduct;
 - b. Chapter 5-25, Lobbying the Metro; and
 - c. Chapter 5-35, Metro Conflict of Interest Code, and
2. Not induce, attempt to induce, or solicit:
 - a. Board members to violate Chapter 5-10;
 - b. Metro employees to violate Chapter 5-15;
 - c. Metro Financial employees to violate Chapter 5-30: or
 - d. Either Board members, Metro employees or Metro Financial employees to violate any other provision of the Administrative Code.

C. Compliance with §§1090 et. seq. and §§87100 et. seq. of the California Government Code

Contractor shall comply with all applicable provisions of §§1090 et. seq. and §§87100 et. seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

1. Contractor shall not cause or permit any member, officer, or employee of Metro to have any financial interest in the Contract;
2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with Metro;
3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of Metro has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to Metro.

D. Campaign Contributions

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of Metro's Board of Directors in violation of California Public Utilities Code §130051.20, California Government Code §§84300 et seq., or the Administrative Code.

E. Environmental Management System (EMS) Policy

Contractor represents that during the performance of the Contract it will assist Metro in achieving the principles of Metro's EMS Policy, available at [Environmental Management System \(EMS\) Policy](#) and Contractor further commits that it shall adhere to the applicable EMS Policy principles in its choice of means and methods in the performance of the Work.

RR-02 DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

- B.** In connection with the performance of Work provided for under this Contract, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

RR-03 WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

- B. Contractor shall not adopt any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or Federal regulation; nor shall Contractor retaliate against an employee for taking such actions as set forth in the California Labor Code §1101 et. seq.

RR-04 PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

- B. Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Metro's business, including all information and documents submitted by Contractor ("**Records**"), shall become the exclusive property of Metro and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Metro's use and disclosure of its records are governed by this Act. Metro will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to Metro. Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C. In the event of litigation concerning the disclosure of any Records, Metro's sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Metro harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05 ACCESS TO RECORDS

A. Applicability

This Article applies to all federally funded contracts.

- B. Contractor agrees to provide Metro, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to 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.

- C. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Metro, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. Contractor shall permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Metro, 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.

RR-06

FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES*

A. Applicability

This Article applies to all federally funded contracts.

- B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 (including any changes, revisions or successor circulars) is automatically 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. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metro requests which would cause Metro to be in violation of the FTA terms and conditions.

This Contract is subject to a financial assistance agreement between Metro and the Federal Transit Administration of the US Department of Transportation and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to this Contract and are incorporated by reference as if fully set forth herein.

- C. Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between Metro and FTA, as they may be amended or

promulgated from time to time during the term of this Contract collectively "Federal Requirements". These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

RR-07 ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

- B.** Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 USC §6321 et seq.

RR-08 CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

- B.** Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, Federal transit law at 49 U.S.C. § 5332, and California Government Code § 12900, et seq., Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, age, ancestry, use of or eligibility for family and medical care leave, marital status, genetic information, military and veteran status, gender, gender identity, and gender expressions, sexual orientation, medical condition, or disability (mental and physical). In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

In addition to any other remedies under this Contract, in the event of the Contractor's noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such sanctions as it or the FHWA may determine to be appropriate, including but not limited to:

1. Withholding of payments to Contractor under the Contract within a reasonable period of time, not to exceed 90 days; and/or
2. Cancellation, termination or suspension of the Contract, in whole or in part.

C. Equal Employment Opportunity

1. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor shall 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. Part 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 activities undertaken in the course of the Contract, as well as California Government Code § 12900, et seq. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, national origin, sex, or age, ancestry, use of or eligibility for family and medical care leave, marital status, genetic information, military and veteran status, gender, gender identity, and gender expressions, sexual orientation, medical condition, or disability (mental and physical). Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, assignment of duties, recruitment or recruitment advertising, layoff or terminate on; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.
2. 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, Contractor shall refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor shall comply with any implementing requirements FTA may issue.
3. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor shall 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, Contractor shall comply with any implementing requirements FTA may issue.

RR-09

NO GOVERNMENT OBLIGATION TO THIRD PARTIES *

A. Applicability

This Article applies to all federally funded contracts.

B. Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award this 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 Metro, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract.

Contractor shall include this Article in each Subcontract and shall not modify the Article, except to identify the Subcontractor who will be subject to its provisions.

RR-10 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS *

A. Applicability

This Article applies to all federally funded contracts.

- B.** 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, shall apply to actions pertaining to this Contract. Upon execution of this Contract, 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 this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, 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 Contractor to the extent the Federal Government deems appropriate.
- C.** Contractor also acknowledges that this Contract is connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- D.** Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

RR-11 SUSPENSION AND DEBARMENT*

A. Applicability

This article applies to federally funded contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

- B.** This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor shall verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

Contractor shall comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

- C.** By entering into this Contract, Contractor certifies that it shall comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Contract.

This certification is a material representation of fact relied upon by Metro. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to Metro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment .

RR-12 RECYCLED PRODUCTS

A. Applicability

This Article applies to federally funded operations/management, construction, or materials & supplies contracts for items designated by the Environmental Protection Agency, when procuring \$10,000 or more per year.

- B.** To the extent practicable and economically feasible, a competitive preference shall be given for products and services that conserve natural resources and protect the environment and are energy efficient.

RR-13 CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

This Article applies to all federally funded contracts over \$100,000.

B. CLEAN WATER REQUIREMENTS

Contractor shall 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 all applicable clean water standards of the State of California and any state or local agency having jurisdiction. Contractor shall report each violation to Metro. Metro will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office, and all other agencies having jurisdiction.

C. CLEAN AIR

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

and all applicable Clean Air Standards of the State of California or any state or local agency having jurisdiction. Contractor shall report each violation to Metro. Metro will, in turn, report each violation as required to FTA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

RR-14 COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

The following Article applies to federally funded contracts over \$100,000.

- B.** The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying 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 from tier to tier up to Metro.

RR-15 BUY AMERICA *

A. Applicability

The following Article applies to federally funded rolling stock purchase and construction contracts over \$100,000 and to contracts over \$100,000 for materials & supplies for steel, iron, manufactured products, and construction materials.

- B.** Contractor shall comply with 49 U.S.C. 5323(j), 49 CFR Part 661, and the Build America, Buy America Act (Sections 70901-52 of the Infrastructure Investment and Jobs Act, Public Law 117-58. which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials 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.

Metro may investigate Contractor's, any Subcontractor's, and any Supplier's compliance with this Article. If an investigation is initiated, Contractor, Subcontractor, or Supplier shall document its compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation. Contractor shall incorporate the Buy America conditions set forth in this Article in every subcontract or purchase order and shall enforce such conditions.

RR-16**CARGO PREFERENCE*****A. Applicability**

The following Article applies to federally funded contracts involving equipment, materials, or commodities which may be transported by ocean vessels

B. USE OF UNITED STATES FLAG VESSELS

Contractor shall 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 this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels

Contractor shall 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 the Metro (through Contractor in the case of a subcontractor's bill-of-lading.)

Contractor shall 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.

RR-17**FLY AMERICA****A. Applicability**

This Article applies to federally funded contracts if the contract or subcontracts may involve the international transportation of goods, equipment, or personnel by air.

- B.** 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 subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. 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. Contractor agrees to include the

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

RR-18

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

This Article applies to federally funded construction contracts over \$100,000 (including ferry vessels), rolling stock purchases over \$100,000 and to operations/management contracts over \$100,000 (except transportation services)

B. Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:

1. **Overtime requirements** – Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the Article set forth in paragraph 1 of this Section Contractor and any Subcontractor responsible therefore 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 Article set forth in paragraph 1 of this Section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the Article set forth in paragraph 1 of this Section.
3. **Withholding for unpaid wages and liquidated damages** – Metro 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 monies payable on account of work performed by Contractor or Subcontractor under the 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 Article set forth in paragraph 2 of this Section.

4. **Subcontracts** – Contractor or Subcontractor shall insert in any Subcontracts the Articles set forth in this Section and also a Article requiring the Subcontractors to include these Articles in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the Articles set forth in this Section.
5. **Payrolls and basic records** – The records to be maintained hereinabove shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by Metro and U.S. Dept. of Labor. Contractor and Subcontractor shall maintain payrolls and basic records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

RR-19

SEISMIC SAFETY

A. Applicability

This Article applies to federally funded Architect & Engineer contracts for the design of new buildings or additions to existing buildings and to contracts for the construction of new buildings or additions to existing buildings.

- B. Any new building or addition to an existing building shall 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 Contractor shall certify to compliance to the extent required by the regulation. Contractor shall 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 the certification of compliance issued on the project.

RR-20

ADA ACCESS

A. Applicability

This Article applies to federally funded Architect & Engineer, Operations/Management, Rolling Stock Purchase, and Construction contracts

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons 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 that policy;

2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
 - (7) 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;
 - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer

Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

RR-21 ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

B. FTA Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations Regulations

Contractor and its Subcontractors shall comply with the FTA anti-drug and alcohol misuse regulations (49 CFR Part 655) and the U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) to the full extent that they are, by their terms, applicable to Contractor and its Subcontractors. The regulations apply to all "contractors" that have "covered employees" that perform "safety sensitive functions" as those terms are defined in the regulations.

C. Certificate of Compliance

The CERTIFICATE OF COMPLIANCE WITH 49 CFR PARTS 655, PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT, submitted by Contractor prior to award, is incorporated as part of the Contract Documents.

D. Drug and Alcohol Testing Program

In the event that any part of the Work under this Contract falls within the scope of 49 CFR Part 655, Contractor, and its Subcontractors (as applicable), shall implement all programs required under the regulations, including without limitation, a Drug and Alcohol Testing Program and an anti-drug use and alcohol misuse program, in full compliance with the regulations.

E. Alcohol and Drug Free Workplace Program

In addition to the above, for Work performed on Metro property, Contractor shall provide an Alcohol and Drug-free Workplace Program in accordance with FTA requirements found at <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Regulations/Regulations/default.aspx>.

A. Applicability

Subject to the limitations in Sections B, C and D, this Article applies if this Contract involves transit operations to be performed by employees of a Contractor recognized by FTA to be a transit operator, and if FTA has determined that it is financed in whole or in part with Federal assistance.

B. General Transit Employee Protective Requirements

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance (other than Federal assistance authorized by 49 U.S.C. § 5310(a)(2) or 49 U.S.C. § 5311), and if the U.S. Secretary of Transportation has determined that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Metro under this Contract, then Contractor shall perform the transit operations work under the Contract in compliance with terms and conditions, (a) determined by the U.S. Secretary of Labor to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor ("U. S. DOL") guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in a U. S. DOL letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Metro, and which is incorporated in the Form of Contract as a Contract Document entitled "U. S. DOL Certification".

C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Metro under the Contract, Contractor shall perform the Work in compliance with the terms and conditions determined, (a) by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Metro, and which is incorporated in the Form of Contract as a Contract Document entitled "U. S. DOL Certification".

D. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of

Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

E. Indemnity

Contractor shall defend, indemnify and hold harmless Metro, and its Board Members, employees and agents from and against all liability, claims, demands actions, costs, judgments, penalties, damages, losses and expenses arising out of or in connection with Contractor's failure to comply with or failure to carry out its responsibilities under all applicable provisions of Sections B, C and D of this Article.

RR-23 CHARTER SERVICE OPERATIONS

A. Applicability

This Article applies to federally funded Operational Service Contracts.

- B.** Contractor shall comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

RR-24 SCHOOL BUS REQUIREMENTS

A. Applicability

This Article applies to federally funded Operational Service Contracts

- B.** Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

RR-25 FEDERAL PATENT AND DATA RIGHTS*

A. Applicability

This Article applies to each contract involving experimental, developmental or research work and for which the purpose of the FTA grant is to finance the development of a product or information.

B. Subject Data

The term "Subject Data" used in this Article means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "Subject Data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

C. Restrictions on Subject Data

The following restrictions apply to all Subject Data first produced in the performance of the Contract:

1. Except for its own internal use, metro or Contractor may not publish or reproduce Subject Data in whole or in part, or in any manner or form, nor may metro or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
2. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any Subject Data or copyright described in subparagraphs C.2(a) and C.2(b) of this Paragraph C.2. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - (a) Any Subject Data developed under the Contract, whether or not a copyright has been obtained; and
 - (b) Any rights of copyright purchased by metro or Contractor using Federal assistance in whole or in part provided by FTA.
3. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, Metro and Contractor performing experimental, developmental, or research work required by the Contract shall permit FTA to make available to the public, either FTA's license in the copyright

to any Subject Data developed in the course of the Contract, or a copy of the Subject Data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become Subject Data and shall be delivered as the Federal Government may direct. This Paragraph C.3 shall not apply to adaptations of automatic data processing equipment or programs for Metro's or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

4. Unless prohibited by state law, upon request by the Federal Government, Metro and Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Metro or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Neither Metro nor Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Federal Government
5. Nothing contained in this Article shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
6. Data developed by Metro or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements of Paragraphs 2, 3, and 4 of this Article, provided that Metro or Contractor identifies that data in writing at the time of delivery of the Contract Work.

D. Patent Rights

If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Metro and Contractor shall take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

E. Provision of Rights in Invention to Federal Government

Unless the Federal Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Metro and Contractor shall take the necessary actions to provide, through FTA, those rights in that

invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

RR-26

PUBLIC WORKS CONTRACTOR REGISTRATION LAW

This Contract is subject to the provision of California Law regarding Public Works, including, but not limited to California Labor Code. Contractors seeking to perform work on Metro's state/local and federally funded public works contracts are now subject to registration requirements in order to bid or perform work on state and local public works projects (as defined under the California Labor Code).

Contractors must meet a set of minimum qualifications to be registered as eligible to bid and work on state and local public works projects. Those qualifications are currently:

- Must have workers' compensation coverage for any employees and only use subcontractors who are registered public works contractors.
- Must have Contractors State License Board license if applicable to trade.
- Must have no delinquent unpaid wage or penalty assessments owed to any employee or enforcement agency.
- Must not be under federal or state debarment.
- Must not be in prior violation of this registration requirement once it becomes effective. However, for the first violation in a 12 month period, a contractor may still qualify for registration by paying an additional penalty.

Metro shall not accept any bid nor award any contract without proof of the contractor's and subcontractor's current registration.

The California Department of Industrial Relations (DIR) will post a list of registered contractors and subcontractors on its website so that awarding bodies and contractors will be able to comply with requirements to only use registered contractors and subcontractors.

This Contract is subject to compliance monitoring and enforcement by the DIR.

Contractors and subcontractors on *all* public works projects will be required to submit electronic certified payroll records (CPRs) to the California Labor Commissioner unless excused from this requirement. Contractor and subcontractors are required to submit CPRs directly to Metro, as well.

Prime contractors will be required to ensure that their subcontractors subject to this requirement are properly registered with the DIR. Contractors that hire unregistered subcontractors are subject to penalties up to \$10,000.

Small Project Exemption

Contractors who work exclusively on small public works projects are not required to register as a public works contractor or file electronic certified payroll reports with the State for those projects. Note, these limits are for total project budgets, not individual subcontract prices. Contractors are still required to submit certified payroll records and accompanying documents to Metro. Contractors must also provide these documents to the California Labor Commissioner's Office upon request. The small project exemption applies for all public works projects that do not exceed:

- \$25,000 for new construction, alteration, installation, demolition or repair
- \$15,000 for maintenance

Information regarding the DIR's Contractor Registration Database can be accessed here: <http://www.dir.ca.gov/Public-Works/Contractors.html>

The website to register or renew your registration can be accessed here: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

The website to check you or your subcontractor's registration status can be accessed here: <https://cadir.secure.force.com/ContractorSearch>

RR-27

COMPLIANCE WITH CALIFORNIA HEALTH AND SAFETY CODE (HSC) §25250.51

a. Applicability

This article applies to all contracts containing motor vehicle brake friction materials as listed in the sections in this regulatory requirement.

b. Contractor shall comply with California SB 346 adding §25250.51 to the California Health & Safety Code as follows:

1. On or after January 1, 2014, any motor vehicle brake friction materials containing any of the following constituents in an amount that exceeds the following concentrations shall not be sold in this state:
 - i. Cadmium and its compounds: 0.01% by weight;
 - ii. Chromium (VI)- salts: 0.1% by weight;
 - iii. Lead and its compounds: 0.1% by weight;
 - iv. Mercury and its compounds: 0.1% by weight; and
 - v. Asbestiform fibers: 0.1% by weight
2. The brake constituents shall not contain any Lead or Asbestos.

END OF REGULATORY REQUIREMENTS

SPECIAL PROVISIONS (CONSTRUCTION)

All Articles, Subarticles, or portions of the Contract noted by a asterisk (*) shall be included in all Subcontracts of any tier.

SP-01 DBE PARTICIPATION

- A. The Contractor shall achieve its Disadvantaged Business Enterprise (DBE) commitment of Twenty percent (20%) of the total contract price. Achievement of the DBE commitment will be measured by the total amount paid for Work completed by firms identified as race-conscious (RC) DBEs.
- B. Achievement of the DBE commitment will be measured by the total amount paid for the Work/Services completed by DBEs.
- C. To obtain an accurate record of the contractor's performance towards meeting it's DBE commitments. The Contractor shall utilize Metro's web-based Small Business Compliance Reporting System (SBCRS) to report DBE and non DBE payments, change orders and all other reporting activities, throughout the performance of the contract. The Contractor is to maintain an accurate listing of all DBE and non DBE firms in the SBCRS. SBCRS provides online webinar training for the Contractor, subcontractors, suppliers, brokers, and truckers, login and password information, at no additional cost to the Contractor or its subcontractors, suppliers, brokers or truckers. The Contractor must complete monthly reports of DBE payments, change orders and other required information by the 15th of each month. Administration sanctions shall be assessed for failure to comply as identified in the Contract Compliance Manual (Federal).
- D. The Contractor is responsible for ensuring that all subcontractors, suppliers, brokers, and/or truckers (at all tiers) participate in the SBCRS based webinar trainings to comply with the verification of payments and other related reporting requirements through the software system.
- E. The Contractor, subrecipient or subcontractor 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 Metro's DBE Program. Failure by the Contractor to carry out the DBE requirements is a material breach of this contract, which may result in the termination of this contract or other administration sanction set forth in the Contract as identified in the Contract Compliance Manual (RC-FTA).
- F. Failure to meet DBE commitments and/or DBE contract requirements may result in administrative sanctions, as set forth in the Contract Compliance Manual (RC-FTA).

SP-02 ORGANIZATIONAL CONFLICTS OF INTEREST*

This Contract is subject to the restrictions against organizational conflicts of interest promulgated by the Federal Transit Administration in FTA Circular 4220.1F dated November 1, 2008 or successor circulars. Contractor and its Subcontractors shall at all times comply with such restriction in connection with the Services it provides to and on behalf of Metro. Without limiting the generality of the foregoing, Contractor shall not provide Services to Metro, under this Contract, which would constitute or create an organizational conflict of interest, including but not limited to any of the following that could result in a lack of impartiality or impaired objectivity, unequal access to information, and biased ground rules, for this Contract or any other contract for Metro:

- A. Influenced Specifications or Statement of Work
The Contractor's prior work product, whether it is performed on behalf of Metro or another public or private entity, has been relied upon in establishing, or significantly influenced, the specifications or Statement of Services under this Contract.
- B. Opportunity to Create Contracting Opportunities
The Contractor's prior work product, whether it is performed on behalf of Metro or another public or private entity, afforded an opportunity for the Contractor to make or influence findings with respect to this Contract.
- C. Evaluation of Prior Work Product
The Contractor would be in position to evaluate its own prior work product as part of this Contract, whether the prior work product is performed on behalf of Metro or another public or private entity; or as part of this Contract the Contractor would be in a position to assess its prior work product whether or not it was performed on behalf of Metro or another public or private entity.
- D. Access to Information
The Contractor received confidential or other information as part of the services performed for Metro or another public or private entity which provides the Contractor with an unfair competitive advantage to obtain this Contract or another contract with Metro.

SP-03 PERCENTAGE OF WORK PERFORMED BY THE CONTRACTOR

The Contractor shall perform with its own organization Work amounting to at least 30 percent of the Total Contract Price.

SP-04 PROSECUTION AND COMPLETION OF WORK

The Contractor shall commence performance of the Work on the date specified in the formal Notice to Proceed issued to the Contractor. The Contractor shall furnish all labor (including extra crews) and facilities and shall work such hours (including extra shifts and overtime operations) to prosecute the Work to completion in accordance with the Appendix entitled WORK COMPLETION SCHEDULE attached hereto and incorporated herein.

SP-05 NOTICE AND SERVICE THEREOF

- A. Any Notice (e.g., Stop Notice, Preliminary Notice, etc.) except for Notices of Intent to Claim (see the Article entitled NOTICE OF INTENT TO CLAIM of the General Conditions) legally required to be given by one party to another under the Contract shall be in writing and dated. The Notice shall be signed by the party giving such Notice or by a duly authorized representative of such party.
- B. All Notices shall not be effective unless enclosed in a sealed envelope and transmitted by registered mail addressed to Metro's offices as follows:

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

Attention: Rafael Vasquez
Manager of Contracts
9th Floor -V/C Management
Contract No. IFB No. C1230

- C. All Notices to the Contractor will be enclosed in a sealed envelope and transmitted by personal delivery to the Contractor or its Authorized Representative at the Worksite or by registered mail or any certifiable delivery service addressed as follows:

FOLLOWING INFORMATION WILL BE INCORPORATED AT TIME OF AWARD

??Contractor Name#
??Contractor Address#
??Contractor City, State, County, Zip#

Attention: ??Contractor Contact Person#
??Contractor Contact Title#
Contract No. IFB No. C1230

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

FOLLOWING INFORMATION WILL BE INCORPORATED AT TIME OF AWARD

??Surety Name#
??Surety Address#
??Surety City, State, Zip#

Attention: ?? Surety Contact Person#
 ?? Surety Contact Title#
Contract No. IFB No. C1230

- E. Any Notice of changes of address shall be provided in accordance with the provisions of this Article.

SP-06 IDENTIFICATION OF CONSULTANTS

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

SP-07 INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons, or damages in property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employee, or subcontractors. As respects Professional Liability, coverage must be maintained, and evidence provided, for two years following the expiration of this contract.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG0001)
2. Insurance Services Office form number CA0001 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance.
5. Contractor's Pollution Liability

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. Products/Completed Operations aggregate shall apply separately to this contract/agreement, or the aggregate limit shall be twice the required per occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation to comply with California's statutory requirements.
4. Professional Liability: \$1,000,000 per claim.
5. Contractor's Pollution with minimum limits of \$1,000,000. Coverage is to remain in effect at least two (2) years after completion of project.

OTHER INSURANCE PROVISIONS

The insurance policies required per the terms of the contract are to contain, or be endorsed to contain, the following provisions:

1. Los Angeles County Metropolitan Transportation Authority (LACMTA), its subsidiaries, officials and employees are to be covered as additional insureds as respects liability arising out of the activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied, or used by the Contractor; or automobiles owned leased, hired or borrowed by the Contractor. The general liability coverage shall also include contractual, personal injury, independent contractors, and broad form property damage liability. The coverage shall contain no special limitations on the scope of protection afforded to LACMTA, its subsidiaries, officials and employees.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects LACMTA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by LACMTA shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to LACMTA, its subsidiaries, officials and employees.
4. 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 the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to LACMTA.
6. Workers' Compensation and Employer's Liability policies shall provide a waiver of subrogation in favor of LACMTA.
7. Professional Liability and Contractor's Pollution insurance shall be continued, and evidence provided to LACMTA, for two years following the expiration of the contract or, tail coverage provided for two years in the event of cancellation or non-renewal and shall be endorsed to include Non-Owned Disposal Site Coverage (NODS).

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and amounts over \$25,000 approved by LACMTA.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with carriers approved by the California Department of Insurance with a current A.M. Best's rating of no less than A- VII, unless otherwise approved by LACMTA.

VERIFICATION OF COVERAGE

Contractor shall furnish LACMTA with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by LACMTA before work commences. If requested by LACMTA, the Contractor shall submit copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

SUBCONTRACTORS

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsement for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. If requested by LACMTA, the Contractor shall submit copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

SP-08 CONTRACT DOCUMENTS TO BE FURNISHED BY METRO

Metro will provide the following documents to the Contractor at no expense. The Contractor shall be responsible for supplying all Subcontractors and/or themselves with additional copies of documents at their own expense.

Note: The quantities shown below are those usually required for a major contract, a smaller contract may require smaller quantities.

DOCUMENT	QUANTITY	
Conformed Contract Documents	(Except Drawings)	1
Contract Compliance Manual		1
Construction Safety and Health Manual		1
Conformed Contract Drawings		1
Construction Specifications		1
Disputes Review Board Procedures		1
Policies and Guidelines on Lobbying		1
Federal Lobbying Restrictions		1
Alcohol and Drug-Free Workplace Manual		1
Labor Compliance Manual		1
Construction Security Manual		1
Construction Contract Forms		1
Environmental Summary Report		1
Reference Drawings		1

SP-09 SUBCONTRACTORS AND SUPPLIERS*

The following table lists the Subcontractors and Suppliers as listed in the Contractors bid. Subcontractor and Suppliers added as a result of a Subcontractor Substitution approved by Metro's Board of Directors will be added to this list by Change Order.

FOLLOWING INFORMATION TO BE INCORPORATED WHEN CONTRACT IS CONFORMED

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

Supplier	Material Supplied	DBE/SBE/DVBE
Name: Address: Phone:		

SP-10 ESCROW OF BID DOCUMENTS

- A. All bidders shall submit, to the CA within forty-eight hours (48) hours after the time for receipt of Bids, one copy of all documentary information generated in preparation of the Bid prices for the subject contract and shall include the same information from all Subcontractors named in the Bid. This material is hereinafter referred to and further defined herein in sub-Article D, Format and Contents as "Escrowed Bid Documents" and shall be submitted in sealed containers and clearly marked "Escrow Bid Documents". The Escrow Bid Documents of the successful bidder will be held in escrow for the duration of the Contract. The Escrowed Bid Documents are, and shall always remain, the property of the Contractor, subject to joint review by Metro and the Contractor. The Escrowed Bid Documents will be returned to the Contractor at such time as the Contract has been completed, final acceptance has been received, and a Notice of Completion has been filed (if required).
- B. The successful bidder agrees, as a condition of award of the Contract, that the Escrowed Bid Documents constitute all the information used in the preparation of the Bid and that no other Bid preparation information shall be considered in resolving changes or claims.
- C. The successful bidder also agrees that nothing in the Escrowed Bid Documents shall change or modify the terms or conditions of the Contract Documents. The Escrowed Bid Documents do not become part of the Contract Documents.
- D. Metro will not reproduce any of the Escrowed Bid Documents without the mutual agreement of the Contractor. Escrowed Bid Documents will be used to assist in the negotiation of Claims and in the settlement of Claims, disputes and other contractual matters. They will not be used for bid evaluation or for evaluation or approval of the bidder's anticipated methods of construction or to assess the bidder's qualifications for performing the Work.
- E. Format and Contents

Bidders may submit Escrowed Bid Documents in their usual cost estimating format; a standard format is not required. It is not the intention to cause the bidder extra work during the preparation of the Bid but to ensure that the Escrowed Bid Documents will be adequate to enable complete understanding and proper interpretation for their intended use. Preparation and submittal of the Escrowed Bid Documents shall be at the sole expense of the bidder.

Escrowed Bid Documents shall be in the English language. All dimensions and measurements shall be in the English (lb./foot/sec.) system. All costs shall be identified. For Bid Items amounting to less than ten thousand (\$10,000) dollars, estimated unit cost are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect cost, contingencies, and mark-up, as applicable, are allocated. The Escrowed Bid Documents shall include all quantity takeoffs, calculations or rates of production and progress, copies of quotes 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.

F. Submittal

The Escrowed Bid Documents shall be submitted by the bidder in a sealed container within forty-eight (48) hours after the time for receipt of Bids. The Container shall be clearly marked on the outside with the bidder's name, date of submittal, Contract number and title.

The Escrowed Bid Documents shall be accompanied by a certification, signed by an individual authorized by the bidder, stating that the material in the Escrowed Bid Documents constitutes all the documentary information used in preparation of the Bid and that the bidder has personally examined the contents of the Escrowed Bid Documents and has found that the documents in the container are complete.

If the Contract is not awarded to the apparent successful bidder, the Escrowed Bid Documents of the second lowest bidder to be considered for award shall be processed as described above.

Timely submission of complete Escrowed Bid Documents is a prerequisite to a Contract award. The contents thereof will not be used for the bid evaluation. Failure to provide the necessary Escrowed Bid Documents within forty-eight (48) hours after the time for receipt of bids will be sufficient cause for Metro to reject the Bid.

Escrowed Bid Documents of unsuccessful bidder(s) will be returned after award of the Contract.

G. Storage and Access

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

H. Examination After Award of Contract

The Escrowed Bid Documents shall be examined by both Metro and the Contractor, at any time deemed necessary after award of the Contract by the Contractor, to assist in settlement of claims, disputes and other contractual matters.

Examination of the Escrowed Bid Documents after award of the Contract is subject to the following conditions:

1. Metro and the Contractor shall each designate, in writing to the other and a minimum of three (3) days prior to examination, representatives who are authorized to examine the Escrowed Bid Documents. With the consent of both Metro and the Contractor, members of the Disputes Review Board or other ADR process, may examine the Escrowed Bid Documents if required to assist in the settlement of a claim.
2. Access to the Escrowed Bid Documents will take place only in the presence of duly designated representatives of both Metro and the Contractor.

SP-11 LIQUIDATED DAMAGES

The liquidated damages for failure to complete the Work, or designated portion thereof, within the number of days indicated in the milestones, are specified in the Appendix entitled WORK COMPLETION SCHEDULE attached hereto and incorporated herein.

SP-12 NOT-USED

SP-13 STANDARD WORK DAY

A Standard Work Day is defined as an eight-hour day commencing at 8:00 a.m. and ending at 5:00 p.m. Monday thru Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Subject to the approval of the division maintenance director.

SP-14 STANDARD WORK WEEK

A Standard Work Week is defined as Five (5) Standard Work Days, from Monday through Saturday, not including holidays.

SP-15 NOT USED

SP-16 USE AND LIMITATIONS OF DISPUTES REVIEW BOARD

The Table below identifies the categories of claims that may be heard by a ADR and/or Disputes Review Board after the Contractor has complied with the requirements of the Contract, including but not limited to, the Articles entitled CHANGES, NOTICE OF INTENT TO CLAIM, and CLAIMS.

In addition to those issues identified throughout the General Conditions, the following categories of claims are excluded from consideration by a Disputes Review Board.

- A. Interest (monetary) on progress payments or final payment.
- B. Wage and hour disputes.
- C. Claims under the jurisdiction of the Owner's Controlled Insurance Program or the Contractor's Automobile Insurance.
- D. Delegated signature authority of Metro personnel or Construction Manager.
- E. Disputes regarding matters governed by Environmental Law.
- F. Disputes on issues covered by policies of Metro Board of Directors.
- G. Results of audits related to components of extended overhead, allowability of overhead costs and other direct costs.
- H. Assessments made as a result of enforcement of the Special Provision entitled ASSESSMENTS FOR SPECIAL CIRCUMSTANCES.
- I. Disputes regarding safety issues and/or matters under the jurisdiction of Cal-OSHA.
- J. The right of Metro to issue unilateral changes.
- K. Issues related to subcontractor substitutions governed by California Public Contracts Code §4100 et. seq.
- L. Stated dollar value of Liquidated Damages as shown on Appendix A.

SP-17 NOT USED

SP-18 NOT USED

**SP-19 MODIFICATIONS TO THE ALCOHOL AND DRUG-FREE
WORKPLACE MANUAL**

The following clause is added to the Alcohol and Drug-Free Workplace Manual, Revision 2, dated November 1, 1994: The Program requirements described in this Manual apply to all work performed at Worksites as defined in the General Conditions.

SP-20 METRO-FURNISHED PERMITS

- A. Notwithstanding the provisions of the Article entitled PERMITS AND COMPLIANCE WITH LAWS of the General Conditions, Metro will furnish the permits listed below without cost to the Contractor. The Contractor shall

obtain all other permits required for the performance of the Work, in accordance with the above-identified Article. The permits furnished by Metro will be available for examination at Metro's office at the Worksite during regular business hours. The Contractor is advised that permits to be furnished by Metro may not be available on the dates indicated. Effects, if any, of delays in effective dates will be addressed under provisions of the General Conditions

SP-21 PAYMENT AND REPORTING OF PREVAILING WAGE*

This Contract is subject to the provisions of California law regarding Public Works, including, but not limited to California Labor Code Sections 227, 1021, and 1720 through and including 1861, together with all applicable regulations (e.g. Title 8 California Code of Regulations, Section 16001 et. seq.). In addition to the requirements for payment of prevailing wages set forth in the Labor Compliance Manual, this Contract, if federally funded, is also subject to payment of prevailing wages under federal law by the Davis Bacon Act, (40 USC§ 3141 et seq.), as determined by the US Department of Labor, and is to be used in accordance with the provision of Regulations 29 CFR Part 1, Part 3, Part 5, Part 6, and Part 7. All pertinent federal and state statutes and regulations, including but not limited to those referred to above are hereby incorporated by reference into this document as though set forth in their entirety.

In the event of a conflict between Metro's living wage (referenced in SP-22), the prevailing wage under state law as determined by California authorities and the prevailing wage under federal law as determined by the U.S Department of Labor, the Contractor shall pay at minimum the highest of the three (3) wages.

Federally funded contracts, subject to federal prevailing wage laws, must include 29 CFR § 5.5, in its entirety, in the contract. See, 29 CFR § 5.5 in its entirety in Appendix G for and the applicable federal prevailing wage determination(s).

Prevailing Wage Reporting System - Metro may require, at time of award, the Contractor to utilize Metro's online "Prevailing Wage Reporting System," in lieu of hard copy manual submittals, for the following documents:

- Certified Payroll and other related documents
- Project Labor Agreement related documents (if applicable)
- Construction Careers Policy monthly reports and related documents (if applicable)

Metro's Prevailing Wage manual can be accessed here:

<https://www.metro.net/about/labor-compliance/lwrp/>

SP-22 LIVING WAGE/SERVICE CONTRACT WORKER RETENTION POLICY*

This Contract is subject to the payment of a living wage, as set forth in Metro's Living Wage Policy / Service Contract Worker Retention Policy (LW/SCWRP), which is incorporated herein by this reference. Contractors performing covered

contract work for Metro that involve expenditures in excess of \$25,000 and a contract term of twelve (12) months or more, shall comply with the provisions in the LW/SCWRP. These provisions include the payment of a minimum wage that is subject to change every July 1st.

This Contract is subject to the Service Contract Worker Retention Policy (SCWRP) which is incorporated herein by this reference. If applicable, the Contractor must also comply with the SCWRP which requires that, unless specific exemptions apply, all contractors performing covered contract work for Metro that involve expenditures in excess of \$25,000 and a contract term of twelve (12) months or more, shall provide retention to a successor contractor for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRP. Metro has the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if Metro determines that the subject contractor violated the provisions of the SCWRP.

Metro's Living Wage / Service Contract Worker Retention Policy manual can be accessed here:

<https://www.metro.net/about/labor-compliance/lwrp/>

SP-23 WEATHER DELAYS CAUSED BY RAIN

- A. For purposes of granting time extensions pursuant to the Article entitled EXTENSION OF TIME of the General Conditions resulting from rain more severe than normal which was not foreseeable, the Contractor and Metro agree that the impact of normal rainfall for which the Contractor is not entitled to a time extension is defined by the number of expected work days of delay (based on a five (5) day work week) caused by normal rainfall by month as follows:

Month	Number of Work Days
January	0
February	0
March	0
April	0
May	0
June	0
July	0

Month	Number of Work Days
August	0
September	0
October	0
November	0
December	0

- B. In scheduling the Work, the Contractor shall account for the above number of work days by month for which the effects of normal rainfall are expected to prevent work. In the event the Contractor works a regularly scheduled work week other than five (5) days per week, the above numbers shall be multiplied by the ratio of the actual average number of work days per week divided by five (5) work days. The number of work days identified on the table above shall be utilized only for the associated month and may not be added to or carried over to any subsequent month.

SP-24 ASSESSMENTS FOR SPECIAL CIRCUMSTANCES

There are certain requirements that Metro has identified as significant concerns. Therefore, the Contractor's failure to meet these requirements will result in an assessment of Contract funds as described below.

- A. Failure of the Contractor to comply with the requirements described in the Sub-subarticles below entitled Quality Assurance and Public Affairs, will result in assessments to be deducted from progress payments in accordance with the following schedule:
1. For the first violation \$1,000
 2. For the second violation \$5,000
 3. For each additional violation \$10,000

a. Quality Assurance

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

The personnel covered by this requirement are those cited in the Technical Specifications by the following terms:

- a. Registered Surveyor
- b. Registered Geotech
- c. Certified Gas Tester

- d. Safety Engineers
- e. Acoustical Engineer
- f. Traffic Control Personnel
- g. Qualified Welder
- h. Certified NACE Corrosion Engineer
- i. Qualified Shotcrete Nozzleman
- j. HDPE Welder

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

2. Contractor is required to complete the Work in conformance with the Technical Specification and Drawings. Inspections performed by Metro or its designee shall verify and document that materials provided and Work performed by the Contractor, or its subcontractors, complies with the applicable specifications, codes, standards, drawings, and other contractual documents. When the material and Work do not conform to specifications, code, standards, drawings and other contractual documents, Metro or its designee shall document this condition on Nonconformance Reports addressed to the Contractor as specified in Technical Specification Section 01460.1.10.B.2 and 1.11. The Contractor shall provide a response to the Nonconformance Report within the time designated that shall include a description of the investigative actions taken to resolve the nonconformance, a description of the cause of the nonconformance, the actions taken or planned to correct the nonconformance, and the actions taken to prevent recurrence of the nonconformance. When the cause of the nonconformance is determined to be within the control of the Contractor, it shall constitute a violation of this provision.

b. Public Affairs

1. Contractor must comply with Technical Specification Section 01522.3.7.A through G regarding temporary deck systems, Technical Specification Section 01535.1.4.A and 3.3.A regarding wood construction fencing, and Technical Specification Section 01536.1.4.A and 3.2 regarding chain link construction fencing, inclusive of the requirement that repairs should be made upon notification by the Resident Engineer. Failure to take immediate action to prevent injury to the public or the workers and provide a plan for repair within 24 hours will constitute a violation of this provision.
2. Contractor must comply with Technical Specification Section 01576.3.1 regarding the requirement to follow the traffic control plans based on LADOT's approval. Any failure to comply with LADOT approved traffic control plans shall constitute a violation of this provision.

3. Contractor must comply with Technical Specification Sections 01576.3.6 regarding maintaining pedestrian and vehicular access to affected properties. Contractor shall not close, block or prevent access to any driveway or street without coordinating the closure with Metro. Closing, blocking or failure to maintain access to affected properties shall constitute a violation of this provision.
 4. Contractor must comply with Technical Specification Sections 01620.3.1.G and H regarding storage of materials. Failure to correct a nonconforming condition within 24 hours of notification by Metro shall constitute a violation of this provision.
 5. Contractor must comply with Technical Specification Section 01710.3.1 and 3.2 regarding maintenance of a clean, orderly and hazard-free Worksite. Failure to correct a nonconforming condition after notification by Metro and by the end of the current shift, or the end of the Regular Work Day, whichever is sooner, shall constitute a violation of this provision.
- B. Failure of the Contractor to comply with the requirements described in the Sub-subarticles below entitled Safety, Environmental and Construction Noise and Vibration Control will result in assessment to be deducted from progress payments in accordance with the following schedule:
1. For the first violation \$5,000
 2. For the second violation \$10,000
 3. For each additional violation \$15,000

a. Safety

1. Contractor is required to comply with all requirements of a written or verbal stop work Notice immediately upon presentation by Metro. Failure to comply with the requirements of a stop work Notice is a violation of this provision.
2. Contractor is required to comply with the requirements of the Alternate Safety Coverage Policy as described in Part F, Construction Safety and Health Manual, Section 2.4. Failure to comply with this Policy is a violation of this provision.
3. Contractor shall remove from service and prevent the use of equipment tagged by Metro in compliance with the Red Tag Policy as described in Part F, Construction Safety and Health Manual, Section 2.4. Failure to remove "red tagged" equipment from service and prevent its use is a violation of this provision.
4. Contractor shall comply with all requirements regarding Fall Protection as described in Part F, Construction Safety and Health Manual, Section 2.4. Failure to comply with these requirements is a violation of this provision.

5. Contractor shall disclose and provide copies of any citation, enforcement or appeal correspondence from or to Cal/OSHA or any other regulatory agent to Metro, within 24 hours of receipt or mailing by the Contractor. Failure to disclose and provide copies within 24 hours is a violation of this provision.

b. Environmental

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

1. Contractor is prohibited from discharging wastes, either water or otherwise, that are not in compliance with Metro's permit for the sanitary sewer system, as specified in Technical Specification Section 01566.3.5.A.1, or the storm drain system as specified in Appendix to the Technical Specification Section 01566.3.5.A. Any noncompliant discharge shall constitute a violation of this provision.
2. Contractor, on a daily basis, is required to sample waste and water discharges and record results to demonstrate compliance with Technical Specification Section 01566.3.5.B. Failure to sample, record and maintain the required documentation shall constitute a violation of this provision.
3. Contractor is required to utilize the personal protective equipment as described in Technical Specification Sections 01568.2.1 and 3.2.B. Contractor or subcontractor (at any tier) employees working without use of the required protective equipment shall constitute a violation of this provision.

c. Construction Noise and Vibration Control

1. Contractor is required to keep work activity noise levels beneath allowable levels as described in Technical Specification Sections 01565.3.1.A through 01565.3.1.G. Each occurrence of exceeding the allowable level shall constitute a violation of this provision.
2. While performing Work at the surface, Contractor is prohibited from utilizing equipment which does not meet the appropriate daytime noise emission limits, as described in Technical Specification Sections 01565.3.1. B., E., and Table 3. Each occurrence of exceeding the allowable level shall constitute a violation of this provision.
3. While performing Work at the surface, Contractor is prohibited from utilizing equipment which does not meet the appropriate nighttime noise emission limits, as described in Technical

Specification Sections 01565.3.1. E. Each occurrence of exceeding the allowable level shall constitute a violation of this provision.

4. Contractor is required to keep work activity vibration levels beneath allowable levels as described in Technical Specification Sections 01565.3.5.A through D. Each occurrence of vibration which is not below the allowable level shall constitute a violation of this provision.
5. Contractor is required to measure noise and vibration levels as described in Technical Specification Sections 01566.1.3.C.2 and 01566.5.D. Failure to test, record and maintain the required documentation shall constitute a violation of this provision.
6. Contractor is required to provide and certify that workers are adequately trained for work involving implementation of measurement activities, as described in Technical Specification Sections 01566.3.2.A.2. Each instance of supplying inadequately trained and uncertified personnel is a violation of this provision.

d. Air Pollution Control

Contractor is required to comply with Rule 403, Limitation on Fugitive Dust Emissions, of the Southern California Air Quality Management District (SCAQMD) to minimize the generation of fugitive dust by using Best Available Control Measures, prevent it from remaining visible in the atmosphere beyond the property line of the emission source, and prevent or immediately remove the track out of bulk material onto public paved roadways, as a result of his/her operations. For the purpose of enforcement the detailed language of SCAQMD Rule 403 prevails over the summarized requirements below.

1. Contractor is prohibited from causing or allowing emissions of fugitive dust from any transport, handling, construction, or storage activity to remain visible in atmosphere beyond the property line of the emission source. Each occurrence of causing or allowing emissions of fugitive dust to remain visible in the atmosphere beyond the property line shall constitute a violation of this provision.
2. Contractor is required to use at least one Best Available Control Measures (BACM) for each source of fugitive dust to minimize the emissions, from construction operations, of fugitive dust. Failure to use at least one BACM for each source of fugitive dust shall constitute a violation of this provision.
3. Contractor is required to prevent or remove within one hour the track-out bulk material onto public paved roadways that results from his/her operations. Each occurrence of tracked-out bulk material that remains on the public paved roadways for more than

one hour shall constitute a violation of this provision unless Contractor has taken at least one of the actions listed in Table 3 of SCAQMD Rule 403, and removed such material anytime track-out extends for 50 feet, and removed all visible roadway dust tracked-out as a result of active operations at the end of each work day when active operations cease.

4. If Contractor has taken at least one of the actions listed in Table 3 of SCAQMD Rule 403, (s)he must remove tracked-out bulk material anytime it extends for a cumulative distance of more than 50 feet onto any paved public road during active operations; and remove all visible roadway dust tracked-out upon public paved roadways as a result of active operations at the conclusion of each work day when active operations cease. Each occurrence of tracked-out bulk material that extends onto public paved roadways for a cumulative distance of more than 50 feet shall constitute a violation of this provision. Each failure to remove all visible roadway dust tracked-out onto public paved roadways at the conclusion of each work day when active operations cease shall constitute a violation of this provision.

C. Code of Conduct for Metro Contractors & Consultants, Sanctions Page 5

1. Failure of the Contractor/Consultant to comply with the requirements of the Code of Conduct for Metro Contractors and Consultants may result in an assessment from \$1,000 to \$5,000 for a first violation up to a maximum amount of one percent (1%) of the Contract value commensurate with the gravity of the violation.
2. In addition to the assessments defined above, whenever work is halted and the work stoppage is unauthorized by Metro and caused by the action or inaction of the Contractor, Metro's costs associated with the work stoppage shall be determined and will be charged to and recovered from the Contractor.

SP-25	NOT USED
SP-26	NOT USED
SP-27	NOT USED
SP-28	NOT USED
SP-29	NOT USED
SP-30	NOT USED
SP-31	NOT USED

SP-32	NOT USED
SP-33	NOT USED
SP-34	NOT USED
SP-35	NOT USED
SP-36	NOT USED
SP-37	HAZARDOUS SUBSTANCES

- A. The term "Hazardous Substances" means any substance, material or waste, exposure to which results or may result in adverse affects on health or safety, including, without limitation, any substance defined as a hazardous substance under §101 (14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or under §25316 and 25317 of the California Health Safety Code, any substance or waste defined as a hazardous substance or hazardous waste under 8 CFR 5192 et. seq. or 29 CFR 1910 et. seq., and 29 CFR 1926 et. seq., any substance, material or waste listed by the U. S. Department of Transportation and regulated as hazardous materials under 49 CFR 172.101 and appendices, any substance, material or waste requiring hazardous Substance Removal (as defined below), Asbestos and petroleum and petroleum by-products, waste, oil, crude oil and natural gas, lead and lead-based paint surfaces as defined in 24 CFR 570.608.
- B. The Contractor may encounter Hazardous Substances, Asbestos, Gas Casings or USTs, lead or lead-based paint surfaces in structures, demolition materials and soils requiring Hazardous Waste Operations as defined by CAL/OSHA. All Hazardous Waste Operations are expressly excluded from this Contract and shall not be performed by Contractor under this Contract. Metro will furnish a specialty Contractor to perform all Hazardous Waste Operations. In the event of a discovery of a condition requiring Hazardous Waste Operations, Contractor shall cease demolition operations and continue Work in unaffected areas until Metro has remedied the hazard. Measurement of delay time will be defined in a Change Order issued by Metro under the General Conditions Article entitled CHANGES.

SP-38 **NOT USED**

SP-39 **NOT USED**

SP-40 **PERFORMANCE AND PAYMENT BOND**

- A. Concurrently with the execution of the Contract, the Contractor shall give Metro a performance Bond in the form supplied by Metro and issued by a Surety satisfactory to Metro and authorized to issue such a bond in the state of California.

- B. The Performance Bond shall be for one-hundred percent (100%) of the Total Contract Price and shall guarantee the faithful and timely performance of the Contractor's obligations in accordance with the terms and conditions of the Contract.
- C. Should any Surety at any time be unsatisfactory to Metro, Notice will be given the Contractor to that effect. No further payments shall be deemed due or will be made under the Contract until a new Surety shall qualify and be accepted by Metro. The Contractor shall pay all costs of compliance with this Article.
- D. Changes in the Goods or extensions of time made pursuant to the Contract shall in no way release the Contractor or Surety from its obligations. Notices of such changes or extensions shall be waived by the Surety.

Sample Performance and Payment Bonds provided in Appendix F

SP-41 NOT USED

SP-42 SUBCONTRACT ADMINISTRATION

In accordance with 49 CFR Part 26, the Contract Document entitled COMPENSATION AND PAYMENT and the Sub-Article entitled PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS, Metro has elected to implement the following requirements related to the Work that is performed by all Subcontractors of any tier under this Contract.

- A. Executed Subcontract Agreements. - Contractor shall submit to Metro Contracting Officer complete copies of all executed Subcontracts and/or Purchase Orders within fourteen (14) calendar days after the Contractor, or its Subcontractors, executes each Subcontract or Purchase Order. Contractor shall also submit copies of all Changes Orders, Modifications, Addendums or Amendments to such Subcontracts and Purchase Orders within fourteen (14) calendar days after execution. Contractor shall not darken out or delete any information from the submitted Subcontract and Purchase Order documents. The Subcontract and Purchase Order prices shown in the submitted documents shall not be cause for any reason by any Party to make an adjustment to the Contract Price and such pricing information will only be used to implement the provisions hereunder and in the Contract Document entitled COMPENSATION AND PAYMENT related to Subcontractor payments and retention.
- B. Subcontract Values. – Contractor shall, in accordance with the Specification entitled COST/SCHEDULE INTEGRATION SYSTEM, breakdown the Schedule of Values and its monthly Application for Progress Payment making all work activities, the value thereof, payments made to date and retention withheld, distinguishable between the Contractor, its Subcontractors and Suppliers, inclusive of the baseline Work and all Contract Modifications.

- C. Releases. - In accordance with the requirements set forth in the Contract Document entitled COMPENSATION AND PAYMENT and the Article entitled PROGRESS PAYMENTS and the Article entitled PAYMENT TO SUBCONTRACTORS, Contractor shall cause that its Subcontractors and Suppliers complete and provide the applicable Conditional and Unconditional Waiver and Release forms (attached hereto as Exhibits SA-1, SA-2, SA-3 and SA-4) for Contractor to submit with its Applications for Progress Payment and Request for Final Payment. In the event Contractor fails to submit the required Waiver and Release form then any money's due for that Work performed shall not be paid and will be carried over to the next Progress Payment, or the Final Payment delayed, until such time Contractor submits the required Waiver and Release form. Any such payment withheld shall not be cause for a Contract Change, Claim, or subject to any accrued interest.
- D. Survival of Obligations. - Without limiting any other provision of the Contract relating to continuing obligations that extend beyond Final Acceptance of the Work or any Subcontractors' or Suppliers' Work under this Contract, the Contractor's responsibility for injury to persons and/or property arising from its duties and obligations under the Contract, including without limitation, the Articles entitled LIABILITY AND INDEMNIFICATION, GOODS, and WARRANTY in the Contract Document entitled GENERAL CONDITIONS, shall survive acceptance and any payment to Contractor by METRO for any element of the Work performed by a Subcontractor or Supplier under this Contract.
- E. Undisclosed Incomplete Work. - Contractor will not be relieved of its obligations to complete any element of the Work, or any portion or item thereof, the non-completion of which was not disclosed to METRO prior to Final Acceptance of the Contract, regardless of: (1) whether such nondisclosures were fraudulent, negligent, or otherwise; and (2) METRO having inspected or accepted the element of the Work, having accepted Contractor's certification that the element of the Work is completed, having made payment to Contractor for the element of the Work, or Contractor having made final payment, including a release of retention to its Subcontractor or Supplier for that element of the Work. Contractor shall remain obligated to correct all such items after Final Acceptance of the Contract under this Article and all other provisions of the Contract that, expressly or by their nature, extend beyond or survive Final Acceptance.
- F. Modified General Condition. The Contract Document entitled GENERAL CONDITIONS, the Article entitled ACCEPTANCE OF ELEMENTS OF THE WORK, and the sub-Article entitled PARTIAL ACCEPTANCE, is modified to read:

"If portions of the Work (due to having independent utility or a subcontract being fully completed) are completed in advance of the deadlines specified in this Contract, METRO shall have the right to accept them in advance of the deadline for completion of the entire Contract. Any such partial Acceptance shall follow a procedure similar to that required for Substantial Completion, modified as specified by the

Contracting Officer. The Contracting Officer will also determine the effect of such partial Acceptance on Contractor's responsibility for maintenance during construction and its Warranty obligations."

- G. Inspection of a Subcontractor's work, under the terms of this Special Provision, shall not constitute an exception for Acceptance as contemplated by the General Condition Article entitled PERFORMANCE AND INSPECTIONS, sub-article 20.1.4, unless it is specified in writing as stated therein.
- H. The terms of this Special Provision, as it relates to General Condition entitled PERFORMANCE AND INSPECTIONS, sub-article 20.1.5, creates an METRO obligation to make inspections of Subcontractors completed work for the limited purpose of implementing the terms of this Special Provision, such inspections shall not relieve Contractor of any of its responsibilities under this Contract.
- I. After the Contractor has notified METRO that a Subcontractor's work is complete, METRO may charge the Contractor for any additional costs METRO incurs for the inspections when the Work is not ready at the time indicated in the notice or when an additional inspection is necessitated by prior rejection.
- J. Contractor shall consider and plan for the requirements of this Special Provision and any delay in any Critical Path, or other interruption to the Contractor, resulting from any inspections or other terms of this Special Provision shall **not**, for any reason, result in an increase to the Contract Price or Time, nor entitle Contractor to any recovery of any costs, or delay, or interest payments occasioned thereby.
- K. Notwithstanding any terms of this Special Provision, the terms of Warranty, either express or implied in this Contract remain unchanged.
- L. Modified Compensation and Payment Article -

CP-3 RETENTION AND ESCROW ACCOUNTS*
(Only paragraphs A & B are revised.)

- A. Retention:
METRO shall retain from each Progress Payment ten percent (10%) of the Progress Payment as part security for the fulfillment of the Contract by the Contractor. However, after fifty percent (50%) of the Work has been completed, if in the sole discretion of METRO progress on the Work is satisfactory, METRO will not make further deductions on the remaining Progress Payments, except that the amount of the retention withheld shall not at any time thereafter be less than five percent (5%) of the Contract Price, as amended, or as adjusted by Change Orders. However, if METRO determines that the Work or progress of the Work is unsatisfactory, METRO may reinstate, continue or increase retentions in amounts necessary to increase the total retention to an amount not to

exceed ten percent (10%) of the Contract Price. Notwithstanding any payments made to Contractor, out of retention or other monies withheld, or other monies due Contractor under this Contract, in the implementation of 49 CFR Part 26 and the Article entitled PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS, in the Contract Document entitled COMPENSATION AND PAYMENT, METRO shall withhold retention from each progress payment, consistent with the amounts allowed above, whereas METRO shall withhold not less than 5% of the Contract price until final completion and acceptance of the Contract.

B. Substitution of Securities:

To ensure performance under the Contract, the Contractor may, at its sole expense, substitute securities equivalent to the retention withheld by METRO. Such securities shall be deposited with an escrow agent approved by METRO, who shall then pay such retention to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor. The Contractor shall be the beneficial owner of any security substituted for monies withheld and shall receive any accrued interest thereon. Securities eligible for investment shall include those listed in Government Code §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 the Contractor and METRO. No such substitution shall be accepted until the Escrow Agreement, securities, and any other documents related to the substitution are reviewed and accepted in writing by METRO. In the event Contractor's subcontractors elect to do any of the following the Contractor shall:

1. If a subcontractor elects to substitute securities in lieu of retention with the Contractor, then in accordance with the sub-Article herein entitled "Prompt Payment of Withheld Funds to Subcontractors", when Contractor certifies to METRO that all tasks called for in the subcontract have been satisfactorily accomplished and METRO has inspected the Work, Contractor shall release the subcontractor's securities within thirty (30) days after receipt of Metro notice on the completed inspection, even though there may be no adjustment(s) to be made to Contractor's substitute securities in lieu of retention.
2. In the event the Contractor elects to substitute securities in lieu of retention and a subcontractor has not elected to substitute securities in lieu of retention, Contractor may withhold from his or her subcontractor the amount of retention that would have otherwise been withheld, yet when, in accordance with the sub-Article herein entitled "Prompt Payment of Withheld Funds to Subcontractors", Contractor certifies to METRO that all tasks called for in the subcontract have been satisfactorily accomplished and METRO has inspected the Work, Contractor shall release the subcontractor's retention within thirty (30) days after receipt of Metro notice on the completed inspection, even though there may be no adjustment(s) to be made to Contractor's substitute securities in lieu of retention.

METRO PROJECT LABOR AGREEMENT AND CONSTRUCTION CAREERS POLICY

Contractor understands and agrees to comply with the Project Labor Agreement (PLA) between Metro and the Los Angeles/Orange County Building and Construction Trades Council and with the Metro Construction Careers Policy (CCP). The Project Labor Agreement and the Metro Construction Careers Policy are available at <http://www.metro.net/about/pla/>.

- A. Purpose: The purpose of the Metro PLA and CCP is to facilitate careers in the construction industry, promote employment and training opportunities during the construction of a project and provide for orderly settlement of labor disputes and grievances without strikes or lockouts.
- B. Applicability: The Metro PLA and CCP requirements may be applied to construction contracts where bids or proposals exceed \$2.5 million, regardless of the contracts original estimated cost.
- C. Contractor and Subcontractor Obligations: Contractor and its Subcontractors, with respect to construction, shall accept and be bound to the terms and conditions of the PLA for the duration of the Contract.
- D. Contractor Letter of Assent: Contractor shall evidence its acceptance of the PLA by submitting to Metro a signed Letter of Assent, as required by the PLA (see Attachment A to the PLA), before Metro will issue the Notice to Proceed for the Work.
- E. Subcontractors Letter of Assent: Contractor's Subcontractors shall submit to Metro prior to starting any Work the signed Letter of Assent required by the PLA. Contractor shall ensure each Subcontractor's timely submittal of a signed Letter of Assent.
- F. Contractor Employment Hiring Plan: Contractor shall submit its Employment Hiring Plan (EHP) to Metro for approval at least twenty (20) business days prior to the planned date for starting Work. Contractor's EHP shall include an action plan that outlines specific initiatives, actions, and/or supportive services that will be implemented in an effort to encourage female participation and provide support to female workers assigned to the project. Metro shall not issue a Notice to Proceed and Contractor shall not commence Work until Contractor has obtained Metro's approval of its EHP and has held its pre-job conference with the appropriate affected union(s), as required by and further described in the CCP.
- G. Subcontractors Employment Hiring Plan: Contractor shall ensure that all Subcontractors submit, through the Contractor, their EHP to Metro for approval at least twenty (20) business days prior to the planned date for the Subcontractor to commence Work. Subcontractor's EHP shall include an action plan that outlines specific initiatives, actions, and/or supportive services that will be implemented in an effort to encourage female participation and provide support to female workers assigned to the project. No Subcontractor shall be approved to perform any Work without an

approved EHP. Contractor shall ensure each Subcontractor's timely submittal of its EHP and also ensure a Subcontractor has an approved EHP before starting any Work.

- H. Jobs Coordinator: Contractor shall recommend a Jobs Coordinator to Metro pursuant to the requirements of the CCP. The recommended Jobs Coordinator (as defined in the PLA and CCP) shall meet the qualification requirements set forth in the PLA and CCP, demonstrate that they fulfill the criteria found on Metro's PLA/CCP website, <http://www.metro.net/about/pla/>, and be approved by Metro prior to issuance of the Notice to Proceed. Metro will base Jobs Coordinator approval for this Contract on the Jobs Coordinator's capacity, experience, and proven effectiveness for similar projects. The Jobs Coordinator shall contract directly with the Contractor.
- I. Small/ Disadvantaged Business Enterprise Credit: If the certified SBE/DBE Jobs Coordinator is approved by Metro DEOD prior to Contract Award, its Work can be counted towards the SBE/DBE commitment and attainment. If the certified SBE/DBE Jobs Coordinator is formally approved by Metro DEOD after Contract Award, its Work can only be counted towards attainment of the SBE/DBE commitment.
- J. Reporting Requirements: Contractor shall utilize Metro's required online tracking system to provide data for and generate Targeted Worker Summary Reports and other related reports. The Targeted Worker Summary Reports provide Targeted Worker, Apprentice and Disadvantaged Worker participation achieved by the Contractor's and Subcontractors' workforce. (See the CCP for definition of Targeted Worker, Apprentice, and Disadvantaged Worker.) After issuance of the Notice to Proceed, Metro or its designee will provide the Contractor the necessary online training, login and password information, at no cost to the Contractor. The Contractor must generate and submit, the Targeted Worker Summary Reports to Metro by the 10th day following the month being reported on.
- K. Zip Code Area Tables: A reference table for "Economically Disadvantaged Area", "Extremely Economically Disadvantaged Area", and "Targeted Workers", as defined in the PLA and CCP, is available at <http://www.metro.net/about/pla/> to assist the Contractor and its Subcontractors with implementing the PLA and the CCP.
- L. Women in the Trades Resource Guide: The purpose of the resource guide is to provide insight and best practices to contractors and female workers in the construction industry. This guide should be used as a toolkit for contractors to recruit, employ and retain women in construction careers. Metro encourages contractors to not only use the resources in this guide, but to share this information with their subcontractors, jobs coordinators, site foreman and construction workers. Additionally, contractors are to use the guide to promote an inclusive workforce to foster a safe, productive and diverse work environment. The guide is available at <http://www.metro.net/about/pla/>.

END OF SPECIAL PROVISIONS

EXHIBIT SA-1 - CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant (Company):

Name of Customer:

Job Location:

Owner:

Through Date:

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release:

Amount(s) of unpaid progress payment(s): \$

- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's [Authorized Representative] Signature:

Claimant's Title:

Date of Signature:

Signer further certifies to the best of his/her knowledge and belief that the following statement is true:

The Claimant and its principals, (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any governmental department or agency (federal, state, or local); (2) have not in the past three years had one or more public transactions (federal, state, or local) terminated for cause or default; (3) have not within the past three years 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, 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; and (4) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, local) with commission of any of the offenses listed above in number (3) of this paragraph.

Claimant (Company): _____

Signature [Authorized Representative]: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

EXHIBIT SA-2 – CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant (Company):

Name of Customer:

Job Location:

Owner:

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:

Amount of Check: \$

Check Payable to:

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$

Signature

Claimant's [Authorized Representative] Signature:

Claimant's Title:

Date of Signature:

Signer further certifies to the best of his/her knowledge and belief that the following statement is

true:

The Claimant and its principals, (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any governmental department or agency (federal, state, or local); (2) have not in the past three years had one or more public transactions (federal, state, or local) terminated for cause or default; (3) have not within the past three years 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, 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; and (4) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, local) with commission of any of the offenses listed above in number (3) of this paragraph.

Claimant (Company): _____

Signature [Authorized Representative]: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

EXHIBIT SA-3 - UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP
PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES
THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS
ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF
YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

Identifying Information

Name of Claimant (Company):

Name of Customer:

Job Location:

Owner:

Through Date:

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$

Exceptions

This document does not affect any of the following:

- (1) Retentions.**
- (2) Extras for which the claimant has not received payment.**
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.**

Signature

Claimant's [Authorized Representative] Signature:

Claimant's Title:

Date of Signature:

Signer further certifies to the best of his/her knowledge and belief that the following statement is true:

The Claimant and its principals, (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any governmental department or agency (federal, state, or local); (2) have not in the past three years had one or more public transactions (federal, state, or local) terminated for cause or default; (3) have not within the past three years 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, 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; and (4) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, local) with commission of any of the offenses listed above in number (3) of this paragraph.

Claimant (Company): _____

Signature [Authorized Representative]: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

EXHIBIT SA-4- UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant (Company):

Name of Customer:

Job Location:

Owner:

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$

Signature

Claimant's [Authorized Representative] Signature:

Claimant's Title:

Date of Signature:

Signer further certifies to the best of his/her knowledge and belief that the following statement is true:

The Claimant and its principals, (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any governmental department or agency (federal, state, or local); (2) have not in the past three years had one or more public transactions (federal, state, or local) terminated for cause or default; (3) have not within the past three years 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, 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; and (4) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, local) with commission of any of the offenses listed above in number (3) of this paragraph.

Claimant (Company): _____

Signature [Authorized Representative]: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

APPENDIX A - WORK COMPLETION SCHEDULE

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

Milestone	Description	Schedule	Liquidated Damages Amount
No. 1	Submit Shop Drawings, Equipment and Parts Lists, Staging Plan, Cutover Plan, and Site Specific Safety & Health Plan	30 calendar days effective date of Notice To Proceed.	\$400.00
No. 2	Submit Test Plan	90 calendar days effective date of Notice To Proceed.	\$1,000.00
No. 3	Substantial Completion	365 calendar days effective date of Notice To Proceed.	\$1,000.00

*The maximum amount of liquidated damages for which the contractor shall be liable is \$1,000 per calendar day for the failure to meet any or all the milestones.

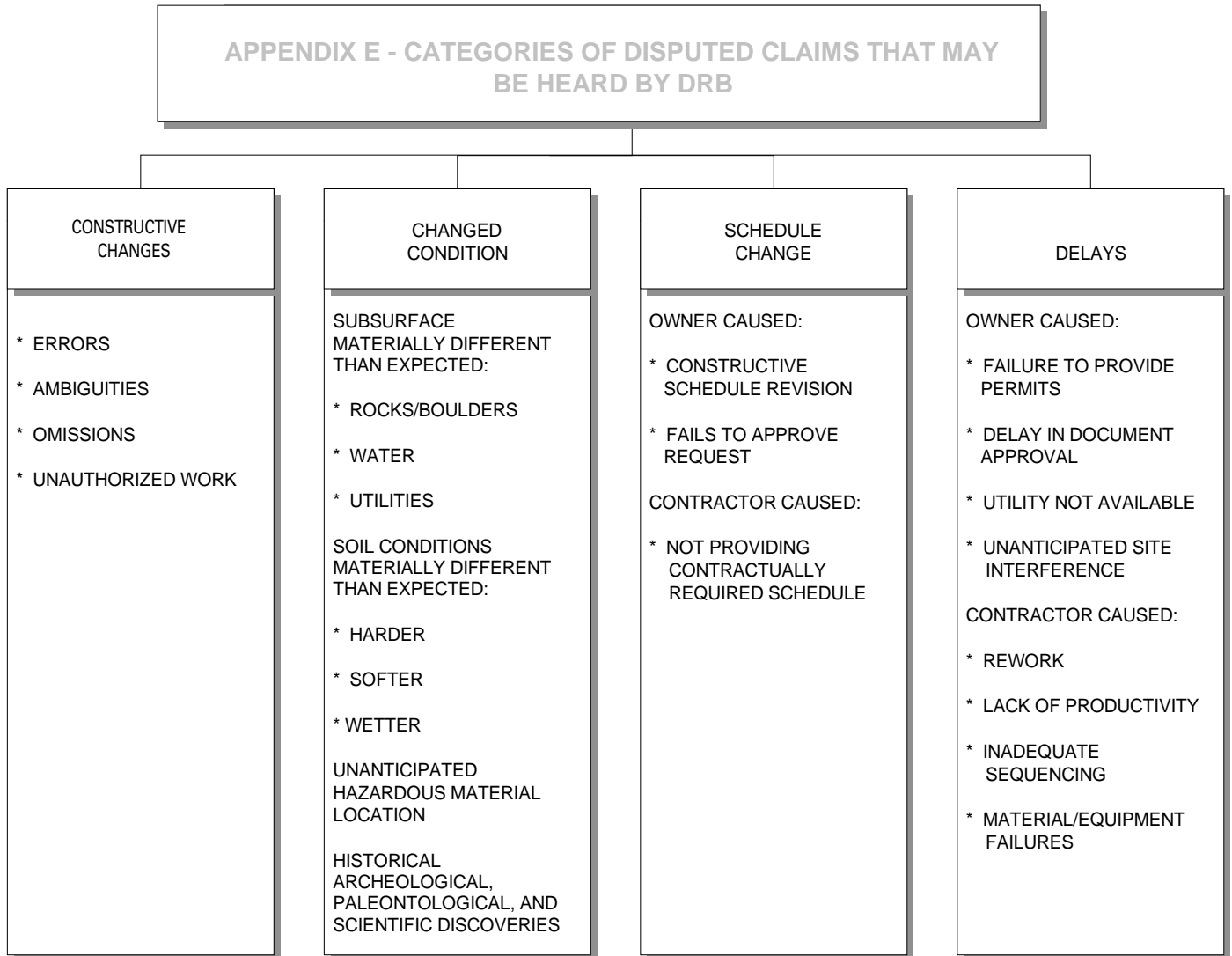
SPECIAL PROVISIONS

APPENDIX B - AVAILABILITY SCHEDULE

SPECIAL PROVISIONS

APPENDIX D - METRO-FURNISHED GOODS

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



APPENDIX F - PERFORMANCE BOND

IFB No. C1230

Division 8 and Central Maintenance Facility (CMF) Bus Hoists Replacement

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to _____ ("Principal"), Contract No **IFB No. C1230, Division 8 and Central Maintenance Facility (CMF) Bus Hoists Replacement** and

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

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

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

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

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the _____ day of _____ 20__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: _____
(Principal)

By: _____
(Surety)

By: _____

APPENDIX F - PAYMENT (MATERIAL AND LABOR) BOND

IFB No. C1230

Division 8 and Central Maintenance Facility (CMF) Bus Hoists Replacement

PAYMENT (MATERIAL AND LABOR) BOND

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to _____ ("Principal"), **IFB No. C1230, Division 8 and Central Maintenance Facility (CMF) Bus Hoists Replacement** and

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

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

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

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

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

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: _____
(Principal)

By: _____
(Surety)

By: _____

APPENDIX G – 29 CFR § 5.5
and
APPLICABLE FEDERAL PREVAILING WAGE CLASSIFICATIONS

29 CFR § 5.5 Contract Provisions

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 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 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) 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.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the 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, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) 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.

(iv) 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.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) 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 same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers

and mechanics, including apprentices, trainees, and helpers, employed by the 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, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the 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 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 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.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [WH-347 Form](#) with form [Instructions](#). The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime

contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) 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:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the 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.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) 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 owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 a 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 journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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.

(ii) 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.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) 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.

(6) 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 (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) 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.

(8) 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.

(9) 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.

(10) Certification of eligibility. (i) 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 firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$27 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 (b)(1) of this section.

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control No.
(a)(1)(ii)(B)	1235-0023
(a)(1)(ii)(C)	1235-0023
(a)(1)(iv)	1235-0023
(a)(3)(i)	1235-0023
(a)(3)(ii)(A)	1235-0023
	1235-0008
(c)	1235-0023

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008; 81 FR 43450, July 1, 2016; 82 FR 2225, 2226, Jan. 9, 2017; 83 FR 12, Jan 2, 2018; 84 FR 218, Jan. 23, 2019]

Applicable Federal Wage Classification(s)

Contract Administrator must insert classifications and any modifications.

GENERAL CONDITIONS (CONSTRUCTION)

Note: All Articles, Subarticles, or portions of the Contract noted by an asterisk (*) shall be included in all Subcontracts of any tier.

GC-01 GLOSSARY OF TERMS

A. Abbreviations and Symbols

The following abbreviations are used in these documents:

ADR	Alternative Disputes Resolution
Cal-OSHA	California Occupational Safety and Health Administration
CALTRANS	California Department of Transportation
CCR	California Code of Regulations
CFR	Code of Federal Regulations
CM	Construction Manager or Construction Management Consultant
CN	Change Notice
CO	Change Order
CPM	Critical Path Method
CPUC	California Public Utilities Commission
CRB	Claims Review Board
CSI	Construction Specifications Institute
CSP	Cost and Schedule Proposal
DOT	United States Department of Transportation
DRB	Disputes Review Board
EEO	Equal Employment Opportunity
FAR	Federal Acquisition Regulations
FTA	Federal Transit Administration
LACFCD	Los Angeles County Flood Control District
LACOFD	Los Angeles County Fire Department
LADOT	Los Angeles City Department of Transportation
LADPW	Department of Public Works, City of Los Angeles
LAFD	Los Angeles City Fire Department
LDs	Liquidated Damages
NOIC	Notice of Intent to Claim
NTE	Not-to-Exceed
NTP	Notice To Proceed
OSHA	United States Department of Labor, Occupational Safety and Health Administration, and Occupational Safety and Health Act
PCC	Public Contracts Code
PUC	Public Utilities Code,
RFC	Request for Change
RFI	Request for Information
SCAQMD	South Coast Air Quality Management District
SSPWC	Standard Specifications for Public Works Construction
U.S.C.	United States Code

Additional abbreviations may be found in the Statement of Work, Special Provisions, and on the Contract Drawings.

B. Definitions

The following terms, when capitalized, shall have the following meanings (additional terms may defined in the Special Conditions):

Acceptance	Acceptance by Metro's Authorized Representative of completion of the Work or any Element in accordance with the Contract by the issuance of a Certificate of Substantial Completion of the Work or any Element, as provided in the Contract.
Acceptance Test	Any one of the tests described in the Contract as an acceptance test.
Alternative Dispute Resolution (ADR)	Means for settling a Dispute, which may include arbitration, mediation or any other recognized procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation.
Amendment	A formal revision or addition to the Contract agreed to in writing and executed by the parties. Includes all changes, corrections and adjustments to the Contract Price, Contract Time and Contract Documents that are agreed to in writing and executed by the parties.
Authorized Auditor	Any Metro Authorized Representative, any Government Entity and/or any firm of auditors appointed by Metro or other Government Entity to perform any audit on behalf of Metro or Government Entity.
Authorized Representative	Person or firm authorized or empowered by Metro to act for, or on behalf of Metro. The Contracting Officer is Metro's primary Authorized Representative, and is the only person authorized to delegate authority to any other Authorized Representative. The Contracting Officer's delegation to other Authorized Representatives shall be in writing and limited to specifically defined authority and responsibilities. The authority, responsibilities and limitations of any Authorized Representative shall be described in the Contracting Officer's notice to the Contractor designating the Authorized Representative. Any authority or responsibility not delegated by the Contracting Officer to another Authorized Representative shall remain solely with the Contracting Officer as Metro's Authorized Representative.

Certificate of Final Acceptance	The formal written acknowledgment from Metro to the Contractor that the Work has been fully completed and has been Finally Accepted in accordance with the Contract.
Certificate of Substantial Completion	The formal written acknowledgment from Metro to the Contractor that the Work, or an Element thereof, has been Substantially Completed in accordance with the Contract.
Change Notice (CN)	A written document issued by Metro to the Contractor describing a proposed change to the Work and requesting the Contractor to submit a Contractor's Cost and Schedule Proposal.
Change Order (CO)	A written order by Metro's Contracting Officer directing Changed Work.
Changed Work (or Change)	Additions, deletions or other revisions to the Work within the general scope of the Contract. Changed Work must be directed by Metro by a Change Order or agreed to by the parties in an Amendment or other Modification. Includes Work that does not involve an adjustment in the Contract Price and/or Contract Time. Does not include Work performed or time spent by Contractor to correct any Deficiency.
Chief Executive Officer (CEO)	Chief Executive Officer of Metro.
Claim	A written demand by one of the contracting parties for: <ol style="list-style-type: none"> 1. A time extension, 2. An adjustment or interpretation of Contract terms; 3. Payment or money, or 4. Other legal, equitable or contractual relief.
Commencement Date	The date set forth in the Contract under the Article entitled PERIOD OF PERFORMANCE that is the commencement date of all performance under the Contract. All dates and schedules under the Contract, including Contract Time, shall be measured from the Commencement Date.
Construction Equipment	Contractor-furnished equipment required and used by the Contractor to perform the Work, but not affixed to or incorporated into the Work.
Construction Manager (CM)	Metro or the Construction Management Consultant retained and designated by Metro to supervise Work. The CM shall be the Authorized Representative of Metro to the extent expressly set forth in the Contract or in any written designation by the Contracting Officer.

Construction Staging Area	Property used by the Contractor during the performance of the Work for the purpose of storing Goods and Construction Equipment, and coordinating the Work.
Contract	This written agreement executed by Metro and the Contractor which sets forth the rights and obligations of the parties in connection with the Work, and which includes the Contract Documents and all incorporated attachments and exhibits.
Contract Administrator	Metro's Authorized Representative with authority, as provided in this Contract or in any delegation from the Contracting Officer, to administer all non-technical contractual matters related to this Contract.
Contract Drawings	The plans depicting the Work showing its locations, character, dimensions, and details.
Contract Documents	The documents included in the Contract and made a part hereof, including without limitation Attachments and Exhibits incorporated herein either by attachment or by reference.
Contract Price	The total compensation approved by Metro to be paid to the Contractor in accordance with the terms of the Contract and all Modifications.
Contract Time	The number of calendar days, or portion thereof, allowed for completion of the Work and Final Acceptance by Metro, including all authorized time extensions. The date specified in the NTP as the Commencement Date shall be the date on which the Contract Time begins and the Scheduled Completion Date shall be the date the Contract Time ends.
Contracting Officer	<p>The CEO of Metro or CEO's Authorized Representative who is designated in writing by the CEO as Contracting Officer for this Contract and authorized and empowered on behalf of Metro to:</p> <ol style="list-style-type: none"> 1. Execute this Contract, and all Modifications, directives, and other agreements and documents related to this Contract; and. 2. Delegate in writing specific authority and responsibilities under this Contract to other Authorized Representatives.

Contractor	The individual, firm, partnership, corporation, joint venture, or combination thereof, which may also be referred to by the term "it", that has entered into the Contract with Metro. Includes Contractor's successors, assigns, employees, officers, Contractor's Representatives, and agents. In context may also include Subcontractors, Suppliers and any other persons for whom the Contractor may be legally or contractually responsible.
Contractor's Representative	The Contractor's executive representative authorized and empowered to act on behalf of the Contractor, to receive and fulfill instructions from Metro, and who shall direct the activities of the Contractor.
Critical Path	The line on a Critical Path Schedule through the various project tasks at the intersection of the points of their logical relationship (junction points or nodes) that controls the time of completion of the Work.
Critical Path Schedule	A schedule which includes the planned sequence of activities showing the interrelationships and dependencies of the elements that comprise the Work, including a breakdown of all of the elements of the Work in to individual tasks, number of days required to perform each task and their logical relationship. The Critical Path Schedule includes the entire Contract Time from the Commencement Date to the Scheduled Completion Date.
Cure Notice	Written notice from Metro to the Contractor to cure a default, issued pursuant to the Article entitled TERMINATION FOR DEFAULT.
Days	Unless otherwise stated, "days" shall mean calendar days.
Deficiency	<ol style="list-style-type: none"> 1. Defect(s) in any of the Work related to its construction, materials, workmanship or functionality, 2. Failure to meet or any deviation from any Contractual standard, 3. Error(s), omission(s), or deviation(s) from the Specifications; or 4. Other problem(s) which result in the Work or any portion thereof not performing in accordance with the Specifications.
Dispute	A disagreement between the parties as to the merits, amount or remedy arising out of an issue in controversy, including a Claim or asserted default.

Effective Date	The date the Contract becomes effective and enforceable. Note: This is not the commencement date of Work; see Commencement Date.
Element	A discrete part or portion of the Work to be performed or Furnished by the Contractor, identified in the Contract or by Metro as a separate element, unit or item (or similar description) thereof.
Emergency	Any sudden generally unforeseen occurrence (such as a Force Majeure event or man-made disaster) that has the potential to: adversely affect the safety of life, the Work, or adjacent property; interrupt contracts essential to the provision of daily transit service; or cause catastrophic failure of revenue-producing equipment or facilities.
Environmental Impairment Losses	Any and all loss, liability, expense or damage (including, without limitation, all attorneys' fees and costs and all other professional or contractors' fees and costs), incurred by Metro under an Environmental Law as a result of the activities conducted by the Contractor under the Contract.
Environmental Laws	All Laws applicable to Metro or to the Work, now or hereafter in effect relating to (1) The environment; (2) To emissions, discharges, releases or threatened releases of Hazardous Substances into the environment, including into the air, surface water or ground water or onto land; (3) The manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances; or (4) The protection of public health, public welfare or the natural environment (including protection of non-human forms of life, land, surface water, groundwater and air) including without limitation: (a) the Laws listed in the definition of Hazardous Substances (which are hereby incorporated into this definition); (b) the following laws – the National Environmental Policy Act, 42 U.S.C. §4321 et. Seq.; the California Environmental Quality Act., Cal. Pub. Res. Code §21000 et. seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et. seq.; the California Occupational Safety and Health Act of 1973, Cal Lab. Code §6300 et. seq.; Cal. Gov. Code §11017; the Endangered Species Act, 16 U.S.C. §1531 et. seq.; the Migratory Bird Treaty Act, 16 U.S.C. §703 et. seq.; Cal. Fish and Game Code §1600 et. seq.; and (c) all federal, state and local regulations, guidelines and interpretations arising out of the above referenced Laws, including, without limitation, applicable regulations in the Code of Federal Regulations and the

California Code of Regulations and Executive Order 11378.

Equipment	Any and all machinery, vehicles, systems, assemblies, sub-assemblies, products, material fittings, devices, appliances, fixtures, apparatus, supplies and parts used by the Contractor or provided by the Contractor to Metro pursuant to this Contract. Does not include Construction Equipment as defined herein.
Final Acceptance	Acceptance by Metro of all Work under the Contract by the issuance of a Certificate of Final Acceptance certifying that the Work has been fully completed in accordance with the Contract.
Force Majeure	<p>Any of the following events (provided such events are beyond the control of the Contractor and are not due to an act or omission of the Contractor), which materially and adversely affect the Contractor's obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by the Contractor:</p> <ul style="list-style-type: none">(a) Any earthquake exceeding 3.5 on the Richter scale epicentered within 25 miles of the specific location of damage on the Worksite, any earthquake exceeding 5.0 on the Richter scale epicentered within 50 miles from the specific location of damage on the Worksite, and any earthquake exceeding 6.5 on the Richter scale epicentered within 75 miles from the specific location of damage on the Worksite, based on the final determination regarding the location and magnitude of the earthquake published by the National Earthquake Information Center in Golden, Colorado;(b) Any epidemic, quarantine restrictions, blockade, rebellion, war, riot, civil disorder, act of a public enemy, or act of sabotage, or any malicious or other acts intended to cause loss or damage;(c) The discovery at, near or on the Worksite of any archaeological, paleontological or cultural resources or Hazardous Substances; provided that the existence of such resources or substances were not disclosed in the Contract Documents, were not otherwise known to the Contractor prior to the bid opening date and would not have become known to the Contractor by undertaking reasonable investigation prior to the bid opening date, and excluding any risks of Delays arising from such discovery allocated to the Contractor under this Contract;

- (d) The discovery at, near or on the Worksite of any species listed as threatened or endangered under any Federal or California endangered species act, except to the extent that the environmental documents related to the Project provide for mitigation measures to be undertaken with respect thereto regardless of whether the species is listed as threatened or endangered as of the bid opening date, and also subject to any risk allocation provisions which may be contained in this Contract;
- (e) The suspension, termination, interruption, denial or failure to obtain, non-renewal or amendment by a Government Entity, of any permit or approval required to be obtained and maintained in force by Metro;
- (f) Any change in a Law or change in the judicial or administrative interpretation of, or adoption of any new Law which is materially inconsistent with Laws in effect on the bid opening date (subject to the exclusions set forth below);
- (g) Any lawsuit seeking to restrain, enjoin, challenge or delay the Work or the granting or renewal of any Governmental Approval of the Work, except to the extent that the risk of such lawsuit has been assumed by the Contractor in this Contract;
- (h) Any physical destruction or damage caused by fire, lighting, explosion, drought, rain, flood, hurricane, storm or action of the elements or other acts of God;
- (i) Strike, labor dispute, freight embargos, work slowdown, work stoppage, secondary boycott, walk-out or other similar occurrence; or
- (j) Except as otherwise provided in the Contract, any other event not in the reasonable control of the Contractor.

Goods

Equipment, material and other products incorporated into or required to perform the Work, or otherwise furnished by the Contractor in accordance with the Contract. Except for Goods specifically identified to be furnished by Metro, Goods shall be furnished by the Contractor.

Governmental Approval

Approval, authorization, certification, consent, exemption, filing, lease, license, permit, registration or ruling, issued or required by any Government Entity having subject matter jurisdiction by Law or consent of Metro, in order to perform the Work.

Government Entity	Any federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than Metro.
Hazardous Substances	<p>(a) Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed, regulated, or addressed in or pursuant to any of the following Laws (which shall include any regulations either in the Code of Federal Regulations or the California Code of Regulations or other regulations implemented under the authority of such Laws):</p> <ul style="list-style-type: none"> • The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. ("CERCLA"); • The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; • The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. ("RCRA"); • The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.; • The Clean Water Act, 33 U.S.C. §1251 et. seq.; • The Clean Air Act, 42 U.S.C. §7401 et. seq.; • The California Hazardous Waste Control Act, Health and Safety Code §25100 et. seq.; • The California Underground Storage of Hazardous Substances Act, Health and Safety Code §25280, et. seq.; • The California Hazardous Substance Account Act, Health and Safety Code §25300 et. seq.; (with particular reference to the definition contained in Health and Safety Code §25316); • The California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code §25249.5 et. seq.; • The California Hazardous Waste Management Act, Health and Safety Code §25170.1 et. seq.; • The California Health and Safety Code §25501 et. seq. (Hazardous Materials Response Plans and Inventory); • The California Hazardous Substances Information and Training Act, Labor Code §6360 et. seq.;

- The California Porter-Cologne Water Quality Control Act, Water Code §13000 et. seq.; or
- Any other federal, state or local Law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect;

(b) Substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above Laws or under any statutory or common law theory based on negligence, trespass, intentional tort nuisance or strict liability or under any reported decisions of a state or federal court;

(c) Notwithstanding Health and Safety Code §25317, petroleum, petroleum by-products, waste oil, crude oil and natural gas; and

(d) Other substances, product, waste or material defined, or to be treated or handled, as a Hazardous Substance pursuant to provisions of the Contract.

Law

Any federal, state or local statute, law, regulation, ordinance, rule, standard, judgment, order, executive order, decree, directive, guideline, policy requirement, other government restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any court or Government Entity, which is applicable to the Contract or the or the Work, as amended whether now or hereafter in effect. A law when cited herein shall be as amended unless provided to the contrary.

Limits of Worksite

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

Materially Differ

When the circumstances differ from that which a knowledgeable Contractor, in the subject field, would reasonably expect to find when relying upon information provided and/or specified, subject to the Contractor's responsibility to inquire as to any known or perceived discrepancies within the plans, specifications, and/or Contract Documents.

Milestone

An established point, event or occurrence in the process of the Work that is included in or that is associated with the Schedule as defined in the Contract.

Modification	Any addition, deletion, adjustment or change to the Contract, including any addition, deletion, adjustment or change arising out of the unilateral exercise of any right under the Contract. A Modification may be unilateral or bilateral and includes Amendments, Change Orders, adjustments in quantities, extensions of time, administrative changes and adjustments, and all other actions and events that result in the modification, correction or adjustment of the Contract Price or Time, any Contract term or process, or any other obligation of either party.
Metro or MTA	The Los Angeles County Metropolitan Transportation Authority (Metro), its predecessors, successors, or any successor in interest, or its Contracting Officer or other Authorized Representative.
Metro Operations	Metro's operation and maintenance of existing Metro facilities and equipment, or the Department within Metro that operates and maintains existing Metro facilities and equipment, as the context requires.
Notice of Completion	A document recorded with the Los Angeles County Recorder by Metro signifying final completion of all Work.
Notice of Termination	Written notice from Metro to the Contractor and its Surety terminating the Contract, or an Element or a portion thereof, as provided in this Contract.
Notice to Proceed (NTP)	Written authorization from Metro to the Contractor specifying the date on which Work under the Contract is to be initiated (the Commencement Date) and providing other information as set forth in this Contract.
Parties	Metro, the Contractor and any other person(s), or business entities or Government Entities that are parties to the Contract.
Period of Performance	The total time period as set forth in the Schedule allowed for Contractor to complete all or any defined Element of the Work under the Contract. May be all or a defined portion of the Contract Time which shall be established in the Notice to Proceed or elsewhere in the Contract.
Product Data	Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate Goods, Equipment or systems for an Element or portion of the Work.
Punch List	The list of Work which remains to be completed after achievement of Substantial Completion and shall be limited to minor incidental items of Work necessary to

	correct imperfections which have no adverse effect on the safety, usability or operability of the Work or completed Element of the Work.
Reference Documents	Documents, other than the Contract Documents that are identified as such in the Contract. Reference Documents are not a part of the Contract and are to be used for reference only.
Reference Standards	Authoritative principles, rules, and models used to determine or establish the acceptability of the Work or Elements thereof, Goods, work procedures, or workmanship. These standards are in other documents and are incorporated into the Contract only by reference.
Request for Change (RFC)	A written document submitted by the Contractor to Metro detailing any proposed change to the Contract.
Request for Information (RFI)	A written request to Metro from the Contractor requesting clarification of or information on a portion of the Work or the Contract.
Request for Substitution	A written request by Contractor to use Components, Equipment, material or service(s) in lieu of that specified in the Contract, including without limitation the Specifications.
Required Subcontract Provisions	Subcontract provisions that must Flow down to all Subcontracts as required in the Article entitled SUBCONTRACTORS AND SUPPLIERS.
Resident Engineer	Metro's Authorized Representative charged to the extent delegated by the Contracting Officer with managing, administering, organizing, coordinating and inspecting the Work in order to achieve completion of the Contract in conformance with the Contract Documents.
Schedule	A time phased, resource loaded, project execution plan that identifies all activities necessary to complete the Work in a logical time phased manner in a Critical Path Schedule format. The Schedule shall include the Critical Path Schedule, the Impacted Schedule, the As Built Schedule, and all updates thereof. The Schedule shall provide the start and completion date of each activity and its Milestones, and shall include the Milestones for the Period of Performance of any defined Elements of the Work and for the entire Contract Time, including any activities that may follow the defined Period of Performance. The Schedule shall include all mandatory Milestones for the completion of all Work.

Schedule of Values	The breakdown of the Contract Price into units relating to specific components of the Work, including but not limited to the Schedule of Quantities and Prices.
Scheduled Completion Date	The date all Work is to be completed, and the date that Contract Time ends.
Shop Drawings	Original drawings, plans, diagrams, schedules and other data pursuant to the Work specifically prepared and submitted to Metro by the Contractor or any of its Subcontractors or Suppliers of any tier, and which show in detail: <ol style="list-style-type: none"> 1. The proposed fabrication and assembly of a specific portion of the Work; and 2. The installation (form, fit and attachment details) of a specific portion of the Work. Shop Drawings shall include Product Data, literature, and performance and test data as appropriate.
Special Provisions	Contract Document containing requirements of the Contract that modify or supplement these General Conditions.
Specialty Item	A designated item of Work or Goods that requires highly specialized knowledge, craftsmanship, or Construction Equipment not ordinarily available in contracting organizations qualified to bid on the Contract.
Specifications	Individually each, and collectively all, of the specifications in this Contract, including without limitation all things described, stated or referenced in the Contract Documents entitled Specifications, Technical Specifications, Statement of Work, Scope of Work, Contract Drawings, and all other descriptions of the Work contained in any other Contract Document, or document incorporated by reference in any of the above described documents.
Standard Drawings	Drawings included as part of or referenced in the Contract, that have been developed to attain uniformity in Goods, geometries, arrangements, details, and procedures and, in some instances, to express prior acceptance thereof by affected Government Entities, utilities, railroads, pipeline companies or other affected entities.
Standard Work Day	Eight (8) working hours, allowing a maximum of one non-working hour for lunch and breaks unless otherwise agreed to by the Contractor and Metro.
Standard Work Week	Five (5) Standard Work Days (Monday through Friday).
State	State of California.

Subcontract	Any contract, including contracts of any tier, to furnish Work, Goods or Equipment between the Contractor and/or any Subcontractor or Supplier.
Subcontractor	Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor that enters into a legal agreement with the Contractor or any Subcontractor to furnish Work, Construction Equipment or Goods. Unless otherwise specified, Subcontractor includes a Subcontractor of any tier.
Substantial Completion	Work or Element thereof sufficiently complete, in accordance with the Contract, to be used by Metro for the purpose for which it was intended.
Supplier	Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor or Subcontractor that enters into a contract with the Contractor or any Subcontractor to furnish Goods.
Temporary Construction Easement	Real property not belonging to Metro or Contractor on which Work can take place during the construction period, subject to any limitations described in the Contract.
Third Party	A Government Entity, utility company, railroad or other entity that contracts with Metro by means of a Cooperative Agreement, Utility Services Agreement or other similar agreement regarding the construction, reconstruction, rearrangement and/or improvement of facilities owned or controlled by the Third Party, to facilitate the Work of the Contractor.
Transit System	The entire bus and fixed-guideway rail transportation system, including Right-of-Way, pavement, tracks, structures, revenue producing equipment, appurtenances, and all other related property of Metro.
Unit	A single item or group of items constituting a single unit which is identified as a Unit or Unit Priced item in the SCHEDULE OF QUANTITIES AND PRICES.
Unit Price	The price of a single Unit.
Warranty	A representation, promise or affirmation given by the Contractor to Metro regarding the nature, description, usefulness, suitability, lifecycle, condition, construction, materials, workmanship or any other aspect of the Work, or any portion thereof, whether contained in any provision in the Contract entitled warranty, in the Specifications, the Statement of Work, or in any other provision of the Contract, including documents incorporated by reference or provided by any

	Subcontractor, Supplier, manufacturer or any other entity.
Work	When capitalized, signifies the facility or project described in the Statement of Work and the sum total of productive and operative efforts used to generate the results specified, indicated or implied in the Contract to complete the fully functional facility or project, including all related activities to Furnish the Goods and Equipment to complete the fully functional facility or project, including all required documentation and Schedules, in accordance with the Contract. The term may also refer to Work in progress.
Worksite	Area within which the onsite portions of the Work will be performed. This area is enclosed by the Limits of the Worksite and immediately surrounding streets and easements (see Contract Drawings). It also includes offsite areas used in connection with the performance of the Work.
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, and false work.

Additional definitions may be found in the Specifications and Special Provisions.

GC-02 INTERPRETATION *

A. Contract Documents

The individual documents comprising the Contract Documents are complementary, indicating all aspects of the Work. Anything mentioned in any Contract Document, including the Specifications and not shown on the Contract Drawings or any other Contract Document, or shown on a Contract Document or the Contract Drawings and not mentioned in the Specifications or another Contract Document, shall be of like effect as if shown or mentioned in all Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper initiation, execution and completion of the Work, and they shall be so interpreted.

B. References within the Contract

References to Articles (e.g. GC-2), Sections (e.g. GC-2-C), and Paragraphs (e.g. GC-2-C-1) are made by citing the title of the provision only, e.g., a reference to this particular Article would be phrased "in the Article entitled INTERPRETATION", which would necessarily include all Sections and

Paragraphs in this Article. References to Sections and Paragraphs include Paragraphs and sub-Paragraphs within the same Section or Paragraph. References to other Contract Documents are made by citing the title of the Contract Document, e.g., "the Special Provisions".

C. Standard Specifications

Where Standard Specifications (e.g., CALTRANS, SSPWC "Greenbook") are a part of the Contract Documents, the following definitions shall apply:

1. All references therein to the "City", "County", "State", "Agency", or "Department", when referring to the public entity party to the contract shall mean Metro.
2. All references to the "Engineer" or similar term when referring to the provider of compliance judgment shall mean Metro or its Authorized Representative.
3. All references to the "plan(s)" or other similar term shall mean the Contract Drawing(s) or Specifications.
4. All other references, including without limitation, to measurement and payment in the Standard Specifications shall not apply. Measurement and payment shall be made as specified in the Contract Documents other than the Standard Specifications.

D. Reference Standards

Goods and workmanship specified by the number, symbol, or title of a Reference Standard shall comply with the latest edition or revision and amendments and supplements in effect on the date of the Invitation for Bids except where a different edition is specified. All governmental, utility, and railroad standards referenced in the Contract are incorporated herein as an integral part of the Contract unless specifically marked otherwise (e.g. see Section in this Article entitled Reference Specifications and Drawings). In case of a conflict between the various standards referenced herein, the more stringent shall govern unless otherwise indicated.

E. Reference Specifications and Drawings

Specifications and drawings indicated as reference specifications or drawings, or "For Information Only, Not For Construction" are not a part of the Contract and are provided to the Contractor for the purposes of information and coordination only and shall not be interpreted otherwise. These reference specifications and drawings are subject to revision and the information contained therein shall not be used directly or indirectly as the basis for any Claim.

F. Differences Between Contract Drawings

In case of differences between small and large-scale Contract Drawings, the large scale Contract Drawings shall govern. In the event of a discrepancy between a figure written on a Contract Drawing and the scaled dimensions, the written figure shall govern.

G. References to the Los Angeles County Transportation Commission or Southern California Rapid District

If the term Los Angeles County Transportation Commission, or LACTC, or COMMISSION, or Southern California Rapid Transit District, or SCRTD, or DISTRICT appears on any document, whether a Contract Document or reference document, it shall mean Metro.

H. Omissions, Misdescriptions and Interpretations

1. The Contractor shall:
 - a. Carefully and continuously study and compare all Contract Documents;
 - b. Verify all figures in the Contract Documents before laying out the Work; and
 - c. In instances where errors, inconsistencies, omissions and/or misdescriptions are discovered, submit a Request For Information (RFI) to obtain specific instructions in writing from Metro before proceeding with the Work.
2. If Contractor performs any Work that is the subject of an RFI prior to Metro's response, it shall be at the Contractor's risk.
3. The Contractor shall interpret the Contract as a whole and read all its parts together. The Contractor shall not take advantage of any apparent non-conformity that may be found in the Contract Documents.
4. Metro may make such additions to, or corrections and/or interpretations of any Contract Documents as are necessary to ensure that everything necessary to complete the Work in accordance with the intent of the Contract or that is customarily performed to complete the Work is performed by the Contractor in accordance with the intent of the Contract.
5. If the Contractor fails to advise Metro of errors, inconsistencies, omissions and/or misdescriptions the Contractor shall not be relieved from performing such Work at no additional expense and/or Delay, and such Work shall be performed as if fully and correctly set forth in the Contract.\

I. Information Supplied To The Contractor:

1. Furnished by Metro:

Metro made available to bidders (including the Contractor) during the solicitation of this Contract information described in the Bid Documents as "Information Available to Bidders". The Information Available to Bidders is not a part of this Contract but was made available to share then existing information, without warranty, with bidders (including the Contractor). Metro made reasonable efforts to ensure that all Information Available to Bidders was reliable, accurate and complete. However, because the information is not a part of the Contract and does not meet Contract Specification standards, Metro makes no representations with respect to its reliability, accuracy, or completeness and shall not be responsible or liable to Contractor for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by Contractor, except as provided in the following sub-Paragraph. If the Contractor intends to use such information, it shall use the information at its own risk and shall apply its professional judgment as to its reliability, accuracy and completeness for the purposes for which the Contractor intends to use it. Contractor may seek clarification or interpretation from Metro as necessary, and, provided that the request is for clarification or interpretation of information that Metro can determine is otherwise reliable, accurate or complete, Metro shall assume the same responsibility as with a response to an RFI. In the absence of a request for clarification or interpretation, Metro will rely on the Contractor to determine which information is sufficiently reliable, accurate and complete for Contractor to use for Contractor's intended purpose.

2. Furnished by Others:

Metro shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by the Contractor by reason of its use of any information furnished by others, or for any actions of forbearance in reliance thereon. The Contractor further acknowledges and agrees that:

- a. If and to the extent the Contractor or anyone on the Contractor's behalf uses any of said information in any way, the Contractor, not Metro, shall be fully responsible for the use of said information; and
- b. Any use of said information is entirely at the Contractor's own risk and at its own discretion.

3. Contractor Representation:

The Contractor represents that it is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and

investigations as it deems advisable to verify or supplement any information furnished by Metro and others as provided in this Section.

J. Headings

The various topical headings contained in the Contract are intended for convenience only and shall not affect the meaning or interpretation of the Contract or any of its provisions.

K. Word Construction

Where appropriate:

1. The singular includes the plural and vice versa;
2. References to any Law includes all statutory or regulatory provisions consolidating, amending or replacing the Law referred to;
3. The word “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”;
4. Unless otherwise indicated references to Articles, Sections, Paragraphs, Exhibits, Attachments, Appendices or Schedules are to this Contract;
5. Words such as “herein”, “hereof” and hereunder” shall refer to the entire document in which they are contained and not to any particular provision unless the reference is to the specific provision;
6. Words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings;
7. References to persons or entities include their respective permitted successors and assigns and, in the case of Government Entities, entities succeeding to their respective functions and capacities;
8. Words of any gender shall include each other gender where appropriate;
9. Unless otherwise specified, the Contract shall be read as a whole, and lists contained in the Contract Documents defining the Work shall not be deemed all-inclusive: And
10. All “notices”, “requests”, “directives” and other communications are required to be in writing, and all references to “notices”, “requests”, “directives” and other communications, by whatever term used, shall be deemed to be followed by the words “in writing” or preceded by the word “written”.

GC-03**AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORIZED REPRESENTATIVES**

1. Metro's Contracting Officer has the authority and responsibility to exercise all powers, rights, and/or privileges that have been lawfully delegated to the Contracting Officer by Metro in all matters relating to or affecting the Work and this Contract. Except as expressly specified in this Contract, the Contracting Officer may delegate, in writing, specifically described authority and responsibility within the scope of its authority and responsibility to Authorized Representatives. The form of written delegation shall be specifically described in the SPECIAL PROVISIONS of this Contract.
2. The authority and responsibility of each Authorized Representative shall be as set forth herein or in the written delegation. The Authorized Representatives, and the authority and responsibilities of the Authorized Representatives may from time to time be changed by notice to the Contractor. Nothing in this Contract shall be construed to bind Metro for acts of any Metro employee or any other person, or for the acts of the Contracting Officer or any other Authorized Representative, including its Construction Manager, that exceed the authority delegated to them herein or in any other written delegation.
3. All Notices to Metro under this Contract shall be to Metro's Authorized Representative for the subject matter of the Notice, with a copy to the Contracting Officer. No Notice shall be effective unless it was delivered to the designated Authorized Representative and to the Contracting Officer as provided in this Contract.

GC-04**INDEPENDENT CONTRACTOR****A. General**

Contractor shall timely perform the Work required under this Contract. Contractor shall be responsible for all acts, materials and Equipment required to complete the Work in accordance with this Contract. Contractor shall be solely responsible for the performance of the Work in accordance with its own means, methods, sequences, and procedures, and for coordination of all portions of the Work in compliance with the Contract. The Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Work, it being understood that Metro will be relying upon such professional quality, accuracy, completeness, and coordination in utilizing the Work.

B. Contractor's Representations, Warranties and Covenants

The Contractor represents, warrants and covenants for the benefit of Metro that:

1. If it is a corporation, it is duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation and has full power and authority to own and operate its business and properties and perform the Work within the State of California.
2. It and all of its Subcontractors are, and will be and will remain, fully experienced and properly qualified to perform the Work, and are, and throughout the term of this Contract shall remain, properly licensed, equipped, organized and financed to perform the Work hereunder and shall perform it in accordance with the Contract and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience and knowledge in performing Work of a similar nature.
3. It and all of its Subcontractors and Suppliers are independent contractors and nothing in this Contract shall be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between Contractor and Metro. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.
4. It shall maintain complete control of its employees and its Subcontractors and Suppliers of all tiers, and shall not assign or transfer Work from itself or any listed Subcontractor or Supplier to itself or any other Subcontractor or Supplier without the written consent of Metro.
5. It has evaluated the feasibility of performing the Contract within the Contract Time and for the Contract Price, and has reasonable grounds for believing and does believe that such performance, including achievement of Substantial Completion of the Work within the Contract Time, for the Contract Price is feasible and practicable.
6. It has in accordance with prudent and generally accepted engineering practices, reviewed the information and documents, including reports provided by Metro and has inspected, and evaluated the Worksite and surrounding locations to the extent the Contractor deems necessary or advisable for performing the Work under the Contract. These inspections and evaluations include but are not limited to:
 - a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
 - b. The availability of labor, water, electric power, and roads;
 - c. Uncertainties of weather, or physical conditions at the site;
 - d. The conformation and conditions of the ground;
 - e. The character of Equipment and facilities needed preliminary to and during Work performance; and

- f. Conditions bearing upon security and protection of material, Goods, Equipment and Work in progress.
7. There are no existing or threatened legal proceedings against Contractor that would have an adverse affect on its ability to perform its obligations under the Contract or its financial condition or operations.
8. Based upon its review of the Contract Documents, the Contractor will be able to obtain and keep in effect throughout the Contract Time all Governmental Approvals the Contractor is obligated to obtain in accordance with the Contract.
9. Contractor has estimated the difficulty and cost of successfully performing the Work and based upon that estimate has concluded that it can successfully perform the Work without additional expense to Metro

C. Inspections

1. The Contractor acknowledges and agrees that it has been afforded the opportunity to review information and documents and to conduct inspections and tests of the Worksite and surrounding locations.
2. The Contractor acknowledges that it has satisfied itself as to the character quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Worksite, including review of Contract Documents
3. As a result of such review, inspection, examination and other activities the Contractor is familiar with and accepts the physical requirements of the Work.
4. The Contractor further acknowledges and agrees that changes in conditions at the Worksite may occur after the Bid Date, and that the Contractor shall be entitled to Change Orders in connection therewith only as specifically permitted under the Article entitled CHANGES.
5. Before commencing any Work on a particular aspect of the Work, the Contractor shall verify all governing dimensions at the Worksite, and shall examine all adjoining work and activities which may have an impact on such Work. The Contractor shall be responsible for ensuring that the Specifications and Contract Drawings accurately depict all governing and adjoining dimensions.

D. Compensation and Benefits

Contractor shall be solely liable and responsible for providing all compensation and benefits to, or on behalf of, all persons performing Work pursuant to this Contract. Metro shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other

compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor. Contractor understands and agrees that all persons performing Work pursuant to this Contract are, for purposes of workers' compensation liability, the sole employees of Contractor and not employees of Metro. Contractor shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any Work performed by or on behalf of Contractor pursuant to this Contract.

E. Quality Assurance and Quality Control Plans

The Contractor shall comply with all requirements of its accepted Quality Assurance and Quality Control Plans.

F. Contractor's Design and Engineering

All Contractor's design and engineering Work shall be performed by or under the supervision of persons licensed to practice architecture, engineering, surveying or other profession (as applicable) in the State of California, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract and who shall assume professional responsibility for the accuracy and completeness of the Work prepared or checked by them.

G. Scheduling of Work

The Contractor shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve completion within the Contract Time and in accordance with the accepted Contract Critical Path Schedule and Contract Schedule of Values, including furnishing such employees, materials, facilities and equipment and working such hours, including extra shifts, overtime operations, Sundays and holidays as may be necessary.

H. Performance During Dispute

At all times during the term hereof, including during any Dispute, the Contractor shall perform as directed by Metro, and shall comply with all provisions of the Contract.

I. Contractor's Responsibility

Contractor shall be solely responsible for its failure to ascertain the facts and take the actions described, represented, warranted and acknowledged in this Article, and no provision of this Contract shall be construed to relieve Contractor from responsibility for such failure.

CONTRACTOR'S REPRESENTATIVE, ORGANIZATION AND PERSONNEL**A. Organization**

Before starting any Work, the Contractor shall submit for Metro review and acceptance, an organization chart showing the proposed organization established by the Contractor for the performance of the Work, including:

1. Lines of authority, responsibility, and communication;
2. Office organizations, if any; and
3. Names, titles, and functions of all Contractor's Representatives and other key personnel.

B. Contractor's Representative

Contractor shall have a Contractor's Representative with full authority to represent and act for the Contractor. Prior to Metro's issuance of a Notice to Proceed the Contractor shall submit for Metro's review and acceptance the name, qualifications and experience of its proposed Contractor's Representative. The Contractor's Representative shall act for the Contractor in all matters concerning the Work, and, subject to all requirements of this Contract, shall have the ability to so organize the Work and the Work of the Subcontractors to complete the Work in accordance with the Contract and the Critical Path Schedule. When directed by Metro, the Contractor's Representative shall be available at the Worksite at all times during performance of the Work, at no increase in Contract Price.

C. Change in Contractor's Representative and Key Personnel

The Contractor shall secure the prior written approval of the Contracting Officer for any change or reassignment of a Contractor's Representative or other key personnel, submitting written documentation of the new individuals' qualifications. The Contractor shall not reassign key personnel to other projects until a satisfactory replacement has been approved by Metro.

D. Removal of Contractor Personnel

The Contracting Officer may require the Contractor to remove any person assigned by the Contractor, or any Subcontractor or Supplier, to perform Work or furnish Goods under the Contract, if the Contracting Officer considers such removal in its best interest and in the interest of completion of the Work. The Contracting Officer's decision to require Contractor to remove any person shall be final and binding on the Contractor. Upon such direction Contractor shall remove the person and resolve all employment or contractual issues at no cost or expense to,

and shall fully indemnify Metro. Any person removed for any reason shall not be re-employed on any other Metro project.

GC-06 SUBCONTRACTORS AND SUPPLIERS

A. Contractor Participation

The Contractor shall perform at least the minimum percentage of Work specified in the Special Provisions with its own organization. Where a percentage of the Work is to be subcontracted, the dollar value shall be based on the estimated cost of such Work, determined from information submitted by the Contractor and subject to written acceptance by the Contracting Officer. With the exception of Work performed under a Construction Equipment rental agreement and Goods purchased directly through Suppliers, Work, Goods, and Equipment furnished by other than the Contractor shall be deemed subcontracted.

Upon Metro's request, the Contractor shall submit a copy of each executed Subcontract for any Subcontractor or Supplier of any tier, regardless of value of Work to Metro.

B. Performance of Work

All subcontracting by the Contractor shall be in strict accordance with this Contract. The Contractor shall be fully responsible to Metro for all acts and omissions of Subcontractors, Suppliers and their employees. Any provision of the Contract referring to the acts or omissions of the Contractor shall also refer to and include the acts and omissions of all Subcontractors and Suppliers. The Contractor shall coordinate the Work performed by Subcontractors and Suppliers. If any portion of the subcontracted Work is not performed in accordance with the Contract, or if a Subcontractor or Supplier commits or omits any act that would constitute a breach of the Contract, the Contractor shall cure the breach, and at the direction of the Contracting Officer, shall replace the Subcontractor or Supplier and not again employ the Subcontractor or Supplier on the Work.

The organization of the Contract into Contract Documents, Articles, Sections and Paragraphs, as well as the arrangement and titles of the Specifications and Contract Drawings, shall not control the Contractor in dividing the Work among Subcontractors nor in establishing the extent of Work to be performed by any trade.

C. Acceptance of Substitution of Subcontractor *

1. The Contractor shall notify Metro in writing of any proposal to substitute a Subcontractor in place of a Subcontractor listed in the Contractor's Qualification/Proposal. Prior to such substitution the Contractor shall secure the acceptance of Metro. The Contractor shall submit the following information in a form similar to that contained in the Contractor's original Qualification/Proposal.
 - a. Name of Subcontractor
 - b. Location and Phone Number of Place of Business
 - c. Contact Person
 - d. Subcontractor's License(s) number and expiration date (if applicable)
 - e. Current Metro Contract Compliance Certification Status (if applicable)
 - f. The portion of the Services that will be performed by each Subcontractor.

Metro will promptly initiate a review of the information submitted on each Subcontractor and transmit written notification to the Contractor concerning its decision.

2. Metro shall not be responsible for delays incurred by the Contractor because of a timely disapproval by Metro of a Subcontractor proposed by the Contractor, or for the late submittal for acceptance of a Subcontractor to Metro, or because of a Subcontractor's removal from the performance of the Work.
3. The Contractor shall not do any of the following without the prior written consent of Metro:
 - a. replace any previously accepted Subcontractor;
 - b. permit any previously accepted Subcontract to be assigned or transferred; and/or
4. However, the Contractor may perform the Work itself with qualified personnel, provided written permission is obtained from Metro prior to performance of the Work.

D. Debarred Subcontractor *

In accordance with Public Contracts Code §6109(a), Contractor shall not perform Work with any Subcontractor who is ineligible to perform work on a public works project pursuant to Labor Code §1777.1 or 1777.7.

In accordance with Public Contracts Code §6109(b) any contract on a public works project entered into between the Contractor and a debarred Subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by the Contractor on the project shall be returned to the awarding body. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

Metro will strictly comply with the above Laws and will act on information related to any debarred Subcontractor in accordance therewith.

E. Pre-Qualification *

Prior to performing Work of \$100,000 or more under this Contract, Subcontractors shall pre-qualify under Metro's Pre-Qualification process.

F. Flow-down Requirements *

The Contractor shall incorporate the following into each Subcontract and require insertion of same into all lower-tier Subcontracts:

1. All Articles, Subarticles or portions of the Contract noted by a star (*) shall be included in all Subcontracts of any tier.
2. All provisions required by law, regulation, rule, or the Contract shall apply to subcontracts and shall apply to all subcontracts of any tier.
3. By virtue of signing the subcontract, the following apply:
 - a. The Subcontractor acknowledges and agrees that all Work being performed by it under the subcontract shall be performed in accordance with the Contractor's Contract with Metro.
 - b. The Subcontractor agrees that it shall have the same duties and obligations to the Contractor with respect to its performance of its own Work as the Contractor has to Metro under its Contract.
 - c. The Contractor and the Subcontractor agree that Metro is the third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit. All guarantees and warranties, express or implied, shall inure to the benefit of both Metro and the Contractor during the performance of the Work; upon final completion of the Work, such guarantees and warranties shall inure to the benefit of Metro.

The Contractor and the Subcontractor agree that nothing contained in the Subcontract shall be deemed to create any privity of the Contract between Metro and the Subcontractor, nor

does it create any duties, obligations, or liabilities on the part of Metro to the Subcontractor except those allowed under California Law. In the event of any claim or dispute arising under the subcontract and/or the Contractor's Contract with Metro, the Subcontractor shall look only to the Contractor for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against Metro arising out of the subcontract.

G. Insurance

No Subcontractor shall be permitted to perform Work at the Worksite until the Contractor, has supplied satisfactory evidence of required insurance to Metro, in compliance with the Contract.

GC-07 PERFORMANCE AND PAYMENT BONDS

A. General

The Performance and Payment Bonds required concurrently with the execution of this Contract shall remain in effect for the entire Contract Time at 100% of the Contract Price. The Payment Bond shall meet all of the requirements of Civil Code Section 3247 et seq.

B. Replacement of Surety

If Metro finds any Surety at any time is unsatisfactory it will provide written notice to the Contractor to replace the Surety. No further payments shall be due or nor will Metro make any payments under the Contract until a new Surety shall qualify and be accepted by Metro. The Contractor shall pay all costs of compliance with this Article.

C. Changes in Work

Changes in the Work or Contract Time made pursuant to the Contract shall in no way relieve the Contractor or Surety from its obligations. Surety shall waive Notice of such Changes.

GC-08 NOTICE TO PROCEED

A. Commencement Date

Except as specifically authorized in writing by the Contracting Officer, the Contractor shall not perform work under the Contract until the Commencement Date stated in the Notice to Proceed (NTP). Metro will issue the NTP, and the Commencement Date will be, no later than 30 days after Metro's receipt of the Contractor's bonds and required insurance certificate(s) and Contractor's completion of all other requirements that are conditions precedent to the issuance of an NTP.

B. Contract Time

The Contract Time shall commence upon the Commencement Date stated in the NTP, and the Contractor shall commence Work and shall diligently prosecute the Work to completion within the Contract Time.

GC-09

PROJECT SCHEDULE AND CONSTRUCTION STAGING

A. Preparation and Submittal

The Contractor shall prepare and submit to Metro a detailed Critical Path Schedule, along with a detailed plan of the Work, for acceptance by the Contracting Officer, and shall prepare and shall submit all updates to the Critical Path Schedule and the plan to include all changes to the Schedule and the Work. The Contractor shall indicate on the Critical Path Schedule the anticipated dates for completing the various stages of construction and shall keep Metro informed of any Delays. The Schedule shall include projected delivery dates for all required Contract deliverables and dates for all required Metro inspections and approvals.

B. Impacted Schedule

To the extent that there are pending Modifications which may affect the Schedule, Change Orders, known Delays or Claims of Delay for whatever cause that are not included in the current Critical Path Schedule, and whether they are Excusable, Inexcusable or Concurrent (as defined in the Article entitled EXTENSION OF TIME), Contractor shall also submit an adjusted Critical Path Schedule, as impacted by all such pending Modifications, Change Orders, known Delays and Claims of Delays representing its best estimate of actual performance ("Impacted Schedule").

C. Electronic Copy

Contractor shall submit to Metro, by electronic mail, electronic write protected, copies of the Critical Path and Impacted Schedules in a standard format on software common to both Metro and Contractor.

D. Subcontractor Schedules

The Critical Path Schedule shall include all activities to be performed by Subcontractors. Contractor shall submit to Metro all Subcontractor schedule commitments, with a certification from the Subcontractor that it has reviewed and accepted the schedule commitment. If the Subcontractor will perform all activities at the direction of the Contractor, without a Subcontractor Schedule commitment, Contractor may request a waiver from Metro of the Subcontractor Schedule commitment. Metro's approval shall be subject to such Contractor assurances and documentation as it deems necessary to ensure timely Subcontractor performance.

E. Use of Schedule

The Critical Path Schedule shall be the Contractor's working Schedule and shall be used to plan, organize and execute the Work; record and report actual performance and progress; and forecast remaining Work. The Schedule shall indicate the anticipated dates for completing the various Contract Milestones and shall include completion of all Work by the Scheduled Completion Date. Upon acceptance of the Critical Path Schedule by the Contracting Officer, it shall be deemed incorporated into and shall become a material part of the Contract.

F. Changes to Schedule

After the Contracting Officer's approval of the baseline Critical Path Schedule, Contractor's additions, deletions and other changes to the Schedule shall be subject to the approval of the Contracting Officer. All changes to all activities on the Critical Path Schedule, including without limitation changes arising out of Delays, and all new activities, shall be included in changes to the Critical Path Schedule. If any changes are pending, they shall be included in the Impacted Schedule.

G. Supplementary Information

The Contractor shall provide such supplementary written information with its submittals as Metro may require to adequately evaluate the Critical Path Schedule and the plan of the Work.

H. Coordination With Schedule of Values

The Contractor shall coordinate the Critical Path Schedule with the Schedule of Values required under Compensation and Payment Provision entitled PROGRESS PAYMENT AND RETENTION.

I. Float

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

J. Coordination

If applicable, the Contractor shall schedule its operations to minimize interference with other Contractors and with Metro's operations.

GC-10 TEMPORARY FACILITIES

The Contractor shall provide and maintain such lights, protective devices, barricades and warning signs as are necessary for the safety of personnel and the public and as are otherwise required by Metro. The Contractor shall be responsible for the timely erection and removal of such safeguards, without specific instructions from Metro, or anyone else.

No signs, billboards or any types of advertising are permitted on, about or adjacent to the Worksite, or on any structure on the Worksite, except by written consent of Metro.

The Contractor shall determine the type of temporary office facilities required and the need for temporary utility services required and shall make all arrangements with utility companies and governmental agencies to secure such services. All costs incurred shall be at the sole expense of the Contractor. All temporary services shall be furnished, installed, connected and maintained by the Contractor in a manner, satisfactory to Metro and shall be removed by the Contractor in like manner at its expense prior to final acceptance except for such temporary facilities as may be specified to remain in place.

Contractor shall provide and maintain adequate sanitary convenience of an acceptable type for the use of persons employed on the Worksite, and properly secluded from public view. Contractor shall properly maintain these conveniences at all times and shall strictly enforce their use. Upon completion of the Work, Contractor shall remove them from the Worksite, leaving the Worksite clean and free from nuisance.

GC-11 GOVERNMENTAL APPROVALS

A. Licenses and Permits

1. Contractor Responsibility - Except for the permits listed in the Special Provision entitled METRO FURNISHED PERMITS, prior to beginning any related Work, the Contractor shall identify and obtain, at its own expense, all necessary licenses, permits and other Governmental Approvals required for the timely prosecution of the Work, and shall furnish Metro's Authorized Representative with fully executed copies.
2. Contractor's Representation - The Contractor acknowledges that prior to entering into the Contract it familiarized itself with the requirements of all applicable Laws, and the requirements for applicable licenses and permits, and other Governmental Approvals.
3. Compliance With Laws - The Contractor shall comply with all changes to applicable Laws, and to the conditions of any required licenses or permits, that occur at any time prior to Final Acceptance of the Work by Metro, including changes prior to award, at its sole cost and expense, regardless of whether such compliance would require additional Work, Construction Equipment, and/or Goods not expressly described in the Contract.

B. Payment

Contractor shall obtain and pay for all permits and bonds required for all off-site work including all utility connections, traffic signal, street lighting relocation and installation and street improvement work. The Contractor shall be liable for any Delay by a Governmental Entity in the granting of such

permits or bonds, except when such Delay is due solely to the fault or negligence of Metro.

C. Issuance to Metro

If any Governmental Approval required to be obtained by the Contractor must formally be issued in the name of Metro, the Contractor shall undertake all efforts to obtain such approvals subject to Metro's reasonable cooperation with the Contractor, including execution and delivery of appropriate applications and other documentation in a form approved by Metro. The Contractor shall assist Metro in obtaining the approvals and any amendments thereto, including providing information requested by Metro and participating in meetings regarding such approvals.

D. Maintenance of Governmental Approvals

Contractor shall undertake all actions necessary to maintain in full force and effect, all Governmental Approvals, including performance of all environmental mitigation measures required by the Contract and by Law, except to the extent that responsibility for performance of such measures is expressly assigned to any other Party to the Contract or any other person.

GC-12 EMERGENCIES *

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

GC-13 GOODS *

A. General

The Contractor shall furnish all Goods required to complete the Work, except those designated, if any, to be furnished by Metro. Goods incorporated into the Work shall be new, of good quality, and of the grade specified for the purpose intended and shall have the specified capacity, functionality and features. Metro may reject Goods not conforming to the requirements of the Specifications. Unless otherwise specifically stated, reference to Goods or patented processes by trade name, make, or catalog number shall be regarded only as a means of establishing a standard of quality; such references shall not be construed as limiting competition. Subject to prior written consent of the Contracting Officer, which consent shall be in the sole and absolute discretion of Metro, the Contractor may, use any Goods that are equivalent to those named.

B. Preservation and Inspection

Contractor shall transport, handle, and store all Goods purchased under the Contract in a manner that facilitates inspection and ensures the preservation of their quality, appearance, and fitness for the Work, and shall be stored in a manner that facilitates inspection.

C. Risk of Loss

The Contractor shall bear the full risk of loss of any and all Goods until such Goods are Accepted by Metro pursuant to the terms of this Contract.

GC-14 METRO FURNISHED GOODS *

A. Furnished Goods

Metro may furnish Goods to the Contractor for installation in the Work or other use in carrying out Work under the Contract. Metro furnished Goods will be available as specified in the Appendix to the Special Provisions entitled METRO FURNISHED GOODS.

B. Contractor Responsibilities

Contractor shall store, protect, handle and transport Metro furnished Goods at its expense, including necessary loading and unloading. The Contractor shall pay all demurrage and storage charges incurred as a result of its failure to take delivery on the date the Goods are scheduled and available for delivery by Metro.

C. Contractor Liability

The Contractor shall be liable to Metro for the cost of replacing or repairing Metro furnished Goods that are lost or damaged from any cause whatsoever after receipt by the Contractor or after the Contractor has failed to take delivery on the scheduled delivery date. Metro may deduct the costs from any monies due or to become due the Contractor.

D. Scheduling

The Contractor shall include delivery of Metro furnished Goods in its Critical Path Schedule, which shall be subject to approval by Metro. The Contractor shall identify delivery dates in the Critical Path Schedule, as required in the Specifications or the Special Provisions. When appropriate, Contractor shall schedule delivery dates for the return of any Metro furnished Goods in a like manner.

GC-15 COOPERATION, COORDINATION AND ACCESS *

A. Cooperation and Coordination with Other Contractors and/or Metro Operations

Metro reserves the right and may undertake or award other contracts for additional Work on or near the Worksite. The Contractor warrants that it has carefully reviewed the Contract Documents and all other pertinent information made available by Metro that relate to the nature and scheduling of other contracts that may be awarded and to constraints related to Metro operations, and in submitting its bid and executing this Contract has taken into account the need to coordinate its Work with that of other contractors and/or Metro Operations. It is the express obligation and duty of the Contractor under the Contract to coordinate its Work with the work of others. The following shall apply:

1. The Contractor shall not have exclusive access to or use of Work areas or the Worksite. Metro may require that Contractor use certain facilities and areas concurrently with others.
2. Metro will endeavor to advise the Contractor of the known others, including Metro Operations.
3. Contractor shall cooperate and communicate with any other contractor performing Work that may connect, complement, and/or interfere with the Contractor's Work and resolve any disputes or coordination problems with such contractor.

B. Site Access Requirements

Site access requirements are specified in the Article in the Special Provisions entitled SITE ACCESS REQUIREMENTS.

C. Reports to Metro

If any part of the Contractor's Work depends on the work of any other contractor or Metro for proper execution or results, prior to proceeding with its own Work, Contractor shall notify Metro of any discrepancies, or defects or failures to perform or complete said other work that would preclude or hinder the proper execution or achievement of the Contractor's Work.

D. Coordination Meetings

The Contractor shall attend such meetings and conferences, including a pre-construction meeting, arranged by Metro for the purpose of coordinating the Work.

GC-16 PROJECT SITE MAINTENANCE *

A. Cleaning

Throughout all phases of construction, and until Final Acceptance of the Work, the Contractor shall keep the Worksite clean and free from rubbish and debris. The Contractor shall also abate dust nuisance by cleaning, sweeping and sprinkling with water.

B. Haul Routes

The Contractor shall take care to prevent spillage on haul routes. Contractor shall remove any such spillage immediately and clean the area.

GC-17 WORKMANSHIP *

Contractor shall perform all Work in a skillful and workmanlike manner. All workers shall have sufficient skill and experience to perform the Work assigned to them. In accordance with the Article entitled INSPECTION, Metro may reject as defective all workmanship not conforming to the requirements of applicable Law, the Specifications or any other provision of this Contract.

GC-18 UNAUTHORIZED WORK *

Contractor shall not perform Work in addition to Work described in this Contract, including without limitation, the Specifications. Any additional Work must be authorized by Metro pursuant to the Article entitled CHANGES or by a Contract Amendment. Unauthorized Work will not be paid for, will not receive an extension of Contract Time, and may be ordered removed at the Contractor's sole expense. The failure of Metro to order the removal of unauthorized Work shall not constitute acceptance of such Work nor shall it relieve the Contractor from any liability on account thereof. If the Contractor does not comply with an order of Metro to remove unauthorized Work, Metro may remove the Work at the Contractor's sole expense.

GC-19 SURVEY AND VERIFICATIONS *

A. Performance and References

Contractor shall perform all surveying necessary for construction as required by the Specifications. The Contractor shall preserve all construction survey references and marks for the duration of their usefulness. If Contractor loses or disturbs any construction survey references and Metro needs to replace them, such replacement shall be at the sole expense of the Contractor.

B. Conformance With Plans and Variations

All Work upon completion shall conform to the lines and elevations shown in the Specifications. Contractor shall report any variation to Metro in writing and may request approval of a variation from the Contracting Officer. If the

Contractor fails to make such report or does not obtain approval of variations by the Contracting Officer, the Contractor shall correct the Work, and shall replace such Work to comply with Specification requirements at its own expense.

C. Verification of Governing Dimensions

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

GC-20 PERFORMANCE AND INSPECTIONS *

A. Inspection and Testing During Contractor Performance

1. Metro shall have access to the Work at all Worksites and at all times during the Contract Time, and upon reasonable notice may inspect the Worksite and inspect and test all Work, Construction Equipment and all other materials wherever located.
2. Such inspection and testing will be for the sole benefit of Metro and is in addition to tests the Contractor is required to perform as part of its Quality Control responsibility.
3. Except to the extent specified in writing by Metro, no inspection or testing shall be construed as constituting or implying acceptance, and Metro may reject or accept any Work, request Changes, or identify additional Work which must be done at any time prior to Final Acceptance of the Work.
4. Metro shall not be obligated to make any inspections and neither the inspection of the Work, nor the lack thereof, shall relieve the Contractor of its responsibility for providing the Goods, and completing the Work in accordance with the terms of the Contract.
5. Provided Metro has given the Contractor reasonable time in its notice to prepare for any inspection or test, Metro may charge the Contractor for any additional costs it incurs for the inspections or tests, when Work is not ready at the time indicated in the notice or when re-inspection or retest is necessitated by prior rejection.
6. Metro shall have access, at all reasonable times, to the Contractor's calculations, supporting materials, data, and information concerning the Work, including computer programs and printouts, which Metro determines are required to review the Work properly and expeditiously.

Metro will perform its inspections and tests in a manner that does not unreasonably Delay the Work.

B. Metro's Remedies for Deficient Work

If any Work provided by the Contractor is Deficient, Metro shall provide written notice to Contractor of such Deficiencies and thereafter may do any or all of the following:

1. Require the Contractor to promptly segregate and remove rejected Work from the Worksite at its own expense and without any extension of Contract Time.
2. Require the Contractor re-perform such Work and repair or replace the Work, Goods or other material or item at the Contractor's own expense;
3. Withhold payments otherwise due to Contractor hereunder.
4. Seek Liquidated Damages as provided in this Contract;
5. Have such Work performed and Goods provided by others at the sole expense of the Contractor.
6. Terminate the Contract in accordance with the Article entitled TERMINATION FOR DEFAULT herein and obtain the remedies provided for therein.

Corrected or re-performed Work and replaced or repaired Goods shall be subject to all of the requirements of the Contract, including without limitation all standards of performance set forth in this Contract.

C. Work Performed Without Inspection

Metro may reject any Work the Contractor performs without a Metro inspection, as specified in the Contract. If Contractor covers up any Work without Metro's prior acceptance or consent, it must uncover it for inspection and properly restore the Work at its expense. Metro may order re-examination of any Work; if so ordered, the Contractor must uncover the Work. If such Work is found to be in compliance with the Contract, Metro will pay all costs associated with the re-inspection, including uncovering, covering, and damage to the Work related to the re-inspection. If the Work is not in compliance with the Contract, the Contractor shall pay all such costs and correct all Deficiencies.

D. Work Performed Outside of Regular Work Day

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

E. Inspection by Government Entities and Others

The Contractor shall make the Work available to authorized representatives of Government Entities, effected railroads and utilities, and property owners for the purpose of observing the Work associated with their respective interests. Visits will be coordinated through Metro.

F. Inspection of Off Site Facilities

Metro and the other authorized agencies may inspect Contractor's production of Goods at off site facilities, including any manufacturer's plant. Adequate facilities shall be made available for the necessary inspections and free access to all parts of the Work shall be available at all reasonable times. The Contractor shall have appropriate provisions inserted into each Subcontract it enters into providing for facility and in-plant inspection by Metro of the manufacture or production of Goods.

GC-21 ACCEPTANCE OF ELEMENTS OF THE WORK *

A. General

Except to the extent specified herein, in the Article entitled FINAL INSPECTION AND ACCEPTANCE OF THE WORK or otherwise specified in the SPECIAL PROVISIONS of this Contract, no inspection, testing or Acceptance of Substantial Completion of any Element of the Work, or payment in whole or in part therefore, shall be construed as constituting or implying Final Acceptance of the Work or any Element. Metro may reject or Accept any Element as Substantially Completed, request Changes, or identify additional Work that must be done at any time prior to Final Acceptance of the Work.

B. Acceptance of an Element

When the Contractor determines that any Element, as authorized in the Contract, is ready for Acceptance as Substantially Complete, including all required submissions and requirements for delivery to Metro specified in the Contract, the Contractor shall request Acceptance of the Element by giving Metro a Notice of Substantial Completion of the Element, as provided in the Article entitled SUBSTANTIAL COMPLETION, specifying that the Element is completed and the date on which it was completed. The procedures for Acceptance of any Element shall be as provided in the Article entitled SUBSTANTIAL COMPLETION and may be further described in the SPECIAL PROVISIONS of this Contract.

GC-22 SUBSTANTIAL COMPLETION *

A. Notice

The Contractor shall provide Notice of Substantial Completion to the Contracting Officer when all of the following have occurred with respect to the Work or for an Element thereof:

1. The Contractor has completed the Work (except for Punch List items and final clean-up);
2. The Contractor has ensured that all Work has been performed and substantially completed in accordance with the requirements of the Contract;
3. All Deficiencies in the Work have been corrected (other than Punch List items);
4. Contractor has submitted a completed As Built Schedule (except for Punch List Items); and
5. The Contractor has ensured that the Work is ready for operation and may be operated without damage to the any other Work or property on or off the Site, and without injury to any Person.

B. Inspection

Within a reasonable time after the Contractor provides the Contracting Officer with Notice of Substantial Completion of the Work or an Element thereof:

1. The Contractor and Metro's Authorized Representative shall make an inspection of the Element that is the subject of the Notice to determine its status of completion: and
2. Metro will analyze the As Built Schedule to determine if it accurately reflects the cumulative effect of all Modifications approved by Metro based upon the Critical Path Schedule. Based upon that analysis, Metro will have the right to adjust the Contract Time, and Contract Price, to correct all errors, including prior estimates, in the Schedules.

C. Substantial Completion

Substantial Completion of the Work or Element thereof shall occur on the date:

1. The Contracting Officer determines that the Work or Element has been completed in accordance with all requirements of the Contract;
2. The Contractor has corrected all Deficiencies and deviations with respect to the Work;
3. The Contracting Officer has accepted the As Built Schedule and has notified the Contractor in writing of its acceptance of the correction of all Deficiencies;

4. Metro and the Contractor have agreed to a Punch List, if any, of items remaining to be completed or corrected prior to Final Acceptance; and
5. The Work, or Element thereof, is ready for use for the purpose intended.

Upon Substantial Completion, the Contracting Officer will issue a Certificate of Substantial Completion for the completed Work or Element.

D. Acceptance

1. The Contracting Officer may either:
 - a. Reject the Contractor's Notice of Substantial Completion because the Element does not meet the requirements for Substantial Completion, describing Deficiencies and/or deviations from the Contract requirements, or
 - b. Issue a Certificate of Substantial Completion and issue the agreed Punch List, if any, of Work items remaining.
2. If the Contracting Officer rejects the Contractor's Notice of Substantial Completion, the Contractor shall, at its own cost and expense, comply with all requirements for Substantial Completion and resubmit the Notice until the requirements have been met.

E. Completion of the Punch List:

1. All Work items on the Punch List shall be completed prior to Final Acceptance and final payment
2. After Substantial Completion, Metro shall allow the Contractor reasonable access to the Worksite to complete the items on the Punch List.

F. Responsibility for Maintenance, Loss and Damage

Upon the Contracting Officer's issuance of a Certificate of Substantial Completion, Metro (notwithstanding the Article entitled DAMAGE TO THE WORK AND RESPONSIBILITY FOR GOODS) shall be responsible for maintenance, and loss or damage to the Work or Element, except as follows:

1. The Contracting Officer's issuance of a Certificate of Substantial completion will not relieve the Contractor of its obligations to complete the Work or any Element, the non-completion of which was not disclosed to Metro (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise);
2. The Contractor's action, negligence or breach of this Contract or the warranty causes loss or damage to the Work or Element;
3. The Work or Element remains within the custody or control of the Contractor; or

4. Responsibility remains with the Contractor pursuant to the terms of the Certificate of Substantial Completion.

G. Responsibility to Complete the Work

Notwithstanding any other provision of this Contract that could be interpreted to the contrary (including in Contract Documents of higher precedence), it shall be the Contractor's continuing responsibility to complete and deliver every Element, and the integrated whole, of the Work in accordance with all of the requirements of the Contract. The issuance of a Certificate of Substantial Completion by the Contracting Officer for any Element, or for the whole of the Work, shall not be construed to relieve the Contractor of this responsibility, or any part thereof. If, after the issuance of a Certificate of Substantial Completion, Metro discovers any Deficiency, or item not completed or otherwise requiring correction or remedial action, whether or not the item appears on any Punch List or other list of clean up items, the Contractor shall correct the Deficiency, complete the item or otherwise remedy the condition to bring it in to full compliance with the Contract.

GC-23

FINAL INSPECTION AND ACCEPTANCE OF THE WORK *

A. Punch List and Other Obligations

Promptly after Substantial Completion of the Work or Element thereof, the Contractor shall perform all Punch List Work, if any, which was not completed for purposes of Substantial Completion, and shall satisfy all of its other obligations under the Contract.

B. Request for Final Acceptance

Within 10 days after the Contractor determines that all Work as required in the Contract is fully completed, and all required submissions and deliveries to Metro specified in the Contract have been made, it shall give the Contracting Officer a written Request for Final Acceptance specifying that the Work is completed, the date on which it was completed and stating:

1. The Contractor has determined that the entire Work is fully completed, including satisfactory completion of inspections, tests, and documentation, including without limitation the As Built Schedule, specified in the Contract;
2. All Punch List and clean-up items are completed.
3. The Contracting Officer has received and accepted the assignment of all Subcontractor's, manufacturer's and Supplier's Warranties, all as-built drawings and other deliverables required under the Contract;
4. All Equipment, special tools, spare parts or other Goods purchased by the Contractor as provided in the Contract have been delivered to and accepted by the Contracting Officer free and clear of Liens;

5. All of the Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities have been removed from the Worksite;
6. The Contractor has complied with all requirements associated with closeout of the Contract.
7. The Contractor has delivered to the Contracting Officer a Notice of Completion for the Work in recordable form and meeting all statutory requirements.

C. Metro Inspection and Acceptance

Metro will inspect the Work and within 60 day thereafter will either:

1. Reject the Request for Final Acceptance, specifying the Deficiencies or uncompleted portions of the Work; or
2. Issue an executed Certificate of Final Acceptance and record the Notice of Completion with the County Recorder.

If the Contracting Officer rejects the Request for Final Acceptance, specifying Deficiencies or uncompleted portions of the Work, the Contractor shall promptly remedy the Deficiencies or uncompleted portions of the Work. Thereafter, the Contractor shall again give the Contracting Officer a written Request for Final Acceptance of the Work, in accordance with the above process.

D. No Implied Acceptance

Any failure by Metro to inspect or reject the Work or to reject the Contractor's Request for Final Acceptance as set forth above shall not constitute or imply Acceptance by Metro of the Work for any purpose, or imply approval of the Contractor's Request for Final Acceptance.

E. Survival of Obligations

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

F. Undisclosed Incomplete Work

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

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

GC-24

WARRANTY *

A. Warranty

The Contractor warrants that the Work shall be free of Deficiencies, shall be fit for use for the intended function, and shall meet all of the requirements of the Contract. The Contractor further warrants that the Goods furnished shall be new and of a quality that meets all of the requirements of the Contract.

B. Commencement and Duration

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

C. Warranty Claims

If Metro determines that any of the Work contains Deficiencies any time within the Warranty Period, Metro shall claim and the Contractor shall correct, repair or replace such Work at its sole expense.

Contractor shall respond to Metro's Warranty claim within one day and shall repair the Deficiency within ten days. If the Deficiency cannot be repaired within said ten days, Contractor, within that ten days shall submit a schedule for completion of repairs, which shall be subject to the approval of Contracting Officer, and shall diligently proceed to complete the repairs within the approved schedule. If any Deficiency affects operation of the Work, or any essential Element thereof, Metro may, in its sole discretion require Contractor to complete repairs in less than ten days.

D. Warranty on Corrected Deficiencies

The Contractor's Warranty shall continue, as to each corrected Deficiency, until the later of:

1. The remainder of the Warranty Period; or
2. One (1) year after Acceptance by Metro of any corrected Work.

E. Metro Right to Correct Deficiencies

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

F. Emergencies

In case of an Emergency or hazard to health or safety requiring immediate curative action, Metro shall notify the Contractor and Contractor shall immediately take such action as it deems necessary and shall notify the Contracting Officer of the action taken. If the Contractor does not undertake immediate curative action, Metro may without prior notice undertake such action as is necessary to correct the hazard or deal with the Emergency and the cost thereof shall be borne by the Contractor.

G. Abuse or Neglect by Metro

To the extent that a particular portion of the Work covered by the Warranty has been abused or neglected by Metro, and such abuse or neglect is the cause of a Deficiency or the failure arising out of the Deficiency, that Deficiency or failure, or portion thereof, shall be excluded from this warranty. Normal wear and tear during operations is excluded from this exception.

H. No Waiver

Nothing in this Contract shall be construed to constitute a waiver or disclaimer, or limit, negate, exclude or modify in any way any warranty in this Contract.

I. Acceptance of Non-Conforming Work

If the Contracting Officer accepts any nonconforming Work without requiring it to be fully corrected, the Contractor shall reimburse Metro a portion of the Contract Price in an amount equal to the greater of: (1) the difference in the value of the Work, plus the present value of additional operating costs, if any, caused by such nonconforming Work or (2) the Contractor's cost savings in not correcting the Work. In either case, Contractor shall, in addition, reimburse Metro's costs to make the determination, including but not limited to staff costs, experts, tests and other actions necessary to make a determination. Such reimbursements shall be payable to Metro within ten (10) days after the Contractor's receipt of Metro's demand for payment.

J. Subcontractor's Warranties

Without in any way limiting the Contractor's Warranties with respect to the Work, the Contractor shall obtain from all Subcontractors, manufacturers and Suppliers, and assign and deliver to Metro all Warranties, including extended Warranties provided by such Subcontractors, manufacturers and Suppliers and from all other persons extending Warranties. All such Warranties shall:

1. Survive Final Acceptance, and all Metro and Contractor inspections, tests and acceptances, and;
2. Shall run directly to and be enforceable by the Contractor and Metro.

K. Other Remedies

The Warranties herein are in addition to all rights and remedies available under the Contract or applicable Law, and shall not limit the Contractor's liability or responsibility imposed by the Contract or applicable Law with respect to the Work including liability for design defects, latent construction defects, strict liability, negligence or fraud.

L. Joint and Several Liability

The Contractor shall be jointly and severally liable to Metro under any such Warranties. To the extent that any Warranty from any person other than the Contractor would be voided in whole or part by reason of any act or omission of the Contractor, the Contractor shall be fully liable to the extent of said Warranty.

M. Actual Damages

The Contractor shall be liable for actual damages resulting from any breach of an express or implied Warranty or any Deficiency in the Work.

N. Spare Parts

Metro's spare parts shall not be used to repair warrantable failures and defects. The security, control, shipping, and disposition of the Contractor-owned parts shall be the responsibility of the Contractor. Damage to Metro's property caused by the Contractor shall be the sole responsibility of the Contractor and shall be corrected at the Contractor's expense.

O. Bond

To the extent that any Performance Bond remains applicable, Surety and the Contractor shall be jointly and severally liable to Metro under its Performance Bond for any breach of the Contractor's obligations hereunder.

P. Disputes

In the event of a dispute between Metro and the Contractor relating to this Article, the Contractor may file a claim in accordance with the Article entitled CLAIMS.

Q. All Contract Warranties Apply

This Warranty provision is not exclusive. Contract provisions containing Warranties, including without limitation documents incorporated by reference

or relied upon in any Contract Document, shall apply in accordance with their terms.

GC-25 SAFETY AND LOSS PREVENTION

A. Contractor Actions

The Contractor shall at all times conduct its operations in such a manner as to avoid risk of bodily harm to persons or damage to property. The Contractor shall promptly take all reasonable precautions to safeguard against such risks and shall make regular safety inspections of its operations. The Contractor shall be solely responsible for the discovery, determination and correction of any unsafe conditions related to the Contractor's performance of the Work or Goods supplied by the Contractor.

B. Compliance with Laws

The Contractor shall comply with all applicable safety Laws, including any safety program established by Metro. The Contractor shall cooperate and coordinate with Metro and with other Metro Contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by Metro. Notwithstanding, the Contractor shall remain responsible for the Worksite safety.

C. Safety Practices

The Contractor shall inform its personnel of Metro safety practices and the requirements of Metro's safety program. If any of the Contractor's personnel are required to visit any Worksites, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel. This Article is to be construed in its broadest sense for the protection of persons and property by the Contractor and no action or omission by Metro, the Contracting Officer, any Authorized Representative or any other person shall relieve the Contractor of any of its obligations and duties hereunder.

D. Loss Prevention

In performing its obligations hereunder, Contractor shall at a minimum provide for protecting the lives and health of employees and other persons; preventing damage to property, goods; and avoiding work interruptions. For these purposes, the Contractor shall, at no additional cost:

1. Provide appropriate safety barricades, signs, and signal lights;
2. Comply with the safety policies of Metro and all applicable Laws;
3. Take additional measures Metro determines are reasonably necessary for this purpose. This determination, when delivered to the Contractor or the Contractor's agent, shall be deemed sufficient notice from Metro of noncompliance and Contractor shall immediately begin required corrective action. After receiving the determination, the Contractor shall

immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, Metro may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

4. Maintain an accurate record of exposure data on all occurrence incident to Work performed under the Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by Metro;
5. Inform its personnel of Metro safety practices and the requirements of Metro's safety program. If any of the Contractor's personnel are required to visit any Worksite, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel; and
6. Be responsible for its Subcontractor's compliance with this Article.

GC-26 PROTECTION OF EXISTING STRUCTURES, EQUIPMENTS AND VEGETATION *

A. Protection

The Contractor shall protect existing structures, equipment and vegetation (collectively "Existing Improvements") within and adjacent to the Worksite and shall exercise due caution to avoid damage to such Existing Improvements.

B. Repair and Replacement

Unless otherwise provided, the Contractor shall repair or replace all Existing Improvements damaged or removed by Contractor. Repairs and replacements shall be at least equal to Existing Improvements and shall match them in finish and dimension.

C. Costs

All costs for protecting, removing and restoring Existing Improvements shall be the sole expense of the Contractor. If the Contractor fails or refuses to make timely repairs, Metro may make the repairs. All costs incurred by Metro, as determined by Metro, for such repairs shall be repaid by Contractor by cash payment upon demand or, without limitation of any of Metro's rights and remedies provided by Law or under this Contract, Metro may deduct the cost from any amount due under this Contract.

GC-27 DAMAGE TO WORK AND RESPONSIBILITY FOR GOODS *

A. Responsibility for Work

Except as otherwise specified in this Article, the Contractor shall be solely responsible for Goods delivered and Work performed until the Contracting Officer issues a Certificate of Substantial Completion, or Certificate of Final Acceptance, if no Certificate of Substantial Completion is issued. Partial Substantial Completion of a portion of the Work shall only relieve the Contractor of responsibility for the Goods delivered and Work performed that are covered by the partial Substantial Completion.

B. Risk of Loss

Except as otherwise specified in this Article or in the California Public Contract Code §7105, the Contractor shall bear the risk of injury, loss, or damage to any and all parts of the Work from whatever cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall properly rebuild, repair, or restore the portions of the Work that have been damaged or destroyed from any causes prior to Acceptance as provided in the Section in this Article entitled Responsibility for Work, bearing the expense thereof.

C. Protection of Structures

The Contractor shall supply security and drainage and erect temporary structures as necessary to protect the Work from damage. The Contractor shall be responsible for Goods not delivered to the Worksite for which any Progress Payment has been made to the same extent as if the Goods were so delivered.

GC-28

TITLE *

A. Transfer

Title to portions of the Work for which Progress Payments or other payments are made shall pass to Metro at the time of payment. The title transferred as described above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances. The Contractor shall promptly execute, acknowledge, and deliver to Metro proper bills of sale or other written instruments of title in a form as required by Metro. If title has not been vested in Metro previously, title shall pass to Metro upon Final Acceptance.

B. Encumbrances After Transfer of Title

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

C. Acceptance

The transfer of title of Work to Metro shall not constitute or imply Metro's Acceptance of any Work. Notwithstanding the transfer of title, the Contractor

shall continue to be liable and responsible to Metro for any damage to or loss of Work until the Work is Accepted by the Contracting Officer.

D. Delivery

To transfer title the Contractor shall promptly execute, acknowledge, and deliver to the Authorized Representative proper bills of sale or other written instruments of title in a form as required by the Contracting Officer; said instruments shall convey to Metro title to Goods free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances. The Contractor at its own expense shall conspicuously mark such Goods as the property of Metro; shall not permit such Goods to become commingled with non-Metro-owned Goods; and shall take such other steps the Contracting Officer may require or regard as necessary to vest title to such Goods in Metro free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

GC-29

CONDITIONS AFFECTING THE WORK *

A. Contractor's Inspection

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

B. Contractor's Representation

The Contractor further represents that it has satisfied itself as to the character, quality, and quantity of surface and subsurface substances or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Worksite and a review of all documentation relating to the Worksite and the Work, including without limitation documents describing any exploratory Work performed by Metro, Reference Documents, and the drawings and Specifications that are a part of the Contract. Any failure of the Contractor to take the actions described in this Article shall not relieve the Contractor from responsibility for properly estimating the difficulty and cost of successfully performing the Work or for proceeding to successfully perform the Work without additional expense to Metro.

C. Contractor's Responsibility

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

D. Disposal of Waste

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

GC-30 DIFFERING SITE CONDITIONS *

A. Notice of Discovery of Subsurface Conditions

Contractor shall, before any of the subsurface conditions are disturbed, provide immediate oral or electronic mail notice of the discovery of such conditions to Metro's Authorized Representative, followed by written notice to the Contracting Officer of the discovery within 24 hours thereafter, of any of the following subsurface conditions:

1. Substances that the Contractor believes may be Hazardous Substances, that are required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Law ("Type 1 DSC");
2. Subsurface or latent physical conditions at the Worksite differing materially from those indicated in the Contract ("Type 2 DSC");
3. Unknown physical conditions at the Worksite of any unusual nature that differ materially from those ordinarily encountered in and generally recognized as inherent in Work of the character provided for in the Contract ("Type 3 DSC").

If the Contractor encounters substances during performance of the Work that it reasonably believes to be a Hazardous Substances, a Type 1 DSC, Contractor shall not disturb the condition and shall suspend Work in the immediate area of the suspected Hazardous Substances until Metro authorizes it to resume.

Metro reserves the right to use other labor forces to investigate and to perform work to determine the nature and extent of any suspected Type 1 DSC and to handle and/or remove the Hazardous Substances from the area.

If the Contractor encounters substances or conditions during performance of the Work that it reasonably believes to be a Type 2 DSC or Type 3 DSC, Contractor shall not disturb the condition or interfere with Metro's right or ability to investigate, but may continue Work in the area.

B. Metro's Responsibility and Determination

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

accordance with any other provision of the Contract providing for compensation to the Contractor under the circumstances.

C. Claims

The Contractor shall not be entitled to any remedy for an asserted Differing Site Condition if it does not give Metro both: (1) timely notice of the asserted Differing Site Condition, as required in this Article and in the Article entitled CLAIMS, and (2) an opportunity to investigate prior to the asserted Differing Site Condition being disturbed.

D. Proceed With Work

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

GC-31

EXTENSION OF TIME

A. Critical Path Schedule

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

B. Inexcusable Delay

An Inexcusable Delay is any Delay, including Delay in starting the Work after the Commencement Date set forth in the NTP, that is not an Excusable Delay. An Inexcusable Delay shall not be a cause for granting additional Contract Time or compensation, and shall be cause for termination of the Contract under the Article entitled TERMINATION FOR DEFAULT

C. Excusable Delay

A Delay of the Work shall be an "Excusable Delay" to the extent that:

1. The Contractor provides notice to the Contracting Officer describing the act or event that the Contractor asserts was the cause of the Delay not more than 5 days after the day the act or event occurs;
2. The act or event consumes all available Float and causes a Delay to the Critical Path Schedule;
3. The Delay to the Critical Path Schedule cannot be reasonably mitigated;

4. The Delay arises out of an act or event that was unforeseeable by the Contractor,
5. The causes and effects of the act or event were beyond the control and without the fault or negligence of the Contractor and did not arise out of the Contractor's failure to perform or meet the requirements of the Contract;
6. The act or event causing the Delay is not excluded as an Excusable Delay under any other provision of the Contract; and
7. A specific remedy for the Delay is not provided by any other provision of the Contract.

The Contractor will have the burden of proving the Delay occurred, the Delay was an Excusable Delay, as defined above, the Delay could not be fully mitigated and the length of time of the Excusable Delay. The Contractor will not receive compensation for an Excusable Delay unless it is also a Compensable Delay, as provided in the Section in this Article entitled Compensable Delay. Upon adequate proof of an Excusable Delay, the Contractor will be granted an extension of time and will not be assessed with liquidated damages to the extent of the Excusable Delay to the Critical Path Schedule.

D. Force Majeure and Severe Weather

Subject to Contractor meeting the requirements of the Section herein entitled Excusable Delay, and the following requirements, Contractor will receive and extension of Contract Time for an Excusable Delay caused by a Force Majeure event or severe weather: 1) Contractor has taken reasonable precautions to prevent further Delays arising out of such Force Majeure event or severe weather; and 3) Contractor provides written notice to Metro describing the Force Majeure event or severe weather and the cause(s) of the Delay within five (5) days after the beginning of such Delay. Metro will grant an extension of time for severe weather Delays only to the extent the Work is actually delayed as determined by Metro. Metro shall determine the extension of time for severe weather, if any, in accordance with the Special Provision entitled WEATHER DELAYS CAUSED BY RAIN. Contractor's exclusive remedy for any Excusable Delay arising out of a Force Majeure event or severe weather shall be an extension of Contract Time as provided in this Article.

E. Compensable Delay

An Excusable Delay shall be a Compensable Delay if the performance of all or any part of the Work is delayed or interrupted:

1. By an act of an Authorized Representative of Metro in the administration of this Contract that is not expressly or impliedly authorized by this Contract, or

2. By a failure of Metro to act within the time specified in this Contract, or within a reasonable time if not specified.

A Claim for a Compensable Delay shall not be allowed:

1. For any costs incurred more than 5 days before the Contractor shall have notified the Contracting Officer of the act or Event causing the Delay; and
2. Unless the Claim is in an amount stated, and is submitted in accordance with the Article herein entitled CLAIMS.

The Contractor will have the burden of proving that the Delay is both an Excusable Delay and a Compensable Delay. If an Excusable Delay is found to be a Compensable Delay, Metro will, by Change Order, extend the Contract Time for the increase in the time of performance, and will adjust the Contract Price (excluding profit). If this Contract provides for a daily unit rate of compensation ("Delay Compensation") in accordance with the Article in the Form of Contract entitled COMPENSATION FOR DELAY, the Contract Price will be adjusted at the specified Delay Compensation rate. The Change Order will be Contractor's sole remedy arising out of the Compensable Delay.

F. Concurrent Delay

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

G. Shortage of Goods

Except for a Delay in delivery by Metro of Metro-furnished Goods, a shortage of Goods shall not constitute a Compensable Delay. The Contractor may be entitled to an Excusable Delay if, in addition to meeting all other requirements for an Excusable Delay:

1. It supplies Metro with documented proof that it made every effort to obtain such Goods from every known source within reasonable distance of the Work; and
2. The inability to obtain such Goods when originally planned, did in fact cause a Delay in final completion of the Work that could not be fully mitigated by revising the sequence of its operations.

Only the physical shortage of Goods will be considered as a basis for an Excusable Delay. No consideration will be given to any claim that Goods could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of Metro that:

1. The Goods could have been obtained only at exorbitant prices or;
2. The prices were entirely inconsistent with current rates, taking into account the quantities involved and the usual practices employed in obtaining such quantities; and
3. The facts could not have been known or anticipated at the time the Contract was executed.

H. Multiple Causes of Delay

If a Delay arises out of more than one cause, to the extent that the Delay is Excusable or Compensable, subject to all the requirements of this Article, Contractor will be entitled to one extension of Contract Time for the cumulative change to the Critical Path Schedule.

I. Submittal of Information

The Contractor shall submit the following information to the Contracting Officer at the earliest possible date after Contractor provides notice to the Contracting Officer of the asserted Delay, as provided in this Article, and shall thereafter supplement information as it becomes available:

1. A detailed description of the events causing the Delay;
2. An analysis of the impact of the claimed act or event causing the Delay upon the then current Critical Path Schedule, identifying the affected activities, the actual impacts and the number of days delayed; and
3. Proposals and measures taken to mitigate the claimed Delay and the effects thereof.

J. No Metro Waiver

Metro's granting of an extension of time or the Acceptance of any part of the Work after the time specified shall not constitute a waiver of any of Metro's rights under the Contract other than those specifically provided for in the extension or Acceptance.

K. No Release of Surety

An extension of Contract Time granted shall not release the Contractor's Surety from its obligations.

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INCREASED OR DECREASED QUANTITIES

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

1. When the actual or measured quantity of a Unit required to complete the Work is more than a 25% increase from the estimated quantity of the Unit, as shown in the SCHEDULE OF QUANTITIES AND PRICES, an adjustment shall be made, upon demand of either party, to the price of those Units which are above 125% of the estimated quantity. The actual or measured quantity of Units up to 125% of the estimated quantity will be paid at the Unit Price shown in the SCHEDULE OF QUANTITIES AND PRICES. If neither party makes a demand for an adjustment in Unit Price for quantities above 125% of the estimated quantity, Metro will pay the Contractor the Unit Price shown in the SCHEDULE OF QUANTITIES AND PRICES for each such Unit.
2. When the actual or measured quantity of a Unit is less than seventy-five percent (75%) of the estimated quantity of the Unit, as shown in the SCHEDULE OF QUANTITIES AND PRICES, an adjustment shall be made, upon demand of either party, to the price of those Units. Metro will pay the lesser of:
 - i. The actual cost of the actual or measured quantity of the Units, including fixed costs; or
 - ii. The Unit Price of the Unit, as shown in the SCHEDULE OF QUANTITIES AND PRICES, multiplied by 75% of the estimated quantity of the Unit.

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A. General

1. The Contracting Officer may direct Changes within the general scope of the Contract without notice to sureties and may in its discretion direct immediate implementation of Changed Work by a CO, as provided herein. Upon receipt of a CO, the Contractor shall promptly proceed with the Work in accordance with the applicable conditions of the Contract. No direction, order, statement, or conduct of Metro, other than written

direction by the Authorized Representative, shall constitute or be the basis for a Modification or otherwise entitle the Contractor to additional Compensation or Contract Time.

2. The Contractor shall promptly submit an RFC when it receives direction, instruction, interpretation, or determination from any person, other than an Authorized Representative, to perform Work that would constitute Changed Work. The Contractor shall not proceed with any such Work until directed in writing by the Authorized Representative as provided in this Article.

B. Request for Information (RFI)

The Contractor may submit an RFI on any portion of the Work. Except under extraordinary circumstances, Contractor shall submit RFIs a minimum of 15 days prior to the need date for the information. Metro will provide a timely response and if a Change or other Modification is required initiate a CN, CO or other Modification.

C. Request for Change (RFC)

1. The Contractor may submit an RFC to Metro's Authorized Representative describing the proposed Change. The Contractor shall describe the discovery of conditions or the occurrence of an event (discovery and occurrence shall collectively be referred to as "Occurrence" and conditions discovered or an event shall be referred to as an "Event") supporting the RFC, identifying the Specification that it proposes to change and stating the reasons for the Change, including relevant circumstances and impacts on the Schedule. If the Contractor is requesting a Modification to the Contract Price or Time, it shall submit the following with its RFC:
 - a) Describe, in detail, the facts underlying the RFC, the reasons why Contractor believes additional compensation or time will or may be due and the date of the Event;
 - b) Provide the name, title, and activity of each Metro Authorized Representative knowledgeable of the facts underlying the RFC;
 - c) Provide such other information as the Contracting Officer may deem necessary to evaluate the RFC;
 - d) If the Contractor estimates the cost to implement the requested Change will be less than \$100,000, the Contractor shall also submit the following with its RFC:
 - (i) A cost and schedule proposal in the level of detail specified by Metro,

- (ii) Recommended Contract Modifications, including specific reference to the Sections and Paragraphs of the contract affected, or other basis of entitlement to the Change, and
 - e) For changes affecting Schedule, a fragment analysis showing how the Critical Path will be impacted by the Change.
2. The Contractor shall submit RFCs within 10 days after the Occurrence of the Event that is the basis of the RFC. If the Contractor delivers any RFC later than 10 days after the Occurrence of the Event (which shall be when Contractor first discovered or should have discovered the Occurrence of the Event in the exercise of reasonable prudence) described in the RFC, the Contractor shall not have, and will be deemed to have waived, any Claim to any increase in Contract Price or Time arising out of the Event for the period prior to the date of delivery of the RFC.
 3. If an RFC concerns any Event related to the Articles entitled DIFFERING SITE CONDITIONS, HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL AND SCIENTIFIC DISCOVERIES, or CONDITIONS AFFECTING THE WORK, Contractor shall immediately provide notice of the Event to Metro's Authorized Representative and shall afford Metro the opportunity to inspect such Event before it is disturbed. If the Contractor does not provide Metro such a timely opportunity, it shall be deemed to have waived the right to Claim any increase in Contract Price or Time in connection therewith.
 4. If the Contractor fails to provide a RFC within 60 days after any Occurrence of an Event, Contractor shall not have, and will be deemed to have waived, any Claim to any increase in Contract Price or Time arising out of the Event, unless Contractor can show, based on a preponderance of the evidence, that: (a) Metro was not materially prejudiced by the lack of notice, or (b) Metro's Authorized Representative had actual knowledge of the Event prior to the expiration of the 60-day period.
 5. If Metro approves the RFC, it will issue a CN, CO or other Modification.
 6. Notwithstanding anything that could be interpreted to the contrary in this Article, an RFC shall be at Contractor's risk. Contractor shall not be relieved from performing the Work during the time Metro considers the RFC and will not receive any adjustment in Contract Price or Time if Metro's Contracting Officer determines the subject matter of the RFC is not a Change or other Modification.

D. Contracting Officer's Directive (COD)

1. Directive – The Contracting Officer may issue a COD with respect to any Work or provision of this Contract. A COD may also include direction to the Contractor to comply with the direction, instruction, interpretation or determination (collectively "Direction") of any other person representing Metro related to this Contract. If the Direction was in excess of the authority of the Authorized Representative or any other person making

the direction, the COD shall constitute ratification of the Direction effective on the date of the COD.

2. Determination Whether Directive is Changed Work – Each COD shall either contain a determination by the Contracting Officer that the Direction is or is not Changed Work, or a date by which the Contractor will make the determination.
3. Issuance of Change Order – If the Contracting Officer determines that the COD constitutes Changed Work, it will issue a Change Order as soon as practicable after that determination.
4. Compliance With COD – The Contractor shall immediately comply with the COD in accordance with its terms.
5. Maintenance of Records for Claims –
 - a. In instances where the Contractor does not assert that a COD constitutes a Change or accepts in writing the determination of the Contracting Officer that a COD does not constitute a Change, upon Contractor's waiver of any Claim related to the COD, the Work will be deemed by the Parties not separate from existing Work and Contractor will not be required to maintain separate records.
 - b. In all instances where the Contractor reserves the right to Claim the COD constitutes Changed Work, Contractor shall maintain, in accordance with the Section entitled Basis for Establishing Costs, separate records to distinguish the cost of Work performed under the COD from existing Work, and records of its impact, if any, on the Schedule.
 - c. Within 1 day after performance of Work under the COD that the Contractor reserves the right to Claim is Changed Work, Contractor shall submit reports of the performance all such Work to Metro's Authorized Representative on forms provided by Metro. All such reports shall be certified by the Contractor's Representative and shall be deemed submitted upon the written acknowledgment of receipt of the report by Metro's Authorized Representative. Such acknowledgment of receipt shall not constitute acknowledgment that the Work was performed or that it was Changed Work.
 - d. Contractor shall preserve all back-up records and reports and shall make them immediately available to Metro's Authorized Representatives upon request.
 - e. All reports shall be subject to review and audit.

E. Change Notice (CN)

The Contracting Officer may issue a CN to the Contractor, describing a proposed Change to the Contract and requesting the Contractor to submit a

Contractor's Cost and Schedule Proposal (in the form prescribed by Metro). A CN does not authorize the Contractor to commence performance of the proposed Changed Work. Any Change implemented by Metro will be incorporated into a CO or other Modification.

F. Change Orders (CO) and Amendments

1. Metro's Authorized Representative may unilaterally or by agreement with the Contractor issue a CO directing the Contractor to proceed with a Change in the Work. The CO shall contain a Not to Exceed (NTE) amount to be expended by the Contractor under the CO.
2. The Contractor shall not commence performance of the Work described in the CO until Metro's Authorized Representative executes the CO and transmits it to the Contractor.
3. Until such time as the parties agree to any Changes arising out of the CO and execute an Amendment, the Contractor shall maintain its records in accordance with the Section entitled Basis for Establishing Costs.
4. The Contractor shall maintain contemporary records as necessary to distinguish the cost of Changed Work performed under a CO from the cost of other Work until the parties execute an Amendment, or they resolve any Dispute through the Dispute Resolution Process (such resolution shall constitute a Modification). Payment for the Work shall be pursuant to the Section entitled Basis for Establishing Costs. The Contractor shall submit reports of Work on forms prescribed by Metro within one day after performance of the Work. All back-up records and reports shall be made immediately available to Metro upon request. All reports shall be certified by the signature of the Contractor's Representative and acknowledged by Metro's Authorized Representative. All submittals shall be subject to audit and determinations of the accuracy of the submitted information.
5. Metro shall not be liable for or pay any amount in excess of the CO NTE amount. The Contractor shall notify Metro when eighty percent (80%) of the NTE amount has been expended, and provide an estimate of the cost to complete the Changed Work. If Metro agrees that costs in excess of the NTE amount are justified, Metro will issue a revised CO increasing the NTE amount.
6. Any Amendment executed by both parties, arising out of a CO shall:
 - a. Expressly state that the Work described therein is Changed Work.
 - b. Include all Changes to the Critical Path Schedule, the Contract Price, and all costs of any nature arising out of the Changed Work and shall be accompanied by a Certificate of Current Cost or Pricing Data.

- c. Contain a statement that the adjustment to the Contract Time and Contract Price, if any, includes all time and amounts to which the Contractor is entitled as a result of the Changes giving rise to the CO.
7. The execution of an Amendment by Metro and the Contractor shall be deemed to be an unconditional agreement to all Work, and all adjustments to Contract Price and Contract Time related to the Change. There will be no reservation of rights by either party on an Amendment.

G. Contractor's Cost and Schedule Proposal (CSP)

1. The Contractor shall submit a Contractor's Cost and Schedule Proposal (CSP) to Metro's Authorized Representative within the time limits below after receipt of a CN or CO from Metro:

Proposed Value	Owner Directed Changes	Contractor Requested Changes (RFC)
< \$100,000	5 Working Days	With the RFC as required above
>= \$100,000	15 Working Days	15 Working Days

2. In preparing the CSP, Contractor shall:
 - a. Use the forms provided or approved by Metro, and the components set forth in the Section entitled Basis for Establishing Costs, to identify all costs of the Change, including overhead and profit.
 - b. Identify the impacts of the Change on, and integrate the Change in to the Critical Path Schedule.
 - c. Follow Construction Specifications Institute's (CSI) Master Format classification system in describing the Changes.
 - d. Base the proposal on the Contractor's actual, expected construction productivity rates (and provide appropriate support for those productivity rates); not on published or trade association composite rates.
 - e. Identify any prices or other elements of the CSP that are conditional, such as time sensitive orders or events.
 - f. Certify the CSP upon Metro's request.
 - g. Include a Certificate of Current Cost or Pricing Data as described in the Article entitled AUDITS.
 - h. If the CSP totals one-hundred-thousand dollars (\$100,000) or more, include an Ethics Declaration on the form provided by Metro.

3. If the Contractor does not submit the CSP by the required date, Metro reserves the right to modify the CO utilizing Metro's fair cost estimate.
4. If any prices or other elements of the proposal are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, the Contractor shall identify these conditions in its proposal.

H. Basis for Establishing Costs

The amount payable for a Change is the sum of all eligible costs the Contractor necessarily incurs to perform the Work and a mark-up for overhead and profit. Any increase in the costs shall exclude:

1. Costs caused by the breach of contract or fault or negligence, or act or failure to act of the Contractor, or any Subcontractor, or any other Persons for whom the Contractor may be contractually or legally responsible; and
2. Costs which could reasonably be avoided by the Contractor, including resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work, adjusted for any additional costs reasonably incurred in connection with such reallocation or redeployment.

Eligible costs shall include:

1. Labor Costs
 - a. Labor cost shall be based, as a minimum, on the prevailing wage scale for each craft or type of Work used in the Changed Work, as well as payroll taxes and fringe benefits, as applicable. Payroll taxes shall be calculated on base wage only and not on fringe benefits. Fringe benefits shall be applied only to the straight-time component of cost and shall not apply to the premium-time component unless otherwise required by the California Labor Code.
 - b. Labor reports shall include names, hours worked, and rates of pay for all classifications that are engaged in the actual direct performance of the Changed Work. Labor costs shall not include costs for management personnel above foreman, office personnel, timekeepers, and maintenance mechanics unless authorized by the Contracting Officer prior to the start of Changed Work.
2. Material Costs

Material costs shall be the cost of all Goods purchased by the Contractor and used in the Changed Work, including normal wastage allowance as per industry standards. The cost shall include freight, delivery, unloading, storage charges, taxes and all Supplier discounts. The prices shall be supported by valid invoices or binding written quotations from reputable

Suppliers, or shall be prices from existing purchase orders, blanket purchase orders or other ordering agreements standard in the industry. The invoices or quotations shall be made available to Metro upon request. Metro reserves the right to review and accept Goods and sources of supply of Goods to be furnished by the Contractor or its Subcontractor(s), as well as the right to furnish the Goods to the Contractor if necessary to facilitate the progress of the Work.

3. Construction Equipment Costs

The rates described in this Paragraph include the Construction Equipment, plus the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals, subject to the following:

- a. Construction Equipment costs shall not include costs for items normally considered Contractor plant or fixed costs items (such as buildings, trailers, office equipment, utilities, rail, piping, electrical distribution systems, processing plants, material handling facilities, work platforms, scaffolding, and concrete forms).
- b. Construction Equipment reports shall include size, type, identification number, rental rate (if applicable), and hours of operation.
- c. Construction Equipment and tools having a replacement value of \$200 or less, whether or not consumed or used, shall be considered small tools and no payment shall be made for them.
- d. Equipment ownership fixed costs shall be limited to the following for multiple shift operations:
 - (1) Overhead - at the hourly overhead rate listed in the Cost Reference Guide for Construction Equipment for the first shift each day and at 15% of that same hourly rate for the second shift each day. No additional overhead costs will be allowed for a third shift; and
 - (2) Depreciation - the hourly depreciation rate listed in the Cost Reference Guide for Construction Equipment for the first shift each day and at 50% of that same hourly rate for the second and third shifts each day.
- e. Metro shall pay Contractor for the use of Contractor-owned Construction Equipment at the total hourly cost rates listed for such Construction Equipment in the Cost Reference Guide for Construction Equipment (published by Dataquest of San Jose), which edition shall be the latest edition in effect at the time the Changed Work is performed. No adjustment to the total hourly cost rates listed in the Cost Reference Guide shall be made except as stated in this Paragraph for multiple shift operations and standby.

- f. If it is deemed necessary by the Contractor to use Contractor-owned specialized Construction Equipment not listed in the applicable edition of the Cost Reference Guide for Construction Equipment (as noted above), the Contractor shall submit all cost data to Metro's Authorized Representative for its use in establishing the rate.
- g. If the Contractor deems it necessary to use rental Construction Equipment due to the lack of availability of Contractor-owned Construction Equipment to perform the Changed Work, the Contractor shall submit the cost data, including written quotes, published price lists and paid invoices to Metro's Authorized Representative for use in verification of such rental cost. Metro will pay for Construction Equipment rented under lease-purchase or sale-leaseback arrangements, or rented from an organization under control of the Contractor or under common control with the Contractor, at the rates set forth in the Cost Reference Guide for Construction Equipment.
- h. Construction Equipment operators shall be paid for as stipulated in the Paragraph entitled Labor Costs.
- i. All Construction Equipment shall be in good working condition and suitable for the purpose for which it is to be used.
- j. Unless otherwise specified, manufacturer-approved modifications shall be used to classify Construction Equipment for the determination of applicable rental rates. Applicable rental rates for Construction Equipment that has no direct power unit shall be based on being powered by a unit of at least the minimum rating recommended by the manufacturer of that Construction Equipment.
- k. Metro will not pay compensation for Construction Equipment while it is inoperative due to breakdown, routine maintenance or other Contractor controlled or planned down time.
- l. Except as otherwise specified in this Article, time will be computed in half and full hours. In computing the time for use of Construction Equipment, less than 31 minutes shall be considered one-half hour.
- m. After Construction Equipment is idle for 16 hours in a 24 hour period it shall be deemed to be on standby, and Compensation for such Construction Equipment shall be limited to the sum of the hourly overhead and depreciation rates for 8 hours per 24 hour period.
- n. The time shall include the time required to move the Construction Equipment to the location of the Changed Work and return it to the original location (or to another location requiring no more time than that required to return it to its original location). Loading and transporting costs shall be allowed, in lieu of moving time, when the Construction Equipment is moved by means other than its own power. No payment for loading and transporting shall be made if the

Construction Equipment is also used at the Worksite for other than the Changed Work.

- o. The Construction Equipment use period shall:
 - (1) Begin at the time the Construction Equipment is unloaded at the site of the Changed Work during standard work hours;
 - (2) Include each day that the Construction Equipment is at the Worksite of the Changed Work, excluding Saturdays and Sundays and other legal holidays unless such Work is performed on those days; and
 - (3) Terminate at the end of the day on which the Work is completed or Metro's Authorized Representative instructs the Contractor to discontinue the use of such Construction Equipment.
- p. Contractor shall substantiate the costs of all rented Construction Equipment by the Supplier's invoices or, if the work has not yet been started, by signed quotes or published rate sheets, submitted with the current reports; or, if not then available, submitted with subsequent reports. If the Contractor does not submit Supplier's invoices within 30 days after completion of the Changed Work, or if in Metro's opinion the cost of such rented Construction Equipment is excessive, then the cost of such Equipment shall be determined utilizing the guides listed in Paragraph 3.d above.
- q. No additional compensation shall be allowed for Construction Equipment used to perform Changed Work if such Equipment is already on the Worksite and being used or will be used for other than the Changed Work.

4. Overhead and Profit

- a. If prior to commencement of performance of Changed Work the Parties agree on the amount of the direct costs of such Work, the Contractor shall be paid mark-ups on such direct costs for overhead and profit of:
 - (1) 20% for direct labor costs;
 - (2) 15% for material costs; and
 - (3) 15% for Construction Equipment use costs.
- b. If the direct cost of the Work is based in whole or in part on the Contractor's actual incurred costs, the mark-ups for overhead and profit shall be subject to determination by the Contracting Officer based upon audited overhead rates and a reasonable profit, not to exceed the markups set forth in Sub-Paragraph a of this Paragraph.
- c. The mark-ups for overhead include and are full compensation for all indirect costs of any nature, including without limitation home and field

office overhead, all taxes of any nature (except taxes covered herein under labor or material costs), Performance and Payment Bond premium adjustments, small tools, incidental job burdens, incidental engineering and all other indirect costs of the Changed Work.

- d. Incidental engineering costs, referred to in the previous Paragraph, which shall be included in the overhead mark-up, shall include all time spent by engineers for RFI and RFC preparation, Change Order administration, preparation and coordination of shop drawings, attendance at meetings, inspections scheduling, estimating, Claim preparation, submittal preparation and review, mix and shoring design and all other tasks normally performed by contractors as part of the Work under similar construction contracts.

5. Engineering Costs

- a. Engineering costs that constitute a direct cost under a Change Order or other Modification shall be limited to costs that meet all of the following elements. They are:
 - (1) Not incidental engineering costs (as described in the immediately preceding Paragraph);
 - (2) Costs arising from engineering Work specified in the Change Order or other Modification, and
 - (3) Costs of engineering in excess of the total estimated cost of engineering for the Contract as shown in the Escrowed Bid Documents (if Bid Documents are escrowed).
- b. Engineering costs which arise as a result of a Force Majeure or severe weather event shall not be compensable.

6. Subcontractor Costs

- a. Overhead and Profit: When Changed Work is performed by a Subcontractor of any tier, the allowable mark-ups set forth above shall be applied only to the Subcontractor's direct costs. Contractor shall not be allowed any mark-up(s) on Subcontractor costs.
- b. Suppliers Goods: Metro will not pay a mark-up for goods furnished by Suppliers, including, but not limited to, Goods specially fabricated or substantially modified for use in the Contract.
- c. Unit Priced Items: Metro will not pay a mark-up for Units with Unit Prices established in the Contract.
- d. Metro Furnished Goods: Metro will not pay a mark-up for Goods furnished by Metro.

- e. Subcontract Management Fee: Metro will allow a single Subcontract management fee to Contractor up to five percent (5%) of the total aggregate of all Subcontractor allowable costs for the Changed Work, regardless of the number of intervening tiers of Subcontractors. The Subcontract management fee may be shared with Subcontractors of all tiers at the Contractor's discretion. Metro will not allow for any additional fee for Subcontractor(s) on their Subcontractors' costs.

7. Credit Items

Where the Contractor's or any tier Subcontractor's portion of a Change or other Modification involves credit items, or the proposed Change is a fully deductive Change or other Modification, the Contractor shall utilize the same mark-ups in computing the value of the credit.

8. Bond Costs

Changes to the cost of Performance and Payment bonds shall be limited to the actual increase or decrease in the cost of the Bonds arising directly out of the Change or other Modification and shall be paid after Final Acceptance of the Work. A copy of the Surety's invoice must be provided to document the change in the cost of the Bonds.

9. Acceleration Costs

No Acceleration Costs incurred by the Contractor to avoid a delay in any Milestone or in Substantial Completion of the Work shall be payable hereunder except with respect to Change Orders issued by Metro as an alternative to allowing an extension of time pursuant to the Article entitled EXTENSION OF TIME.

I. Audit

The Contractor's records pertaining to Changes pursuant to this Article are subject to audit as set forth in the Article entitled AUDITS.

J. Limitations on Authority

Nothing in this Article shall be construed to bind Metro for acts of any person, including its Authorized Representatives, who exceed their authority as set forth in the Article entitled AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORIZED REPRESENTATIVES.

K. Work After Scheduled Completion Date, or During Suspension or Delay

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

L. Interest

Except as provided in Public Contract Code Section 20104, no interest shall be payable on any amounts until the later of 30 days after: (1) execution to the Modification by both parties; or (2) the amounts become due and payable under the terms of the Modification.

M. Accord and Satisfaction

The execution of an Amendment by the Contracting Officer and the Contractor's Representative shall constitute a full accord and satisfaction of all amounts payable, all time extensions allowable and all other Claims arising out of the Event or Work that is the subject matter of the Amendment.

GC-34 VALUE ENGINEERING PROPOSALS *

A. Value Engineering Proposals - General

The Contractor may submit to Metro, in writing, value engineering proposals for modifying the Specifications for the purpose of reducing construction costs. The value-engineering proposal shall not impair the essential functions or characteristics of the Work, including service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

B. Value Engineering Proposals - Contents

1. Value engineering proposals shall contain the following information:
 - a. A general description of the original Contract requirements for the Work and the proposed changes;
 - b. An itemized list of all the proposed modifications to the drawings and specifications;
 - c. An itemized list of all Work and Goods affected by the value-engineering proposal;
 - d. A detailed estimate of the construction costs based on the original Contract requirements and based on the proposed Changes;
 - e. Any requested time extensions or reductions to the Contract Time or Contract Milestones;
 - f. Statement that there will be a minimum twenty-five thousand (\$25,000) net savings; and
 - g. The date by which the Contractor requires a decision from the Contracting Officer concerning the value-engineering proposal.

2. The detailed estimate shall be supported by full and completely detailed estimates of costs by the Contractor, Subcontractors and Suppliers. The estimates of costs shall be determined in the same manner as if the Work were to be paid as a Change pursuant to the provisions the Article entitled CHANGES. The Contractor shall, upon the request of Metro, permit inspection of its original Bid estimate, Subcontracts and purchase orders relating to the value-engineering proposal.
3. The Contractor's cost of preparing the value-engineering proposal shall be excluded in determining the estimated net savings in construction cost.

C. Value Engineering Proposals – Metro Review

Metro may in its the sole discretion accept the value-engineering proposal or any part thereof, and determine the estimated net saving in construction cost. In determining the estimated net savings, Metro may disregard the original contract bid estimates for any related Work or Goods, which in the judgment of Metro, do not represent a fair measure of the value of the Work or Goods. Metro will not be liable for Delays or damages to the Contractor resulting from any failure of Metro to accept or act upon any value-engineering proposal submitted pursuant to this Article. If a submitted value-engineering proposal is similar to a Change already under consideration by Metro, Metro may make such Change pursuant to the Article entitled CHANGES without respect to the Value Engineering Proposal.

D. Modifications– Metro Issuance

If the value-engineering proposal is acceptable to Metro, in whole or in part, Metro will accept by execution of a Modification, which shall specifically state that it is executed pursuant to this Article. Such Modification shall identify all the Changes in the Specifications, Contract Time and Milestones; shall specify net savings in construction costs; and shall provide that the Contractor be paid 50% of the said net savings amount based upon the difference between the amount contained in the Contract and the estimated net savings, both as determined by Metro.

E. Change Orders – Contract Review

The Contractor shall either accept or reject any proposed Amendment executed by Metro pursuant to this section within (5) working days of its receipt date from Metro. If the Contractor does not reject the proposed Amendment in writing within the five (5) working days will be deemed accepted by Contractor, and shall become an Amendment to the Contract the same as if the Amendment had been executed by the Contractor. Contractor's acceptance, or deemed acceptance, of any Amendment executed by Metro pursuant to this Article shall be unconditional and the compensation stated therein shall constitute full compensation for all Work and Goods covered by the Amendment.

A. General

The Contractor, its Subcontractors and Suppliers of any tier shall be subject at any time to audits by the Authorized Auditors to verify compliance with all Contract requirements.

The audits will be performed using FAR Part 31, Generally Accepted Accounting Practices and Principles (GAAP), and Metro's Contractor Cost Guidelines to determine the allowability, allocability, and reasonableness of the costs. If, based on an audit, the Contracting Officer determines that the Contractor has been previously overpaid, such overpayment shall be deducted from the Contractor's next Progress Payment, or after 10 days notice to the Contractor, the Contractor shall reimburse Metro.

B. Metro Rights

The Authorized Auditors shall have the right to examine all records, books documents and any other applicable data or evidence (hereinafter in this Article "Records") necessary to permit adequate evaluation of cost or pricing data submitted in connection with each CN, CO, Modification and Claim, along with the computations and projections used. The Authorized Auditors may also examine such Records in connection with any Application for Progress Payment that relates to Work performed under a CO, and Goods not yet incorporated into the Work.

For a period of three (3) years after the Final Acceptance of the Contract, the Authorized Auditors shall have the right to examine all Records that relate to the negotiation and/or performance of a CO or other Modification for the purpose of determining the accuracy and completeness of the cost or pricing data submitted by the Contractor. For all audits, the Authorized Auditors shall have the right to examine, reproduce and audit all Records regardless of form (e.g., machine readable media such as disk, tape, etc.), or type (e.g., databases, application software, database management software, utilities, etc.) of the Contractor, including computations and projections, in order to evaluate whether the Records are accurate, complete and current.

C. Contractor Responsibilities

The Contractor shall maintain its Records within the United States in accordance with FAR Part 31, GAAP, and Metro's Contractor's Cost Guidelines. The Records shall be sufficient to properly reflect all costs the Contractor claims to have been incurred, or anticipates it will incur, in performing the Contract. The Contractor, its Subcontractors and Suppliers are responsible for accounting for unallowable costs in accordance with FAR Subpart 31.201-6. All costs that are expressly unallowable or mutually agreed to be unallowable, including directly associated costs, shall be excluded from any billing, Claim, or proposal applicable to Metro's Contract. The Contractor shall maintain and segregate cost and pricing data, Records, and any other accounting evidence sufficient to properly reflect all direct and indirect costs of whatever nature the Contractor claims to have incurred or anticipates it will incur under any CO or other Modification. The Contractor

shall make said evidence (or to the extent accepted by the Authorized Auditors, photographs, micro-photographs or other authentic reproductions thereof) available to the Authorized Auditors at the Contractor's offices at all reasonable times and without charge. The Contractor and its Subcontractors and Suppliers shall keep and preserve all such Records for a period of at least three (3) years from and after Final Acceptance of the Contract, or if the Contract is terminated in whole or in part until three (3) years after the final Contract close-out.

Contractor shall provide Records that are on machine-readable media in a format accessible and readable by the Authorized Auditors.

D. Written Notice

Upon reasonable advance written notice, the Authorized Auditors shall have access at all times to all Records maintained by the Contractor and its Subcontractors and Suppliers for the Contract, for the purpose of auditing and verifying the Contractor's cost claimed to be due and payable hereunder, or anticipated to be incurred in performing the Contract. Reasonable advance written notice shall be provided with a copy sent to the Contractor's Representative for any audits performed at the Contractor's and/or Subcontractor's Home Office.

E. Defective Cost and Pricing Data:

1. Contractor Data

The Contractor shall certify in the form prescribed by Metro that to the best of its knowledge and belief, the data submitted in relation to any Modification or Claim under this Contract were accurate, complete and current as of the date of agreement of the negotiated price of the Modification. If the Contractor, Subcontractor, Supplier, prospective Subcontractor or prospective Supplier supplied certified cost or pricing data that were not complete, accurate, and current, or furnished data of any description that were not complete, accurate and current, the amount, including profit, negotiated in connection with any Modification or Claim shall be adjusted, and the Contract shall be modified to reflect the adjustment.

2. Subcontractor/Supplier Data

Before awarding any Subcontract in connection with any Change, the Contractor shall require the Subcontractor to submit cost or pricing data, in writing, unless the price is based on adequate price competition; based on established catalog or market prices for commercial items sold in substantial quantities to the general public; or set by Law. The Contractor shall require the Subcontractor to certify in the form prescribed by Metro, to the best of its knowledge and belief, the data submitted were accurate, complete and current as of the date of agreement on the negotiated price of the Subcontract or Subcontract modification.

F. Requirements Not Exclusive

The requirements of this Article are in addition to other audit, inspection, and record keeping requirements specified elsewhere in the Contract.

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CLAIMS

A. Notice of Intent to Claim (NOIC)

1. Conditions to Claim - As a condition to pursuing any Claim under or in connection with the Contract, the Contractor must meet all requirements set forth in this Article for submission of Claims.
2. Time Limits - The Contractor shall, as a condition precedent to entitlement, submit a written Notice of Intent To Claim (NOIC) to the Contracting Officer within 10 days after the Event or Occurrence, giving rise to the potential Claim in accordance with the provisions of this Article. Failure to comply with these requirements shall constitute a waiver by the Contractor of any right, equitable or otherwise, to bring any such Claim against Metro.
3. Content - The NOIC shall set forth the reasons the Contractor believes additional compensation or time is or will be due, the nature of the costs or Delay involved, and insofar as possible, the amount of the potential Claim.
4. Additional Work - If the Claim is for additional Work not yet commenced, Contractor shall, if possible, give the NOIC to the Contracting Officer prior to Contractor's start of performance of the Work.

B. Submittal of and Response to Claims

1. Submittal and Review - Subject to having filed a timely NOIC, the Contractor shall file its Claim in writing within 60 days after the Occurrence of the act or Event giving rise to the Claim, in sufficient detail for Metro to ascertain its basis and amount. The Contractor shall furnish, when requested by Metro's Authorized Representative, such further information and details as Metro may require to evaluate the Claim. The Contractor shall give Metro's Authorized Representative access to its Records (as defined in the Article entitled AUDIT) and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that Metro's Authorized Representative can fully investigate the Claim.
2. Delay Claims - The Contractor shall submit to the Contracting Officer with each Claim for an adjustment on account of Delay for any cause a proposed revision to the Critical Path Schedule incorporating the effects of the Delay claimed. The Claim shall also contain reasonable proposals to minimize the Delay and its effects. If the Critical Path Schedule submitted to the Contracting officer prior to the Delay for which relief is sought did not describe prior conditions affected by the Delay, then Contractor shall prepare a portion of the Critical Path Schedule reflecting

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

3. Certificate of Current Cost and Pricing Data - All Claim submittals shall include a Certificate of Current Cost and Pricing Data. In addition, and except as otherwise provided in Article 1.5 (defined below), each Claim over \$50,000 shall be accompanied by the following certification that:

"I certify that the Claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Contract adjustment for which the Contractor believes Metro is liable; and that I am duly authorized to certify the Claim on behalf of the Contractor."

C. Claims Subject to Article 1.5

1. Article 1.5 - This Contract is subject to the provisions of Sections 20104 et seq. of the California Public Contract Code (Article 1.5 of Chapter 1 of Part 3, entitled Resolution of Construction Claims – hereafter "Article 1.5"), and claims subject to said Article 1.5 shall be processed in accordance therewith. Pursuant to Section 20104[c], the full text of Article 1.5 is attached hereto as Attachment 1.
2. Other Requirements - Depending upon the grounds for relief and the nature of relief sought, information and conditions to resolution including additional submittals, not inconsistent with Article 1.5, may be required elsewhere in the Contract.

D. Claims Not Subject to Article 1.5:

For Claims not subject to Article 1.5, the provisions of Article 1.5 are hereby incorporated and shall apply, except the 60 day response period set forth in Section 20104.2(c)(1) shall be 90 days.

E. Government Code Claims

1. Submittal - If the Contractor disputes the Contracting Officer's decision or if the Contracting Officer fails to make a decision with respect to the Claim, the Contractor may file a Claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencement with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code ("Government Code Claim") within the time limits set forth in Government Code.
2. Claims \$50,000 and Under – The commencement of the running of the period of time to file a Government Code Claim for \$50,000 or less shall be tolled until the Contracting Officer denies the Claim in writing pursuant to the process set forth in Section 20104.2(b) of Article 1.5. If the

Contracting Officer does not deny the Claim in writing, the Claim shall be deemed denied by the Contracting Officer 15 days after the day the Contractor submits its final documentation as provided in Section 20104.2(b)(3). If the Contracting Officer denies the Claim in part, those parts of the Claim that are denied shall be subject to a Government Code Claim.

3. Claims over \$50,000 - The commencement of the running of the period of time to file a Government Code Claim for Claims over \$50,000 shall be tolled until the Contracting Officer denies the Claim in writing as a result of the "meet and confer" process pursuant to Section 20104.2(e) of Article 1.5. If the Contracting Officer does not deny the Claim in writing after the "meet and Confer" process, the Claim shall be deemed denied by the Contracting Officer 15 days after the last day of the "meet and confer" process. If the Contracting Officer denies the Claim in part, those parts of the Claim that are denied shall be subject to a Government Code Claim.

F. No Claim After Final Acceptance

Contractor shall not be eligible to, and shall not, make any Claims after the Contracting Officer executes a Certificate of Final Acceptance under the Article entitled FINAL INSPECTION AND ACCEPTANCE OF THE WORK. Contractor's Request for Final Acceptance of the Work and the Contracting Officer's issuance of a Certificate of Final Acceptance shall constitute a full accord and satisfaction with respect to all Claims, actual or potential, known or unknown.

G. Performance During Claim or Dispute

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

H. Accord and Satisfaction

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

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DISPUTES

A. Administrative Process

1. Negotiation - If a Dispute under the Contract arises, the Contracting Officer and the Contractor's Representative shall use their best efforts to resolve the Dispute through negotiation.

2. Documentation - All Disputes and negotiations shall be documented by each Party in writing and state the specifics of each Dispute and actions taken.
3. Agreement to ADR - If a Dispute cannot be resolved by the Contracting Officer and the Contractor's Representative, they may agree to use an ADR process for settling the Dispute.
4. Determination by Contracting Officer - In the absence of settlement, the Contracting Officer may, upon its own initiative, or upon the written request of the Contractor, make a determination of the Dispute. Upon such determination, Contractor shall immediately comply with the determination.
5. Claims - If the Dispute involves a Claim by the Contractor, the Contractor shall comply with and be subject to the provisions of the Article entitled CLAIMS, including the time limits for the filing of a Government Code Claim.

B. Alternative Dispute Resolution (ADR)

If the Parties choose to use ADR to attempt to resolve a Dispute:

1. The results of the ADR shall not be binding on either Metro or the Contractor unless the Parties have separately agreed prior to the ADR in writing that the ADR will be binding or thereafter agree by a separate settlement or other agreement that it will be binding.
2. A mediation will not be binding, except by separate agreement as a result of the mediation and in no event will a mediator make any findings.
3. Any separate agreement reached by the Parties as a result of a mediation or non-binding arbitration shall be implemented as a Modification.
4. If the ADR does not resolve all issues and there are items to be negotiated in order to enter into a Modification, the Parties shall use their best efforts to negotiate those issues. If they are unsuccessful the Parties may agree to return to the ADR for further proceedings on the open issues. If the Parties cannot agree, they shall proceed in accordance with the following Paragraphs.
5. If the ADR is an arbitration (or other process in which findings are made), the findings may be used in any concurrent or subsequent Claim, litigation or other action at Law or in equity only if the Parties have agreed that the findings may be used.
6. If either party does not accept the result of a non-binding arbitration, or they are unable to reach agreement on a Modification, the Contracting Officer may make a determination, which shall be final, subject to Contractor's remedies under the Article entitled CLAIMS. In the absence of a determination by the Contracting Officer after conclusion of the ADR, the Contracting Officer's determination prior to the ADR shall apply, subject to Contractor's remedies under the Article entitled CLAIMS.

7. The Parties may agree that the time for the filing of a Government Code Claim, as defined in the Article entitled CLAIMS, shall be tolled during the pendency of an ADR process. The terms of the tolling agreement shall be subject to the agreement of the Parties.

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SUSPENSION *

A. Order of Suspension;

Metro may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying, or interrupting all or any part of the Work for a specified period of time.

B. Contractor Compliance:

The Contractor shall comply immediately with any written order it receives from the Contracting Officer suspending the Work and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of Work stoppage. Contractor shall continue the Work that is not included in the suspension at normal full strength and shall continue ancillary activities, as reasonably required to preserve property or as otherwise required by the Contracting Officer. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction of the Contracting Officer.

C. Price and Time Adjustments

The Contractor may submit an RFC for an adjustment in the Contract Price (not to include profit) and/or an extension of the Contract Time, to the extent that cost or Delays are shown by the Contractor to be directly; attributable to any suspension. The RFC shall be filed within 20 days after the end of the Work suspension. However, no adjustment shall be made under this Article for any suspension, Delay or interruption to the extent that the Contractor's performance would have been so suspended, Delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment to the Contract Price or an extension of Contract Time is provided for, or excluded under any other term or condition of the Contract. The provisions of this Article shall only apply if a written order of suspension, Delay or interruption is issued by the Contracting Officer.

D. Work During Suspension

If during the suspension, the Contracting Officer authorizes the Contractor to incur any costs or perform any Work related to the suspended Work, such authorization shall be by CO and shall identify the authorized Work, any staff required to achieve the level of effort authorized, and the not to exceed amount of the authorization. Metro will make partial payments up to the not to exceed amount of the authorization against costs incurred by the Contractor in connection with the authorized Work.

A. Notice of Termination

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

B. Obligations Upon Termination

After receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, the Contractor shall:

1. Stop Work under the Contract on the date and to the extent specified in the Notice of Termination.
2. Place no further orders or Subcontracts for Goods or Work, except as may be necessary for completion of such portions of the Work expressly excluded from the Notice of Termination.
3. Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties, at any tier.
4. Terminate all orders and Subcontracts that relate to the performance of the Work terminated by the Notice of Termination.
5. Settle outstanding liabilities and claims arising out of such termination of orders and Subcontracts, with the Acceptance of the Contracting Officer if required (which Acceptance shall be final for the purposes of this Article).
6. Upon the Contracting Officer's written order, assign to Metro in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor in and to outstanding orders and Subcontracts affected by the termination.
7. Transfer title and deliver to Metro in the manner, at the times, and to the extent directed by Contracting Officer:
 - a. Fabricated or unfabricated materials, supplies and Goods constituting Work in process, and all other products of uncompleted Work,
 - b. Completed Work, supplies, and other Goods procured as a part of, or acquired in connection with, the performance of the Work terminated; and
 - c. Completed or partially completed designs, plans, drawings, information, documentation and other items that would have been

required to be completed and Furnished to Metro if the Contract had been completed.

8. Use its best efforts to sell the Goods referred to in this Article in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Contracting Officer, providing that the:
 - a. Contractor is not required to extend credit to any purchaser;
 - b. Contractor may acquire any such Goods under the prescribed conditions; and/or
 - c. Proceeds of any such transfer or disposition shall be applied or otherwise credited to reduce payments made by Metro to the Contractor under the Contract.
9. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which Metro has or may acquire an interest.
10. Comply with all other requirements of Metro as may be specified in the Notice of Termination.
11. Complete performance of that portion of the Work that has not been terminated by the Notice of Termination, as applicable and in accordance with the Contract.

C. Submittal and Review of Invoice

Within 60 days after Metro's delivery of a Notice of Termination for Convenience, Contractor shall submit a final invoice based on the percentage of the Work completed prior to the effective date of termination and other costs reasonably incurred by the Contractor to implement the termination. Metro shall review and the Contracting Officer shall approve the invoice, or approve the invoice as adjusted, based upon its determination of the amount due.

D. Failure to Submit Termination Invoice

Upon failure of the Contractor to submit its termination invoice within the time specified, the Contracting Officer will determine the amount due the Contractor, if any, on the basis of information available, and will pay the Contractor the amount so determined. Such payment shall constitute payment in full for the Work performed under the Contract. Any allowable costs incurred prior to the date of termination shall be handled in accordance with the Contract Document entitled COMPENSATION AND PAYMENT PROVISIONS.

E. Partial Payments and Settlements

1. Partial Payments – Under such terms and conditions as it may prescribe and at its sole discretion, Metro may make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever the Contracting Officer decides that the aggregate of such payments is within the amount to which the Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed-upon or determined to be due under this Article, such excess shall be payable by the Contractor to Metro upon demand, together with interest at a rate equal to that set forth in California Code of Civil Procedure Section 685.010.
2. Partial Settlements – Subject to the provisions of this Article, the Contractor and the Contracting Officer may agree upon the total of partial amount to be paid to the Contractor by reason of the total of partial termination of the Work pursuant to this Article. The Contract will be amended or revised accordingly and the Contractor will be paid the agreed-upon amount. Nothing in that part of this Article, which deals with the failure to reach agreement on the total amount to be paid to the Contractor, shall be deemed to limit, restrict, or otherwise determine or affect the amount that may be agreed upon pursuant to this section.

F. Payment Upon Failure to Agree

If the Contractor and the Contracting Officer fail to agree on the total amount to be paid the Contractor by reason of the termination of Work pursuant to this Article, Metro will pay the Contractor the amounts determined by the Contracting Officer as follows, exclusive of any amounts already agreed upon in accordance with this Article:

1. The Contract Price allocable to the portion of the Work properly performed or Goods supplied by the Contractor as of the date of termination, as determined in accordance with the Contract Document entitled COMPENSATION AND PAYMENT PROVISIONS reduced by any sums previously paid to the Contractor.
2. The cost of settling and paying Claims arising out of the termination of the Work under Subcontracts or orders as specified above, exclusive of the amounts paid or payable on account of Goods delivered or Work furnished by Subcontractors prior to the effective date of the Notice of Termination of Work under the Contract.
3. Profit on the cost of Work performed is included in the amount determined above. However, if the Contractor would have sustained a loss on the entire Contract had it been completed, the Contractor shall not be entitled to a profit and the settlement will be reduced to reflect the indicated rate of loss.
4. The reasonable cost of preserving and protecting property will also be paid, as well as any other reasonable costs incidental to the termination

of the Work under the Contract or, including those reasonable expenses incurred to determine the amounts due.

G. Exclusions

Except to the extent that Metro will have otherwise expressly assumed the risk of loss, the fair value (as determined by the Contracting Officer) of property that is destroyed, lost, stolen, or damaged (so as to become undeliverable to Metro or other buyer as described above) shall be excluded from the amounts paid to the Contractor.

H. Retention

In arriving at the amount due the Contractor under this Article, retention shall be made for the following:

1. The amount of any Claim that Metro may have against the Contractor in connection with the Contract; and
2. The agreed upon price for and/or proceeds from the sale of Goods or other items acquired or sold by the Contractor that have not been otherwise recovered by or credited to Metro.

I. No Damages or Anticipatory Profits

Neither the Contractor nor any Subcontractor, Supplier or any other third party shall be entitled to any damages, whether they be direct, indirect, special, anticipatory, consequential or any other damages, anticipatory profits on Work not yet performed, as a result of any termination under this Article. Payment to the Contractor in accordance with this Article shall constitute the Contractor's, Subcontractor's, Supplier's and any other third party's exclusive remedy for any termination hereunder.

J. No Waiver

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

GC-40 TERMINATION FOR DEFAULT *

A. Grounds for Termination for Default

Metro may terminate this Contract, in whole or in part, for default for any of the following:

1. Contractor fails or refuses to perform any obligation under the Contract or to perform any Work or provide any Goods within the Schedule (including the applicable notice and/or cure periods, if any) or any authorized extension thereof.

2. Contractor fails to perform or comply with any other provision of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms.
3. Contractor's violation of an order or requirement of the Contracting Officer authorized by or within the scope of the Contract.
4. Contractor's abandonment of the Contract, which the Contracting Officer in its sole discretion may determine to exist if Contractor, without authorization ceases to perform substantial Work, which is not otherwise excused under the Contract, for three (3) days.
5. Contractor assigns the Contract, or any portion thereof, or subcontracts any Work without acceptance by the Contracting Officer.
6. Contractor's insolvency, bankruptcy, reorganization, or the filing of any related or similar proceeding; the appointment of a receiver or trustee for Contractor; the execution by Contractor of a general assignment for the benefit of creditors.
7. Failure of the Contractor to pay any amounts owing to any persons performing any portion of the Work, or the failure of the Contractor to pay its debts incurred on the Contract as they become due, providing that such failure continues for a period of 10 working days after written notice to the Contractor by the Contracting Officer.
8. The attachment, levy, execution, or other judicial seizure of any portion of the Contractor's property, or any substantial portion of the other assets of the Contractor, which is not released, expunged, or discharged within a period of 10 working days.
9. The violation or material failure to comply with any Law or order of a Government Entity, applicable to the Contractor, the Work or the Contract, including the submittal or pursuit of any false claim or any other act in violation of any Law relating to false claims.
10. Failure to indemnify any party that the Contractor is obligated to indemnify under the Article entitled LIABILITY AND INDEMNIFICATION and elsewhere under the Contract.
11. Failure to promptly correct any Deficiency, or to re-perform or replace rejected Work or Goods that do not meet Contract requirements.
12. Conviction of the Contractor or any of its officers, partners, principals, employees or any Contractor's Representative, for a violation of any Law related to Contractor's obligations under the Contract, including without limitation, in connection with the Work to be performed, Goods supplied, payments to be made or Claims submitted under the Contract.

13. Contractor's fraudulent representation or other material misrepresentation related to the Pre-qualification Application and process, or to any other representation or warranty under the Contract, including the filing of a False Claim under the California or federal False Claim Acts.
14. Contractor's offering or giving of any improper consideration, in any form, either directly or through an intermediary, to any Metro member, officer, employee or authorized representative with the intent of securing the Contract or the making of any determinations with respect to the Contractor's performance of the Work.
15. Contractor is placed on the California State Labor Commissioner's list of debarred contractors pursuant to Labor Code §1771.1 or §1771.7.

B. Insolvency and Bankruptcy Defined

1. Insolvency – Contractor shall be deemed to be insolvent if it has ceased to pay or has admitted in writing its inability to pay its debts for at least 60 days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the United States Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the United States Bankruptcy Code, provided that Contractor shall not be deemed insolvent if it has ceased in the normal course of business to pay its debts which are disputed in good faith and which are not related to this Contract.
2. Bankruptcy – Contractor shall be deemed to be bankrupt upon the filing of a voluntary or involuntary petition (which involuntary petition is not dismissed within 60 days) regarding Contractor under the United States Bankruptcy Code.

C. Cure Notice

1. Cure Notice

If, the Contracting Officer determines the Contractor is in default of the Contract, the Contracting Officer will issue a Cure Notice to the Contractor, with a copy to the Surety, describing the default.

2. Failure to Cure and Notice to Surety

If the Contractor fails to cure the default within 5 days after receipt of such Cure Notice, or if the default cannot be cured within 5 days, the Contractor fails to commence to cure within 5 days or fails to diligently proceed to cure or to cure the default within the time the Contracting Officer determines to be necessary, the Contracting Officer shall provide notice to the Surety of the Contractor's failure to cure or commence a cure. The Contracting Officer may in its sole discretion demand that the Surety cure the default. Whether or not Contracting Officer demands that the Surety cure the default, it may take any other actions it deems appropriate to cause the completion of the Work and to mitigate its

damages. The Surety on the Performance Bond under the Contract shall not be entitled to take over the Contractor's performance of Work in case of termination under this Article, except with the consent of the Contracting Officer.

3. Failure of Surety to Cure and Notice of Termination

If the Contracting Officer demands that the Surety cure the default, and the Surety fails to cure the default within 5 days after receipt of the Cure Notice, or if the default cannot be cured within 5 days, and the Surety fails to commence to cure within 5 days and diligently proceed to cure within the time Metro determines to be necessary, the Contracting Officer may, by written notice, terminate the Contract or such part of the Contract as the Contracting Officer in its sole discretion deems to be in Metro's best interest.

4. Contractor's Continuing Liability

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

D. Contractor Obligations on Receipt of Notice

Upon receipt of a Notice of Termination for default from Metro, the Contractor shall:

1. Stop all Work under the Contract on the date and to the extent specified in the Notice of Termination.
2. Place no further orders or Subcontracts for Goods or Work except as may be necessary for completion of such portions of the Work expressly excluded from the Notice of Termination.
3. Communicate any Notice of Termination to the affected Subcontractors and Suppliers at all tiers.
4. Terminate all orders and Subcontracts that relate to the performance of Work terminated by the Notice of Termination.
5. Comply with all other requirements of the Contracting Officer as may be specified in the Notice of Termination or any subsequent notices related to the termination.

E. Metro Completion of Work

Upon Metro's termination of the Contract in whole or in part because of the Contractor's default, Metro shall have the right to complete the Work by whatever means and methods it deems advisable. Metro:

1. May take over the Work and complete it by contract or otherwise.

2. Will not be required to obtain the lowest prices for completing the Work, but shall make such expenditures that, in Metro's sole judgment, best accomplish such completion.
3. May take possession of and use any or all the Contractor's Goods, plant, tools, Construction Equipment, and property of any kind, provided by or on behalf of the Contractor for the purpose of completing the Work, or any portion thereof, and shall not be responsible to the Contractor for fair wear and tear. The Contractor shall have no rights in such property during its use by Metro.
4. May procure, upon such terms as Metro deems appropriate, all Goods and services necessary to complete the Work, and Contractor shall be liable for any and all excess costs incurred by Metro.
5. Charge to the Contractor the expense of completing the Work together with a reasonable charge for engineering, managerial, and administrative services, as certified by Metro. Metro shall deduct said amount out of such monies that may be due or may at any time thereafter become due the Contractor.
6. Charge all other excess costs to Contractor and deduct them out of payments otherwise due at that time or thereafter.
7. If charged costs and expenses are in excess of the sum which otherwise would have been payable to Contractor, then the Contractor shall promptly pay the amount of such excess to Metro upon notice of the excess so due.

F. Transfer of Title and Delivery of Work

If the Contract is terminated as specified in this Article, the Contracting Officer may direct the Contractor to, and the Contractor shall, transfer title to and deliver all designated Goods, Equipment, Documents, Work in progress, tools, dies, jigs, fixtures, plans, drawings, information, and other items that the Contractor has produced or acquired for the terminated portion of the Contract and would have been required to furnish to Metro if the Contract had been completed.

G. Preservation of Metro Property

The Contractor shall, at its sole expense, protect and preserve property in its possession in which Metro has an interest.

H. If Contractor Not In Default

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

TERMINATION FOR CONVENIENCE, and adjustment shall be made as provided in that Article.

I. Damages

Neither the Contractor, nor any Subcontractor, Supplier or third party shall be entitled to any damages whether they be direct, indirect, special, anticipatory, consequential, or any other damages as a result of any termination under this Article.

J. Remedies Not Exclusive:

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

GC-41 COOPERATION IN EVENT OF TERMINATION

A. General

1. Contractor understands and agrees that Metro has obligations that it cannot satisfy without use of the completed Work, and that a failure to satisfy its obligations under this Contract could result in irreparable damage to Metro and the persons and entities it serves. Therefore, Contractor agrees that in the event of any termination of all or any part of this Contract for any reason, Contractor shall fully cooperate with Metro in the transition of the Work to Metro or to a new contractor or provider of Goods and services, toward the end that there be no interruption of day-to-day operations due to the unavailability of the completed Work, or to related or existing facilities to the extent they are impacted by the termination of this Contract, during such transition.
2. Contractor shall have no right to withhold or limit any of the Work or any transition services on the basis of any alleged breach of this Contract by Metro, other than a failure by Metro to timely pay the amounts due based upon a properly submitted and approved invoice for Work rendered during the transition period or the amounts due for such transition services under this Article. Notwithstanding the provisions of the Article entitled DISPUTES, Metro shall have the right to seek specific performance of this Article in any court of competent jurisdiction, and Contractor hereby waives any defense that damages are an adequate remedy. Compliance with this Article by either party shall not constitute a waiver or estoppel with regard to any rights or remedies available to the parties.

B. Termination Transition Plan

1. Upon the written direction from Contracting Officer included in the Notice of Termination, Contractor shall develop a Termination Transition Plan, to be completed within 10 days after such Notice. The Termination Transition Plan shall be subject to Metro's Acceptance.

2. If the Contractor has not submitted, or Metro has not accepted, a Termination Transition Plan by the effective date of the termination of this Contract, the Contracting Officer may direct the Contractor to continue to perform Work in accordance with Contract requirements to the extent required by the Contracting Officer. This Section shall survive the termination of the Contract.

C. Acts Upon Termination

1. Contractor will (i) meet with Metro' Authorized Representative as soon as practicable after a Notice of Termination has been given, to discuss the Termination Transition Plan or any potential modifications to the then most current Termination Transition Plan, and (ii) use its best efforts to assist Metro in effecting a transition of the Work, in accordance with industry best practices, to Metro or another contractor chosen by Metro.
2. Provided that Metro is current in payment of the Contract amounts owed by Metro to Contractor (except for disputed amounts and withholds), Contractor shall continue to provide Work as well as transition services for a period defined in the Termination Transition Plan. In addition to the Work required of Contractor as set forth in this Contract, the transition services shall include, at a minimum, maintaining current data and records, providing services until transition to Metro or to a new contractor, providing on-site assistance, cooperating with Metro or its designated contractor, and providing such other services as shall be necessary or appropriate to facilitate, without interruption to the Work, the orderly transition of Work to Metro or its new contractor in accordance with industry best practices. If Contractor is providing any Work hereunder at the time of such transition utilizing any property or services of a Subcontractor or Supplier, Contractor shall, at the request of Contracting Officer, assign such Subcontract to Metro.

GC-42

ASSIGNMENT *

A. Consent

1. The Contractor or its Surety shall not assign, transfer, convey, delegate or otherwise dispose of the Contract or the right, title, or interest in it or any part of it (collectively "Assign" or "Assignment") without the prior written consent of the Contracting Officer.
2. Any attempted Assignment without such consent shall be null and void.
3. No right under the Contract shall be asserted against Metro, in Law or in equity, by reason of any Assignment of the Contract, or any part thereof, unless authorized by the Contracting Officer as specified in this Article.

B. Setoffs

Any Assignment of proceeds of the Contract shall be subject to all proper setoffs and withholdings in favor of Metro and to all deductions specified in

the Contract. All monies withheld, whether assigned or not, shall be subject to being used by Metro for completion of the Work, pursuant to the terms of the Contract. If the Contracting Officer consents to such Assignment of monies, the Contractor or Surety shall give written notice thereof to Metro at least 10 days before payment is due.

C. Continuing Responsibility

The Contractor's Assignment or delegation of any of its Work under the Contract shall be ineffective to relieve the Contractor of its responsibility for the Work assigned or delegated, unless the Contracting Officer, in its sole discretion has approved such relief from responsibility.

D. Assignment of Certain Legal Rights

The Contractor hereby agrees that the provisions of Public Contract Code §7103(b) are applicable to the Contract, and which provides as follows:

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

GC-43 ENVIRONMENTAL COMPLIANCE *

A. Inclusion in Subcontracts

The Contractor shall include the requirements of the following Sections in every Subcontract that is more than one hundred thousand dollars (\$100,000) and shall take such action as Metro's Authorized Representative directs to enforce these requirements.

B. Compliance With Environmental Laws

- a. The Contractor shall comply with all applicable standards, orders, and requirements issued under any and all Environmental Laws, including those related to Hazardous Substances; and all interpretations, guidelines, clarifications, mitigation measures, and any other requirements of Governmental Entities having jurisdiction related to such Laws.
- b. Without in any way limiting the foregoing, Contractor shall comply with all rules, regulations, and ordinances of the SCAQMD that apply to any Work performed pursuant to the Contract. The Contractor, Subcontractors, and

Suppliers shall submit evidence to Metro that the governing air quality control criteria and requirements are being met.

- c. The Contractor shall comply with the applicable requirements of the SCAQMD governing solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Contract. Containers of paints, thinner, curing compound, or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.
- d. The Contractor shall comply with all California Laws regarding pollution controls in purchasing and leasing new motor vehicles with Contract funds.
- e. The Contractor shall not burn Goods it disposes of.

C. Environmental Protection Agency Regulations

Without in any way limiting the foregoing, Contractor shall comply with all applicable regulations (40 CFR Part 15) of the Environmental Protection Agency. The Contractor shall not use any facility in the performance of the Contract that is listed on the Environmental Protection Agency List of Violating Facilities, unless and until the Environmental Protection Agency eliminates said name of such facility from said listing. The Contractor shall promptly notify Metro of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (or any successor agency), indicating that a facility to be used by the Contractor is under consideration for listing on the Environmental Protection Agency List of Violating Facilities. The Contractor shall also report violations to Metro, to the FTA, and to the Environmental Protection Agency Assistant Administrator for Enforcement.

D. Energy Conservation

In addition to all other Contractual requirements, the Contractor shall comply with all mandatory standards and policies relating to energy efficiency contained in the California energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6321 et. seq.).

GC-44

HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL AND SCIENTIFIC DISCOVERIES *

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

GC-45 WHISTLEBLOWER REQUIREMENTS *

A. Disclosure

The Contractor shall not adopt any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or federal regulation; nor shall the Contractor retaliate against an employee for taking such actions as set forth in the California Labor Code §1101 et. seq.

B. Posting and Hotline

The Contractor shall post and maintain Metro's Telephone Hotline poster provided by Metro at the Worksites during the term of the Contract. The Hotline poster shall be posted in prominent locations that are highly visible and accessible to the Contractor's employees. The Contractor shall not hinder or coerce its employees from using Metro Telephone Hotline to report concerns relative to the performance of any Metro contract. The Contractor shall provide access to Metro representatives for the purpose of verifying the Contractor's adherence to this Article. In the event Metro inspection finds the Contractor has failed to comply herewith, the Contractor shall correct such failures including, but not limited to, replacing Hotline posters and sponsoring training sessions, with Metro representatives, on the use of Metro Hotline.

C. Reporting

The Contractor, or its employees, shall immediately report any attempt by any member, officer, or employee to solicit improper consideration. The report shall be made to the Contracting Officer or Metro Inspector General's Hotline.

GC-46 SEVERABILITY *

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

GC-47 GOVERNING LAW *

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

GC-48**PUBLIC RECORDS ACT *****A. Ownership and Disclosure**

Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Metro's business, including information submitted by the Contractor ("Records"), shall become the exclusive property of Metro and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Metro's use and disclosure of its records are governed by this Act. Metro will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by the Contractor to Metro. Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

B. Litigation Related to Disclosure

In the event of litigation concerning the disclosure of any Records, Metro's sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Metro harmless from all costs and expenses including attorney's fees in connection with any such action.

GC-49**LIABILITY AND INDEMNIFICATION *****A. Definitions**

1. "Indemnitees" shall mean Metro, its Authorized Representatives and subsidiaries, and their respective members, directors, officers, employees and agents.
2. "Indemnitors" shall mean the Contractor, the Contractor's Representative, any other representative of the Contractor, any of its officers, employees, Subcontractors or Suppliers, or any person or organization directly or indirectly employed by any of them, in connection with or relating to the Work or the Contract.
3. "Liabilities" shall mean any and all Claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses or expenses, including but not limited to workers compensation claims, and all fees of accountants, attorneys or other professionals related to any Claim or liability.

B. Indemnification

To the fullest extent permitted by law, the Contractor shall, at its sole cost and expense, fully defend, indemnify and hold harmless Metro, its Authorized Representatives, including its CM, and their respective subsidiaries, affiliates, members, directors, officers, employees and agents (collectively, the "Indemnitees") from and against any and all claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses, including but not limited to any fees of accountants, attorneys or other professionals (collectively "Liabilities"), arising out of, in connection with, resulting from or related to, any act, omission, fault or negligence of the Contractor, Contractor's Representative, or any of its officers, agents, employees, Subcontractors or Suppliers, or any person or organization directly or indirectly employed by any of them (Collectively, the "Indemnitors"), in connection with or relating to or claimed to be in connection with or relating to the Work or the Contract, including without limitation to any Liability arising out of:

1. The personal injury to or death of any person (including employees of the parties to be indemnified) or for damage to or loss of use of property (including property of Metro); and
2. Metro's reliance upon the use of data or other information furnished or delivered by the Contractor pursuant to the Contract.

C. Description

1. The indemnification specified in this Article shall
 - a. Survive termination or close-out of the Contract and is in addition to any other rights or remedies that the Indemnitees may have under the Law or Contract.
 - b. Apply in the event of the act, omission, fault, or negligence, whether active or passive, of the Indemnitee.
 - c. Not apply to Liabilities arising from the sole negligence or willful misconduct of the Indemnitee.
2. In the event of any Claim or demand made against any Indemnitee, Metro may at its sole discretion reserve, retain, or apply any monies due the Contractor under the Contract for the purpose of resolving such claims; provided, however, Metro may release such funds if the Contractor gives Metro reasonable assurance that Metro's interests will be protected. Metro shall, at its sole discretion, determine whether such assurance is reasonable.

D. Employee and Third Party Claims

1. Employee Claims: Claims against any Indemnitee or Indemnitor by any employee of any Indemnitor, including claims under any workers' compensation act, disability benefit act or other employee benefit act or

insurance, shall not in any way limit the Indemnitor's Liabilities to the Indemnitees.

2. Third Party Claims: Nothing contained in the Contract or CWO is intended to or shall have the effect of creating any rights in any third party against Metro. The inclusion of the Contract or any part thereof in any other document shall not be deemed to be creating or incorporating any obligation, duty, or liability on the part of Metro. The Contractor shall indemnify the AUTHORITY in accordance with the provisions of this Article against any claim made by any third party claiming rights under the Contract.

E. Joint and Several Liability

If the Contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the Contractor that are assumed under or arise out of the Contract. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of the Contractor contained in, resulting from or assumed under the Contract, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.

F. Other Rights and Remedies

The Contractor:

1. Acknowledges that the rights and remedies of Metro specified herein are in addition to and do not limit any rights or remedies of Metro afforded by the Contract or by Law;
2. Agrees that it is the Contractor's obligation to construct the Work, or cause the construction of the Work in accordance with the Contract Documents and that the Indemnitees are fully entitled to rely on the Contractor's performance of such obligation.
3. Agrees that any review and/or acceptance by the Contracting Officer or any Authorized Representative hereunder shall not relieve the Contractor of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.

G. Limitation of Liability

The following restrictions shall apply to the Indemnities set forth in Sections A and C of this Article:

1. With respect to any loss, damage or expense of the type covered by the insurance required to be provided under this Contract, the Contractor's Indemnity obligation shall not extend to any loss, damage or expense arising from the sole negligence or willful misconduct of the Indemnitee or its

agents, servants or independent contractors who are directly responsible to such Indemnatee.

2. With respect to any loss, damage or expense which is not of the type covered by the insurance required to be provided under this Contract, the Contractor's Indemnity obligation shall not extend to any loss, damage or expense to the extent that such loss, damage or expense was caused by the negligence or willful misconduct the Indemnatee or its agents, servants or independent contractors who are directly responsible to such Indemnatee (in other words, a comparative negligence standard shall apply).
3. Except as permitted by California Civil Code §2782.1, 2782.2 and 2782.5, such indemnities shall not inure to the benefit of an Indemnatee so as to impose liability on the Contractor for the active negligence of Metro, or to relieve Metro of liability for such active negligence.

GC-50 RIGHTS IN SHOP DRAWINGS, RECORD DRAWINGS, SAMPLES, TECHNICAL DATA, PATENTS AND COPYRIGHTS *

A. Shop Drawings

Shop Drawings submitted to Metro by the Contractor, Subcontractors or Suppliers of any tier pursuant to the Contract, are the property of Metro, and Metro may use and disclose, in any manner and for any purpose unless Shop Drawings delivered under the Contract are marked "Confidential", "Trade Secret", or "Proprietary" in accordance with the Article entitled PUBLIC RECORDS ACT.

B. Samples

When specified or requested by Metro, typical samples of Goods, properly tagged with, name of Work, Contractor, Goods, Supplier, location of Work and date of submittal, shall be submitted in triplicate by the Contractor for acceptance by Metro. Samples shall be of size indicated in the Specifications, or where no size is indicated, shall be of sufficient size to permit evaluation. Samples shall be submitted sufficiently in advance of the time when they are to be used so that any rejection thereof will not delay the accepted construction Schedules. Allow ten (10) working days for checking and notification from Metro. Accepted samples will be so labeled and dated, and a transmittal of acceptance will be sent to the Contractor. One accepted sample will be kept at Metro.

C. Technical Data

1. Technical data, as used herein, means any form or format of technical writing, pictorial reproductions, drawings or other graphic representations, and documents of a technical nature, including computer software and program listings, which are developed or required to be delivered pursuant to the Contract. The term does not include financial reports, cost analyses,

and other information incidental to contract administration. Technical data includes, but is not limited to:

- a. Manuals or instructional information prepared for installation, operation, maintenance, or training purposes;
 - b. Data pertaining to items, components, or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements; and
 - c. Computer and microprocessor software documentation including program design language or pseudo-code listings, fully annotated source code and machine level listings.
2. Except as limited by the Article entitled PUBLIC RECORDS ACTS Metro shall have the right to use, duplicate, modify or disclose the technical data and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so, for the purpose of operating, maintaining, procuring or modifying the Work, or the Transit System of which the Work is a part, or any Equipment or other items supplied by the Contractor.

D. Patents and Copyrights

1. Metro and its Authorized Representatives and employees acting within the scope of their official duties shall have a royalty-free license to publish, translate, reproduce, deliver, and use as they deem fit all technical data covered by copyright, patent or other proprietary rights supplied for the Contract. Contractor shall obtain the written permission of the owner of the patent, copyright or other proprietary right for Metro to use such technical data in the manner herein described.
2. The Contractor warrants that the Goods used on and/or incorporated into the Work shall be delivered free of any rightful claim of third party for infringement of any United States patent, copyright or other proprietary right. If a suit or proceeding based on a claimed infringement of a patent, copyright or other proprietary right is brought against Metro, and/or the CM, the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by Metro, and bear all damages and cost associated therewith.
3. The Contractor shall bear all costs arising from the use of patented Goods and/or processes used on and/or incorporated into the Work. When use of these Goods and/or processes are judged to be an infringement and their use is banned, the Contractor, at its own expense, shall with the concurrence of Metro, do one of the following:
 - a. Secure for Metro the right to continue using said Goods and/or processes by suspension of the injunction or by procuring a license(s);

- b. Replace said Goods and/or process with non infringing Goods and/or processes;
- c. Modify said Goods and/or processes so that they become Non-infringing; or
- d. Remove said Goods and/or processes and refund the sum paid therefore without prejudice to any other rights of Metro.

E. Metro Design

The preceding Section shall not apply to any Goods manufactured to the detailed design of Metro contained in the Contract Documents.

GC-51 NO WAIVER OF CONDITIONS *

Failure of Metro to enforce at any time, or from time to time, any provision of the Contract shall not be construed as a waiver thereof.

No waiver by Metro of any breach or default of any provision of the Contract shall constitute a waiver of any other breach or of such provision.

Failure or delay by Metro to insist upon strict performance of any term or condition of the Contract, or to exercise any right or remedy provided herein or by Law, shall not be deemed a waiver of any right of Metro to insist upon strict performance of the Contractor's obligations set forth in the Contract, or any of its rights or remedies as to any prior or subsequent default hereunder.

GC-52 CONTRACTOR'S INTERACTION WITH THE MEDIA & THE PUBLIC *

A. Approval of Copy

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

B. Contact With News Media

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

C. Coordinating With the Public

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

D. Complaints

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

E. Tours

Metro will notify the Contractor at least five (5) working days in advance of a media related site visit to the construction area.

F. Notices to the Public

The Contractor shall provide written notice to the community that it will be impacted by any event (e.g., for utility shutoffs, road closures, etc.) at least five (5) days prior to the anticipated event. Contractor shall submit six (6) copies of the proposed notice to Metro's Public Affairs staff at least ten (10) days prior to the anticipated event.

GC-53 AGENT TO ACCEPT SERVICE

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

GC-54 COVENANT AGAINST CONTINGENT FEES*

- A. The Contractor warrants that no person or Authorized Representative has been specifically employed or retained to solicit or obtain the Contract in exchange for a contingent fee, except a bona fide employee or agent. A breach or violation of this warranty shall be considered a breach of Contract pursuant to the Article entitled TERMINATION FOR DEFAULT herein. In addition to any rights and remedies otherwise provided for in the Contractor by law, Metro may deduct from the total Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

- B. "Bona fide agent", as used in this Article, means an established commercial or selling entity that is maintained by the Contractor for the sole purpose of securing business and that neither exerts nor proposes to exert improper influence to solicit or obtain Metro contract(s) nor holds itself out as being able to obtain any Metro contract(s) through improper influence.
- C. "Bona fide employee", as used in this Article, means a person who is employed by the Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance and who neither exerts nor proposes to exert improper influence to solicit or obtain Metro contract(s) nor holds itself out as being able to obtain any Metro contract(s) through improper influence.
- D. "Contingent fee", as used in this Article, means any commission, percentage, or other sum that is payable only upon success in securing a Metro contract.
- E. "Improper influence," as used in this Article, means any influence that induces or tends to induce a Metro employee, officer, Contractor, Subcontractor, Authorized Representative, or Consultant to give consideration or to act regarding a Metro Contract on any basis other than the merits of the matter.

END OF GENERAL CONDITIONS

COMPENSATION & PAYMENT PROVISIONS (CONSTRUCTION)

FIRM FIXED PRICE (FFP)

Note:

Articles flagged with an asterisk (*) are Flow-down requirements as defined in Article SUBCONTRACTORS AND SUPPLIERS in Contract Document GENERAL CONDITIONS.

CP-1 BASIS OF COMPENSATION

Contractor will be paid the Contract Price in accordance with the following Articles, the Payment Schedule (Attachment 1) and all other applicable terms and conditions of the Contract.

CP-2 PROGRESS PAYMENTS

- A. Definition: A Progress Payment is a payment of a portion of the Contract Price for partial completion of the Work based upon the Payment Schedule. A Progress Payment shall not include those portions of the Contract Price withheld pursuant to the Article entitled RETENTION AND ESCROW ACCOUNTS herein, nor any other amount properly withheld or deducted under other provisions of this Contract.
- B. Payment Schedule: Within thirty (30) days after the date of the Notice to Proceed (NTP), but in any event prior to the first Application for Progress Payment (hereinafter referred to as "Application"), the Contractor shall submit a detailed Payment Schedule to Metro, including a SCHEDULE OF VALUES based upon the SCHEDULE OF QUANTITIES AND PRICES attached hereto and a Schedule based upon the milestones in the Critical Path Schedule (or such other Schedule as is required under the Contract). Progress Payments shall be based upon the approved Payment Schedule. Each item of the Payment Schedule shall include its proportionate share of overhead, profit, and all other expenses involved. The quantities and values shall be extended to show the total amount for each item. The Payment Schedule must be approved by Metro prior to any Progress Payment being made. Metro reserves the right to modify or reject and require re-submission of any Payment Schedule which the Contracting Officer determines to be "front-end loaded," "materially unbalanced" or which otherwise does not represent an accurate representation of the manner in which the Contractor will incur cost. The determination of the Contracting Officer is final.
- C. General Invoicing Instructions: Contractor's Invoice shall include, at a minimum:
 - 1. Clear reference to Metro Contract Number, as well as Metro Project, to which the Invoice applies.
 - 2. Contractor's Invoice Number, Invoice Date, as well as the contract payment number the invoice represents; for example, Contractor's submittal of its first invoice is payment number 1, its second invoice submittal is payment number 2, and so on. Any Contractor re-submittal/revision to a submitted invoice shall have a letter suffix (a, b, c, etc.) added to the payment number, signifying the invoice revision; for

example, Contractor's first re-submittal of its first invoice shall be designated as payment number "1a".

3. Clear reference to the Payment Schedule Item(s) being invoiced, and the appropriate milestone description of activities and/or work related to the billing.
4. The itemized and total amount being invoiced (in U.S. dollars), less the amount of all contractual retention and deductions applicable for the invoiced amount (in U.S. dollars), and the resulting total net payment due.
5. The Time Period during which the Work was performed and for which the invoice is submitted.
6. Clear reference to Contractor's Taxpayer ID Number.

In no event shall Contractor's Invoice include any commercial terms in conflict with, or in addition to, the provisions already provided and agreed upon in the Contract. Any such non-contractual commercial terms included in Contractor's Invoice shall be null and void, superceded by the terms of Contract, and may subject the Invoice to being rejected by Metro.

D. Application for Progress Payment:

Contractor's Application shall be electronically submitted to Metro at accountspayable@metro.net and contain:

1. Contractor's invoice;
2. A description of the Work completed;
3. Conditional and unconditional waivers executed by the Subcontractors as described in the Article entitled PAYMENT TO SUBCONTRACTORS herein;
4. Release of Stop Notice from Subcontractors;
5. Any other documentation Metro requires to process the Progress Payment;
6. A Payment Certification (Continuous) as set forth in Attachment 2, and;
7. Signature of Metro's Authorized Representative acknowledging that the Work described in the Application has been done in accordance with the Contract.

E. Terms of Payment:

1. Shall submit the Application to Metro as set forth in Article INVOICES in the FORM OF CONTRACT, based upon the Payment Schedule, no later than the 25th day of each month.
2. Metro will make Progress Payments within thirty (30) days after its receipt of an undisputed and properly submitted Application. If Metro fails to make any approved Progress Payment within such time, it shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Upon receipt of an Application, Metro shall, pursuant to Section 20104.50(c) of the Public Contract Code:
 - a. Review the Application to determine if it is complete and meets Contractual requirements.
 - b. Return any Application that is not complete or does not meet Contractual requirements as soon as practicable, but not later than seven (7) days after receipt by Metro. Metro shall set forth in writing the reason(s) why the Application does not meet Contractual requirements.
3. The number of days available to Metro to make a Progress Payment without incurring interest shall be reduced by the number of days by which it exceeds the seven (7) day return requirement set forth above.
4. No Progress Payments shall be made for Work not performed in accordance with the Contract.
5. Except for Final Payment, an Application shall not be submitted unless the value of the Work is greater than five thousand dollars (\$5,000).

F. Payment for Goods Not Incorporated into the Work:

Metro, at its discretion, may authorize payment for Goods not yet incorporated into the Work, subject to the following conditions:

1. Goods shall be delivered to the Worksite or delivered to the Contractor and promptly placed in appropriate storage within Los Angeles County or other location, as approved by Metro.
2. Prior to inclusion of such Goods in any Application, the Contractor shall submit certified invoices for such Goods to Metro. Metro may allow only such portion of the amount represented by these invoices that, in its opinion, does not exceed the reasonable cost of such Goods.
3. If Goods are stored outside Los Angeles County, the Contractor shall pay all personal and property taxes that are levied against Metro by any state or subdivision thereof on account of such storage of said Goods.

4. Metro will permit the Contractor to contest, at its own expense, the validity of any such tax levied against Metro in appropriate legal proceedings.
 5. In the event of any judgment or decree by the court against the Contractor and/or Metro, the Contractor shall pay it together with any penalty and any other costs relating thereto. All such Goods so accepted shall become the property of Metro.
 6. Payments made for Goods included in an Application that are subsequently lost, damaged, or unsatisfactory shall be deducted from succeeding Applications.
- G. Title to portions of the Work for which Progress Payments or other payments are made shall pass to Metro as set forth in the General Conditions.

CP-3 RETENTION AND ESCROW ACCOUNTS*

A. Retention:

Metro shall retain from each Progress Payment FIVE percent (5%) of the Progress Payment as part security for the fulfillment of the Contract by the Contractor. The total retention withheld shall not exceed FIVE percent (5%) of the contract price, as amended, or as adjusted by change orders.

B. Substitution of Securities:

To ensure performance under the Contract, the Contractor may, at its sole expense, substitute securities equivalent to the retention withheld by Metro. Such securities shall be deposited with an escrow agent approved by Metro, who shall then pay such retention to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor. The Contractor shall be the beneficial owner of any security substituted for monies withheld and shall receive any accrued interest thereon. Securities eligible for investment shall include those listed in Government Code §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 the Contractor and Metro. No such substitution shall be accepted until the Escrow Agreement, securities, and any other documents related to the substitution are reviewed and accepted in writing by Metro.

C. Payment of Escrow Agent:

In lieu of substitution of securities as provided above, the Contractor may request and Metro shall make payment of retention earned directly to the escrow agent at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities consistent with Government Code §16430 and the Contractor shall receive the interest earned on the investments upon the same terms provided for in this Article for securities deposited by the Contractor. Upon satisfactory

completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from Metro, pursuant to the terms of this Article. The escrow agreement used by the escrow agent pursuant to this Article shall be substantially similar to the form set forth in §22300 of the California Public Contract Code.

D. Release of Retention:

Upon Final Acceptance of the Contract, the Contractor shall submit an invoice for release of retention in accordance with the terms of the Contract.

E. Additional Deductibles:

In addition to the Retentions described above, Metro may deduct from each Progress Payment any or all of the following:

1. Liquidated Damages that have occurred as of the date of the Application for Progress Payment;
2. Deductions from previous Progress Payments already paid, due to Metro's discovery of deficiencies in the Work or non-compliance with the Specifications or any other requirement of the Contract;
3. Sums expended by Metro in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform, and;
4. Other sums that Metro is entitled to recover from the Contractor under the terms of the Contract, including without limitation insurance deductibles and assessments.

The failure of Metro to deduct any of the above-identified sums from a Progress Payment shall not constitute a waiver of Metro's right to such sums or to deduct them from a later Progress Payment.

CP-4 STOP NOTICE*

In addition to other amounts properly withheld under this Article or under other provisions of the Contract, Metro shall retain from Progress Payments otherwise due the Contractor an amount equal to one hundred twenty-five percent (125%) of the amount claimed under any Stop Notice under Title 3 of Part 6 of Division 4 of the California Civil Code or other lien filed against the Contractor for labor, materials, supplies, equipment, and any other thing of value claimed to have been furnished to and/or incorporated into the Work; or for any other alleged contribution thereto. In addition to the foregoing and in accordance with California Civil Code §9358 Metro may also satisfy its duty to withhold funds for Stop Notices by refusing to release funds held in escrow pursuant to Public Contract Code §22300. However, Metro may release such funds upon receipt of a Release of Stop Notice executed by a Stop Notice Claimant, a Stop Notice Bond, an order of a court of competent jurisdiction, or

other evidence satisfactory to Metro that the Contractor has resolved such claim by settlement.

CP-5 PAYMENT TO SUBCONTRACTORS*

A. Requirements

The Contractor or Subcontractor shall pay any Subcontractors, as required by the California Business and Professions Code §7108.5 for any and all undisputed amounts in properly submitted payment requests for work performed; (1) not later than seven (7) days after receipt of each Progress Payment for Work performed under the Contract or Subcontract; or (2) not later than thirty (30) days for any other completed Work authorized and directed by the Contractor. The Contractor shall pay to each Subcontractor all amounts it has retained, other than retention, from payments under the Subcontract within seven (7) days after the Subcontractor's work is satisfactorily completed. Any delay of payment beyond the seven (7) day time limit shall be only for good cause, and only upon the prior written approval of Metro.

- B. If Contractor fails to make any payment of an undisputed amount within the seven (7) days or thirty (30) days set forth in paragraph A above, after receipt of an undisputed and properly submitted payment request from a Subcontractor, Contractor shall pay interest to the subcontractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure (which is 10% per annum). The number of days available to a Contractor to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a Contractor exceeds the seven (7) day return requirement set forth in paragraph (1.b) below.

1. Upon receipt of a payment request, each Contractor shall act in accordance with both of the following:
 - a. Each payment request shall be reviewed by the Contractor as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
 - b. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Subcontractor as soon as practicable, but not later than seven (7) days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is proper.
- b. Contractor shall implement a dispute resolution process within thirty (30) business days of accrual of the dispute.

C. Release of Retention

The Contractor shall pay to each Subcontractor all retention from payments under the Subcontract within seven (7) days after the Subcontractor's subcontract is satisfactorily completed. Any delay of payment of retention

beyond the seven (7) day time limit shall be only for good cause and only upon the prior written approval of Metro.

D. Waiver and Release Forms

As a condition to Metro's release of any Progress Payment, Contractor shall furnish Metro with:

1. A duly executed Conditional Waiver and Release Form from each Subcontractor listed in the current Application, and
2. A duly executed Unconditional Waiver and Release Form from each Subcontractor listed in the preceding Application.

The Contractor shall utilize the applicable waiver and release forms set forth in Exhibit SA-1 and SA-3, as required by Division 4, Part 6, Title 1, Chapter 3 of the California Civil Code. In the event the Contractor fails to supply any of the foregoing waiver and release forms, Metro may retain the amount attributable to any such Subcontractor until the appropriate form is received. The Unconditional Waiver(s) must state the amount that the Subcontractor has been paid with respect to the Progress Payment most recently made to the Contractor.

E. Failure to Comply

Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted by Contract or law, including but not limited to, Metro issuing written notice to the Contractor and the Contractor's Surety that if the default is not remedied within a specified period of time -- at least five (5) days -- the Contract may be terminated for cause and the Contractor debarred. In addition, Contractor's failure to promptly pay its Subcontractors is subject to the provisions of the California Prompt Payment Act, including penalty of 2% per month on the improperly withheld amount (instead of interest) and attorney's fees and costs if the Subcontractor prevails.

CP-6 PAYMENT OF TAXES

Unless otherwise specifically provided in this Contract, the Contract Price includes compensation for all taxes the Contractor is required to pay by Laws in effect on the date the Contractor's bid was opened. The Contractor shall pay all federal, state, and local taxes, and duties applicable to and assessable against any Work, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The Contractor shall ascertain and pay the taxes when due. The Contractor will maintain auditable records, subject to Metro reviews, confirming that tax payments are current at all times.

CP-7 FINAL PAYMENT

A. After Final Acceptance of the Work, a Final Payment will be made as follows:

1. Prior to Final Acceptance, the Contractor shall prepare and electronically submit an Application for Final Payment to Metro at accountspayable@metro.net, including:
 - a. The proposed total amount due the Contractor, segregated by items on the Payment Schedule, Amendments, Change Orders, and other bases for payment;
 - b. Deductions for prior Progress Payments;
 - c. Amounts retained;
 - d. An Unconditional Waiver and Release for each Subcontractor. The Contractor shall utilize the applicable waiver and release form set forth in Exhibit SA-1 and SA-3, as required by Division 4, Part 6, Title 1, Chapter 3 of the California Civil Code;
 - e. List of Claims the Contractor intends to file at that time or a statement that no Claims will be filed, and;
 - f. List of pending unsettled claims, stating claimed amounts.
2. The Application for Final Payment shall include complete and legally effective releases or waivers of liens and stop notices satisfactory to Metro, arising out of or filed in connection with the Work. Prior Progress Payments shall be subject to correction in Metro's review of the Application for Final Payment. Claims filed with the Application for Final Payment must be otherwise timely under the Contract and applicable Law.
3. Metro will review the Contractor's Application for Final Payment. Any recommended changes or corrections will then be forwarded to the Contractor. Within ten (10) days after receipt of recommended changes from Metro, the Contractor will make the changes, and shall submit the revised Application for Final Payment. Upon Acceptance by Metro, the revised Application for Final Payment will become the approved Application for Final Payment.
4. If no Claims have been filed with the initial or any revised Application for Final Payment, and no claims remain unsettled within thirty (30) days after Final Acceptance of the Work by Metro, and agreements are reached on all issues regarding the Application for Final Payment, Metro, in exchange for an executed release from Contractor and an executed Unconditional Waiver and Release on Final Payment from each Subcontractor (Exhibit SA-4), satisfactory in form and substance to Metro, will pay the entire sum found due on the approved Application for Final Payment, including the amount, if any, allowed on settled Claims.

5. The release from the Contractor shall be from any and all Claims arising under the Contract, except for Claims that with the concurrence of Metro are specifically reserved, and shall release and waive all unreserved claims against Metro and its officers, directors, employees and Authorized Representatives. Contractor shall provide said release using the Release of Claims form (Attachment 4). Further, the Release of Claims form shall be accompanied by a certification (using Payment Certification (Final), Attachment 3) by the Contractor that:
 - a. It has resolved all Subcontractor, Supplier and other Claims that are related to the settled Claims included in the Final Payment;
 - b. It has no reason to believe that any party has a valid Claim against the Contractor or Metro which has not been communicated in writing by the Contractor to Metro as of the date of the Certificate;
 - c. All warranties are in full force and effect, and;
 - d. The releases and the warranties shall survive Final Payment.
6. If any Claims remain open, Metro may make Final Payment subject to resolution of those Claims. Metro may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of the sum of the amounts of the open Claims, and one hundred twenty-five percent (125%) of the amounts of open Stop Notices referred to in Article entitled STOP NOTICES herein.

CP-8

DISCOVERY OF DEFICIENCIES BEFORE AND AFTER FINAL PAYMENT

- A. Notwithstanding Metro's acceptance of the Application for Final Payment and irrespective of whether it is before or after Final Payment has been made, Metro shall not be precluded from subsequently showing that:
 1. The true and correct amount payable for the Work is different from that previously accepted;
 2. The previously-accepted Work did not in fact conform to the Contract requirements, or;
 3. A previous payment or portion thereof for Work was improperly made.

Metro also shall not be stopped from demanding and recovering damages from the Contractor, as appropriate, under any of the foregoing circumstances as permitted under the Contract or applicable Law.

END OF COMPENSATION & PAYMENT PROVISIONS

ATTACHMENT 1 – PAYMENT SCHEDULE

To be inserted at the time of contract award

ATTACHMENT 2

PAYMENT CERTIFICATION (CONTINUOUS)

TBD (Contract No.)

TBD (Title)

A. I hereby certify to the best of my knowledge and belief that:

1. This Payment Certification represents a true and correct statement of the Work performed;
2. The Work completed to date under this Contract are in full accordance with the terms of the Contract Documents;
3. All Subcontractors and/or Suppliers who have performed Work on the project through the closing date of the prior Payment Request have been paid their proportionate share of all previous payments from LACMTA;
4. This Payment Certification does not include any amounts which the Contractor intends to withhold or retain from a Subcontractor or Supplier in accordance with the terms and conditions of the subcontract; and
5. The Contractor and its principals, (i) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any governmental department or agency (federal, state, or local); (ii) have not in the past three years had one or more public transactions (federal, state, or local) terminated for cause or default; (iii) have not within the past three years 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, 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; and (iv) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, local) with commission of any of the offenses listed in Section (A)(5)(iii) above.

B. This Payment Certification is not to be construed as final Acceptance of the Contractor's, and any Subcontractor's or Supplier's performance.

C. I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to LACMTA a false claim for payment or approval. A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false Record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts. I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other criminal and/or civil remedies which LACMTA may have either under contract or law.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

ATTACHMENT 3

PAYMENT CERTIFICATION (FINAL)

TBD (Contract No.)

TBD (Title)

A. I hereby certify to the best of my knowledge and belief that:

1. This Payment Certification (Final) represent a true and correct statement of the Services performed and that the services have been completed in full;
2. The Services completed under this Contract are in full accordance with the terms of the Contract Documents;
3. All Subcontractors and/or Suppliers who have performed Services on the project have been paid their proportionate share of all previous payments from LACMTA, in full;
4. This Payment Certification (Final) does not include any amounts which the Contractor intends to withhold or retain from a Subcontractor or Supplier in accordance with the terms and conditions of the subcontract;
5. The Contractor, Subcontractors and/or Suppliers have no outstanding Claims related to any unreserved (settled) Claims. Further, Contractor releases and waives all unreserved (settled) Claims against LACMTA, its officers, directors, employees and Authorized Representatives;
6. Contractor has no reason to believe that any party has a valid Claim against the Contractor or LACMTA, which has not been communicated in writing by the Contractor to LACMTA as of the date of this Payment Certification (Final);
7. All warranties are in full force and effect;
8. Releases and warranties shall survive final payment; and
9. The Contractor and its principals, (i) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any governmental department or agency (federal, state, or local); (ii) have not in the past three years had one or more public transactions (federal, state, or local) terminated for cause or default; (iii) have not within the past three years 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, 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; and (iv) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, local) with commission of any of the offenses listed in Section (A)(5)(iii) above.

- B. This Payment Certification is not to be construed as the Final Acceptance of the Contractor's, and any Subcontractor's or Supplier's performance.
- C. I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to LACMTA a false claim for payment or approval. A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false Record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts. I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other criminal and/or civil remedies which LACMTA may have either under contract or law.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

ATTACHMENT 4

RELEASE OF CLAIMS

TBD (Contract No)

TBD (Title)

Contract Number:

Name of Contractor:

Date:

Pursuant to the terms of Contract # [insert Contract number here] (hereinafter the "Contract") and in consideration of the monies, which are to be paid under the Contract to ***[insert Contractor's full legal name here]*** (hereinafter "Contractor") or its assignees, if any, the Contractor hereby does remise, release, waive and discharge the Los Angeles County Metropolitan Transportation Authority (hereinafter "LACMTA"), its officers, directors, agents, employees, and Authorized Representatives (as defined in the Contract) of and from all liabilities, obligations, claims and demands whatsoever arising out of or under this Contract, except for those claims specifically reserved with the concurrence of LACMTA and listed here:

Contractor acknowledges that the consideration of monies provided by LACMTA in exchange for this release of claims shall be full and final payment for the amount due exclusive of the specifically reserved claims listed above.

(Note in the case of a corporation, the certificate below must be completed.)

Certificate

I _____, certify that I am the _____ of the corporation named as Contractor herein; that _____, who signed said release on behalf of the Contractor was the _____ of said Corporation; that said release was duly signed for and in behalf of corporation by authority of its governing body and is within the scope of its corporate powers.

Signature

Corporate Seal

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

EXHIBIT **TBD** - STATEMENT OF WORK

Insert when contract is conformed

DIVERSITY & ECONOMIC OPPORTUNITY DEPARTMENT CONTRACT COMPLIANCE MANUAL (RC – FTA)

SECTION 100 - DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

100 FEDERAL OBLIGATION:

This contract is subject to the requirements of 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

101 POLICY STATEMENT:

It is Metro's policy to provide equal opportunity for Disadvantaged Business Enterprises (DBE) firm, as defined in Part 26, receive and participate on DOT-assisted contracts. It is also our policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that Metro's DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- To assist the development of firms that can compete successfully in the market place outside the DBE program.

102 INTERPRETATION:

Any conflict, error, omission or ambiguity which may arise between these instructions and the federal regulations or the above mentioned DBE Program shall be resolved first in favor of the federal regulation and second the DBE program.

103 INCORPORATION OF THE DBE PROGRAM INTO THE CONTRACT:

49 CFR Part 26 and the DOT approved DBE Program adopted by Metro are hereby incorporated by reference into this contract as though set forth in full. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a material breach of this contract. The Contractor and all project subcontractors are subject to the requirements of the DBE Program and to all requirements of the DOT DBE program found at 49 CFR Part 26. Metro will investigate any allegation of the Contractor, subcontractor or any other participating business failing to carry out the requirements of this DBE Program. Should this investigation find merit in the allegations, Metro may pursue legal and/or contractual remedies and/or impose sanctions as provided for in 49 CFR Part 26. In appropriate cases, Metro may also refer the matter to proper Federal authorities for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Contract Compliance Manual is a component of this contract. It describes the DBE Program requirements applicable to this contract. The provisions and enforcement mechanisms set forth in the Contract Compliance Manual are in addition to all other provisions and enforcement mechanisms available to Metro set forth elsewhere in this contract. The Contractor's compliance with the DBE Program requirements will be monitored by Metro throughout the life of the contract.

104 GENERAL CONDITIONS AND SPECIAL PROVISIONS:

The General Conditions and Special Provisions of the subject Contract are incorporated by reference.

105 METRO ASSURANCE:

In accordance with 49 CFR Part 26, it is the policy of Metro to ensure that no person is excluded from participation, denied benefits, or otherwise discriminated against in connection with the award and performance of a contract on the basis of race, color, sex, religion or national origin. Metro will not directly or indirectly, through contractual or other arrangements, use criteria or methods of administration, that defeat or substantially impair the objectives of the DBE Program on the basis of an individual's race, color, sex, religion or national origin.

106 MISREPRESENTATION:

Suspension or debarment proceedings may be initiated against any firm that:

Attempts to participate in a DOT-assisted program as a DBE and does not meet the eligibility criteria stated in the Certification Standards for DBE programs; or on the basis of false, fraudulent or deceitful statements; or under circumstances indicating a serious lack of business integrity or honesty.

Attempts to use false, fraudulent or deceitful statements or representations in order to meet its DBE administrative requirements; or uses another firm that does not meet the DBE eligibility criteria stated in the certification standards.

DOT may take action itself through its Fraud and Civil Remedies Program or refer the matter to the Department of Justice for prosecution under appropriate criminal statutes.

107 AUDIT AND INSPECTION:

The Contractor shall maintain records of all DBE subcontractors and suppliers including names, business addresses, and the total dollar amounts actually paid through the term of the contract for five years after contract completion. Metro reserves the right to audit records and inspect the facilities of its contractors or any subcontractor (at any tier) for the purpose of verifying the DBE participation and/or adherence to the DBE program requirements. Contractors and subcontractors shall permit access to their records at the request of Metro. Notice is hereby given that state, local, and federal authorities may initiate or cooperate with Metro in auditing and inspecting such records.

SECTION 200 - DBE PARTICIPATION

200 OVERALL DBE GOAL:

To comply with 49 CFR Part 26, Metro has set an overall goal for DBE participation on its federally assisted contracts. The overall goal applies to federal-aid funds Metro expects to expend for the fiscal year. Metro will strive to meet its overall goal through race conscious and race neutral measures.

Metro supports the use of race conscious and race neutral measures to facilitate participation of DBEs and other small businesses, and encourages prime contractors to subcontract portions of their work that they might otherwise perform with their own workforce. To ascertain whether the overall DBE goal is being achieved, Metro will track payments made to all DBE firms performing work eligible for credit.

201 DBE MEASURES:

- A. Race Conscious (RC) DBE Measures for FTA funded contracts - RC DBE contract goal(s) applies to all federal DBE groups, which includes: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, Subcontinent Asian Americans, and Women (including Caucasian Women).
- B. DBE Measures for FHWA funded contracts - Includes setting DBE contract goals for the participation of DBE groups found in the California Department of Transportation (Caltrans) DBE Program, as [amended](#).

202 RACE NEUTRAL (RN) DBE MEASURES:

The DBE group(s) that have not been found in Metro's Disparity Study to have significant statistical disparity in Metro contracting and cannot be counted toward the RC DBE contract goal, but will be counted as RN DBE participation in accordance with 49 CFR Part 26.

Participation by all DBE groups will be tracked and reported to meet Metro's overall DBE goal.

203 DBE COMMITMENT:

The level of DBE participation, which the Contractor commits to at the time of contract award, is the commitment of record and is included in the Special Provision section of the contract. DBE participation will be monitored and enforced through the life of the contract.

204 COMMERCIALLY USEFUL FUNCTION (CUF):

A commercially useful function is performed when the business is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved. To perform a commercially useful function, the company must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity,

ordering the material, installing (where applicable) the material and paying for the material itself. To determine whether a company is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount of the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work and other relevant factors.

A DBE prime or subcontractor must perform at least 30% of its listed work with its own workforce or on the basis of normal industry practice, may not subcontract a greater portion of the work than would be expected. On-site CUF Reviews will determine whether the DBE is actively performing, managing, and supervising the contracted scope of work. It shall employ a labor force which is separate and apart from that employed by the prime, and which is independently recruited by the DBE in accordance with standard industry practice.

205 VIOLATION OF COMMERCIAL USEFUL FUNCTION:

If an investigation reveals that there has been a violation of the CUF provisions, that portion of the work found to be in violation will not be credited toward the DBE commitment for the contract. Expenditures to a DBE subcontractor or supplier will count toward DBE commitment only if the DBE subcontractor or supplier performs a commercial useful function.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, Metro must presume that the DBE firm is not engaged in performing a commercially useful function. The presumption that arises can be rebutted within 15 days. Metro's decisions on CUF matters are administratively final and may not be appealed to DOT.

206 DBE'S WORK FORCE:

The DBE shall solicit, hire, place on its payroll, direct, and control all workers performing work under its contract. The DBE owner or its superintendent shall, on a full-time basis, supervise and control the work of the contract. The DBE may with the prior written consent of Metro augment its work force with personnel of another firm. Metro shall approve the request in writing only when specialized skills are required and the use of such personnel is for a limited time period.

The DBE's utilization of labor, supervisory personnel, equipment and material in the performance of the subcontract must be consistent with industry standards and demonstrate that the DBE (and not some other business entity) is actually performing the contracted scope of work. A DBE does not perform a CUF when it associates too closely with another business entity's work force, including the use of equipment or materials.

207 COUNTING DBE PARTICIPATION:

Metro is only able to count toward the achievement of the Contractor's commitment percentage(s) the value of payments made for CUF work actually performed by DBE firms during the performance of the Contract. There will be no credit for DBE work performed by a non-DBE prime or subcontractor. Metro and the Contractor are governed by the provisions of 49 CFR Part 26.55(c) on questions of commercially useful functions as it affects the work. Specific counting guidelines are provided in 49 CFR Part 26.55, the provisions of which govern over the summary contained herein.

- A. DBE as the Prime Contractor: 100% DBE credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies and materials, for a construction contract, obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliates). When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE contract goal(s).
- B. DBE as a Joint Venture Contractor: 100% credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.
- C. DBE as a Subcontractor: 100% credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the prime contractor or its affiliates. Work that a DBE subcontractor in turn subcontracts to a non-DBE firm does not count toward the contract goal.
- D. DBE as a Material Supplier or Broker:
 - 1. 60% credit for the cost of the materials or supplies purchased from a DBE regular dealer.
 - 2. 100% credit for the cost of materials or supplies obtained from a DBE manufacturer.
 - 3. 100% credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.
- E. DBE as a Trucker: 100% credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the contract. Credit will be given for the full value of all such DBE trucks operated using DBE employed drivers. DBE credit will be limited to the value of the reasonable fee or commission received by the DBE if trucks are leased from a non-DBE company. Metro uses the following six

(6) factors in determining whether to count expenditures to a DBE trucking firm, to determine if it is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases the trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE, including an owner-operator. The DBE who leases trucks from a non-DBE will be credited only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For the purposes of determining whether a DBE trucking company is performing a commercially useful function, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

208 CHANGES IN WORK LISTED TO DBE FIRMS:

If Metro or the Contractor proposes changes for work contracted to a DBE firm(s), the Contractor is required to notify the DBE firm in writing within ten (10) working days prior to execution of the proposed change, reduction, or deletion of any work listed at time of contract award or after contract award. The dollar amount of changes or any other contract modification, change order, or provisions sums that increase or decrease the work listed to a DBE firm(s) will be commensurately added to or subcontracted from the total contract amount used to compute actual dollars paid to DBEs. Failure to comply with Section 207 will be cause for non-compliance and assessment of administrative sanctions.

SECTION 300 - ADMINISTRATIVE REQUIREMENTS

300 DBE STANDARDS:

The Contractor shall ensure that DBEs it has committed to in its bid/proposal have a level playing field to successfully perform their contract responsibilities and further commits to meet the DBE Goal of Record for the contract. These efforts should include but are not limited to the following:

- A. Negotiate in good faith to attempt to finalize subcontract and supply agreements with DBEs listed in its bid/proposal.
- B. Continue to provide assistance to DBE subcontractors or DBE suppliers in obtaining bonding, lines of credit, or other capital financing through referral to the DOT Bond Assistance Program (800) 532-1169.
- C. Issue the DBE(s) a written notice of any potential problem and provide a reasonable time frame for the DBE to remedy the problem. The Contractor shall, concurrently with the issuance of the notice to the DBE, send a copy of the notice by First Class mail, postage prepaid, to the Diversity & Economic Opportunity Department (DEOD). In instances where the DBE fails to remedy the problems identified in the notice, the Contractor shall within sixty (60) days of the first written notice to the DBE firm, take the steps outlined in Section 5.0 RESOLUTION OF DISPUTES BETWEEN CONTRACTOR AND (DBE) SUBCONTRACTORS, prior to formally requesting approval from Metro to substitute a DBE. Failure to comply with this section will be cause for non-compliance and assessment of administrative sanctions.

301 DBE CERTIFICATION STATUS:

If a subcontractor becomes a certified DBE during the life of the contract, the Contractor shall notify DEOD in writing with the date of certification to be counted toward the Contractor's DBE commitment subject to compliance with the substitution and addition requirements, if applicable. The Prime and DBE firm shall notify Metro of any change to its certification status. If a DBE firm's ineligibility is removed, the Prime and DBE firms shall notify Metro. The counting of DBE firm participation if deemed ineligible will be determined based on 49CFR26.87.

302 DBE DECERTIFICATION:

Contracts executed prior to the decertification of the DBE shall remain undisturbed. Neither the prime contract nor the subcontract shall be subject to cancellation because of the decertification, provided there is no culpability on the part of either the prime contractor or the subcontractor that led to the decertification. The prime contractor for whom the decertified DBE is working receives credit toward the project goal provided the prime contractor acted in good faith in relying on Metro's certification of the firm. However, if the decertified DBE were also found not to have performed a commercially useful function, no credit is to be made to the project goal or Metro's overall goal. The contractor shall promptly replace decertified firms with DBE in accordance with guidelines herein.

SECTION 400 - CONTRACT COMPLIANCE MONITORING

400 REVIEW AND MONITORING SYSTEM:

This section describes the review and monitoring system to ensure that all contractors, subcontractors, consultants, vendors, suppliers, dealers, brokers and other sources, and all Metro departments comply with the DBE requirements and all other contract provisions related to DBE participation.

Non-compliance by the Contractor with the DBE contract requirements or federal regulations constitutes a breach of contract, and requires, at a minimum, a written explanation and documented description of the contractor's good faith efforts (GFE). Failure to comply may result in: (1) mandatory participation in a DBE Program Training Session, reviewing the performance, accountability, record keeping and reporting aspects of the DBE Program, and/or (2) termination of the contract, and/or (3) administrative sanctions, and/or (4) other appropriate remedies.

401 CREATE A LEVEL PLAYING FIELD OF OPPORTUNITY TO PARTICIPATE:

The Contractor shall ensure that DBEs have a level playing field to successfully perform the responsibilities of their contract in order to meet its DBE contract commitment. These efforts include, but are not limited to the following:

- A. Negotiate in good faith to attempt to finalize subcontract and supply agreements with DBEs listed in its bid/proposal.
- B. Continue to provide assistance to DBE Subcontractors or Suppliers in obtaining bonding, lines of credit, or other capital financing through referral to the DOT Bond Assistance Program (800) 532-1169.
- C. Contractors who failed to meet the DBE goals established for the contract, but who were determined by Metro to have fulfilled the good faith effort requirements to meet the goal, shall make additional documented efforts to seek out and utilize additional first-tier DBE Subcontractors and Suppliers to increase DBE participation, during the life of the contract.
- D. Contractor shall immediately inform DEOD of any problems anticipated or concerns in achieving the DBE commitment agreed upon at the time of award.
- E. Issue the DBE(s) a written Cure Notice of any potential problem and provide a reasonable time frame for the DBE to cure the problem. The Contractor shall, concurrently with the issuance of the Cure Notice to the DBE, send a copy of the Cure Notice by First Class mail, postage prepaid, to the assigned Contract Compliance Officer, DEOD Contract Compliance Manager and to the Contract Administrator. In instances where the DBE fails to cure, the Contractor is then obligated to take the steps outlined in the section herein RESOLUTION OF DBE DISPUTES BETWEEN CONTRACTOR AND DBE SUBCONTRACTORS before formally requesting approval from Metro to substitute a DBE.

402 PRE-CONSTRUCTION (KICK-OFF) MEETING:

Both the Contractor and the Subcontractor(s) or a representative of each firm shall attend the kick-off meeting concerning DBE requirements and other matters, prior to or immediately after Notice to Proceed is issued. The Contractor shall be responsible for informing the Subcontractors of all DBE requirements as specified by Metro herein.

403 CONTRACT COMPLIANCE SUBMITTALS – REPORTING DBE PARTICIPATION:

Contractor and all subcontractors shall report payment details to Metro using the web-based Small Business Programs Compliance Reporting System (SBCRS) by the 15th of each month. SBCRS allows Contractors to manage their own records, maintain accurate contract information, and report payment details online, and submit system generated report to Metro. SBCRS is mandatory for Contractors and subcontractors to use unless Metro instructs otherwise. Metro will provide the Contractor, subcontractors, suppliers, brokers, and truckers online training, login and password information, at no cost to the Contractor or its subcontractors, suppliers, and truckers. Contractor shall have fourteen (14) days from Notice to Proceed (NTP) to register and obtain login and password with the SBCRS. Subcontractors, at all tiers, shall register within thirty (30) days of the NTP.

After award, Contractor will receive instructions on how to set up their account and enter required Subcontractor data. Contractor must require each of its subcontractors to enter required payment information into SBCRS. Contractor shall submit all monthly reports, subcontractor agreements, and documents through the SBCRS to Metro for review and approval. The Contractor is responsible for ensuring that all subcontractors, suppliers, brokers, and/or truckers (at all tiers) participate in the SBCRS based webinar trainings to comply with the verification of payments and other related reporting requirements through the software system. Failure of Contractor or its subcontractors to enter required information on a timely basis may result in delay of payment by Metro and assessment of DBE non-compliance for reporting requirements as identified in Section 800 of this Manual.

1. CONTRACTOR MONTHLY DBE PROGRESS REPORT (Design/Build Only):

The Contractor shall submit timely and complete monthly progress report summarizing the overall status of commitments to DBE firms, attainments to DBE firms, and prompt payment/retainage counts to all firms (DBE and non-DBE firms) performing on this contract.

The monthly progress report shall be submitted to Metro by the 15th day following the reporting month. The monthly report shall provide, at a minimum, the following information:

- A. General Contract Value Information: The following general contract value information must be provided:
- 1) Original Contract Amount
 - 2) Running Total of Change Order Amount
 - 3) Current Contract Amount
 - 4) Amount Paid to Contractor during Month

- 5) Amount Paid to Contractor Inception to Date
- 6) DBE Contract Goal
- 7) Total Dollar Amount of DBE Commitment
- 8) DBE Commitment as Percentage of Current Contract Amount

- B. Contractor/Subcontractor information: The following general information shall be prepared for the Contractor and each subcontractor (at every tier level): Name, address, phone, DBE status, contact person, contractor(s), name, date contract agreement signed, scope of work, anticipated first date of performance and anticipated last date of performance
- C. SUPPLEMENTAL REPORTS (Design/Build Only): The Prime Contractor shall submit, each month (or other such time as the DEO, may choose), the below compliance reports. Metro has developed a series of forms that may be adopted by the Contractor to meet this requirement or the Contractor may develop its own report format and present to Metro for approval and use to meet the supplemental report requirements:
- a. The Prime Contractor's DBE Attainment and Commitment Report for the month listing its immediate subcontractors and the DBE Attainment and Commitment Tally Sheets from each subcontractor subcontracting at each tier listing their immediate subcontractors, to the Contract Compliance Officer, documenting DBE and Non-DBE participation expected for the month;
 - b. The Prime Contractor's "Prompt Payment" Report listing its immediate subcontractors and the "Prompt Payment" activity from each subcontractor subcontracting at each tier listing their immediate subcontractors, to the Contract Compliance Officer, documenting the status of each subcontractor's retainage account with the Prime Contractor engaged in subcontracting and their compliance with the return of the retainage regulations.
 - c. The Prime Contractor's "Prompt Payment and Retainage" Report for the month (or such time period as the DEOD may choose), listing its immediate subcontractors and the prompt payment and retainage activity from each subcontractor (at any tier).
 - d. DBE Trucking Verification Report by the fifth (5th) day of each month, for the preceding month's trucking activity. The Contractor shall submit documentation showing the amount paid to DBE trucking companies listed to perform on the contract. This monthly documentation shall indicate the portion of revenue paid to DBE trucking companies which is claimed toward DBE participation. The Contractor shall also obtain and submit documentation to the DEOD showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks.
 - e. The DBE who leases trucks from a non-DBE is to credit only for the fee or commission it receives as a result of the lease arrangement. The records must confirm that the amount of credit claimed toward DBE participation conforms with Section 207.

The Contractor shall also obtain and submit documentation showing the truck number, owner's name, California Highway Patrol CA number and if applicable, the DBE certification letter of the owner of the truck for all trucks used during that month for which DBE participation will be claimed. The Contractor shall promptly pay DBE trucking companies in accordance with the prompt payment provisions prescribed in herein.

D. For Contracts that Require a DBE Contracting Outreach and Mentoring Plan (COMP). The Contractor shall:

- 1) Comply with the DBE requirement in the Contract Compliance Manual (RC-FTA);
- 2) Annually, no later than 60 days before the anniversary date of the overall contract, the Contractor shall prepare and submit to Metro an updated DBE COMP that includes the next 2 calendar years of subcontracting activities, inclusive of the overall project DBE commitment forecast. At all times over the life of the Project, the DBE Plan shall cover a 2-year period; and
- 3) Submit a quarterly report on all mentor protégé arrangements; meet with Metro, mentor(s) and protégé(s) annually to report overall progress of the mentor protégé component of the DBE COMP.

2. MONTHLY EXPENDITURE PLAN (CONSTRUCTION PROJECTS ONLY):

A monthly expenditure plan in calendar form for each of its approved DBE Subcontractors/Suppliers shall be submitted 14 working days after the Contractor executes a contract or purchase order with Metro. The planned expenditures shall equal the dollars committed to each DBE Subcontractor/Supplier and shall be developed according to the approved project schedule.

The plan shall be updated to incorporate any schedule changes and executed Changed Notices and Work Authorization Change Notices affecting the DBE's work. The original plan must be approved and each revision must be approved by the, "Construction Manager's Resident Engineer," prior to being submitted to the assigned Contract Compliance Officer and the Contract Administrator. Revised plans shall be submitted within 30 days from the incorporation of the change.

3. EXECUTED DBE SUBCONTRACT AGREEMENTS:

The Contractor shall submit copies of all executed DBE subcontract agreements and/or DBE purchase orders (PO) within 14 working days after the Notice to Proceed for all DBE firms listed in the Contractor's bid/proposal and DBE COMP. For Contracts that require a DBE Contracting Outreach and Mentoring Plan (COMP), the Contractor shall also submit the executed mentor protégé agreements for the DBE firms identified for mentor protégé development no later than 14 days after Notice to Proceed. Failure to comply with this section will be cause for non-compliance and assessment of administrative sanctions, and may include, imposing a special assessment against the Contractor.

The DBE subcontract or PO should be sent to the attention of the assigned Contract Compliance Officer. The Contractor shall incorporate the DBE Program document and this DBE Contract Compliance Manual into each PO and into each Subcontract issued under this DOT-assisted contract and each subcontractor, consultant, dealer, broker, vendor or other source shall agree to the terms and conditions. The Contractor shall immediately notify DEOD in writing, within the 14-day timeframe mentioned above, of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time. Failure to notify DEOD may deem the Contractor in non-compliance with this requirement.

The Contractor shall include the following language verbatim in each subcontract agreement the Contractor signs with a DBE subcontractor(s):

1. Contract Assurance: The contractor or subcontractor 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 DOT-assisted contracts. 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 recipient deems appropriate.
2. Enforcement: If a contractor or subcontractor fail or refuse to include the contract assurances verbatim in all DOT-assisted contracts, subcontracts and/or purchase orders agreements, MTA may impose penalties and administrative sanctions for non-compliance as contained in Section 800.
3. Prompt Payment: (Required in all DBE and non-DBE subcontract agreements)
 - a. Pursuant to 49 Code of Federal Regulations (CFR) Part 26 and the California Business and Professions Code Section 7108.5, the Contractor shall pay each subcontractor under this contract for satisfactory performance of its Work no later than to 7 days after receipt of each Progress Payment received from Metro. Any delay or postponement of payment from the above referenced time may occur only for good cause, and only upon prior written approval by Metro.
 - b. This clause applies to both DBE and non-DBE. For the purpose of this section, a subcontractor's work is satisfactorily completed when the Contractor certifies to Metro that all the tasks called in the subcontract have been satisfactorily accomplished and that the
 - c. (The above language is to be used verbatim, pursuant to federal regulations.)
 - d. After an investigation, if it is determined that the contractor is in non-compliance with prompt payment provisions, the contractor will receive written details of this deficiency. If additional clarification is required, the contractor must respond to the request within five (5) working days.

4. PROMPT PAYMENT, RETAINAGE AND RETENTION:

Contractor is referred to the General Terms and Conditions concerning Prompt Payment to Subcontractors and Prompt Payment of Withheld Funds to Subcontractors.

The Contractor shall incorporate the Prompt Payment Clause and Retention Clause, set forth above, in all subcontract, broker, dealer, vendor, supplier or PO or other source agreements issued to both DBE and Non-DBE firms. Contractor shall include a prompt payment and retention clause in all DBE and non-DBE subcontracts.

Enforcement: If Metro determines that the prime contractor has failed to (1) include prompt payment language verbatim, (2) promptly pay its subcontractors, or (3) promptly release Retainage, Metro shall give written notice to the Contractor and the Contractor's Surety that, if the default is not remedied within a specified period of time (at least 5 days), the contract may be terminated. The Contract may be terminated for cause in accordance with the Contract Article TERMINATION FOR DEFAULT. Metro shall also impose penalties and sanctions for non-compliance with the DBE Program as referenced in Section 800 and other requirements of State law.

5. PROMPT PAYMENT OF RETENTION:

Contractor shall promptly release retention to Subcontractors (Required in all DBE and non-DBE subcontract agreements verbatim):

With respect to retention that Metro withholds from the Contractor, Metro shall make prompt and regular incremental inspection(s) and upon approval of the Contractor's work at various stages of the Project, Metro shall pay a percentage of retention to the Contractor. The Contractor shall, within 7 days after Metro has made such payment, promptly pay all retention owed to Subcontractor(s) who has satisfactorily completed all of its work and whose work is covered by Metro inspection(s) and approval(s). For the purposes of this section, a subcontractor's work is satisfactorily completed when the Contractor certifies to Metro that all the tasks called for in the subcontract have been satisfactorily accomplished and that subcontractor's retention may now be paid. Any delay or postponement of prompt release of retention beyond the 7-day time limit shall be for good cause, and only upon prior written approval by Metro. (The above language is to be used verbatim, pursuant to federal regulations.)

6. FINAL REPORTING:

Contractor shall submit to Metro, along with invoice for final payment, a signed and notarized statement that the Contractor will pay all outstanding payments including retention 7 days after it receives final payment from Metro. Please see General Terms and Conditions concerning "Prompt Payment to Subcontractors and Prompt Payment of Withheld Funds to Subcontractors." The Contractor shall submit the final payment report in the reporting system within 14 calendar days of final payment.

7. FAILURE TO COMPLY:

If it is determined that the contractor is non-compliant with prompt payment provisions, the contractor will receive written details of this deficiency. If additional clarification is required, the contractor must respond to the request within five (5) working days. Failure to comply may result in the assessment of appropriate administrative sanctions and/or penalties.

- A. Assessment for DBE Non-Compliance: If the Contractor fails to comply with the DBE Program requirements, contract payments shall be reduced by one or more of the following methods:
 - a. A penalty of five thousand dollars (\$5,000) per day, from the date the Contractor is determined to be in non-compliance with the DBE Program requirements until compliance is determined.
 - b. Penalties of ten percent (10%) of the total contract value, including any approved change orders, for failure to meet DBE commitments or to demonstrate good faith efforts.
 - c. Penalties may be deducted from payments due the Contractor, from any funds retained.
- B. Dispute Resolution: The Contractor must include in its DBE Subcontract Agreement(s) the Dispute Resolution provisions in Section 5.0 of the Contract Compliance Manual (Federal) for disputes arising out of or related to this contract between Contractor and any lower tier Subcontractors which cannot be settled by discussions between the parties involved. The Contractor and Subcontractor, in the event of a dispute to their contract, agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof.
- C. Equal Employment Opportunity (EEO) Policy Statement:
 - a. Contractor shall submit a copy of its EEO Policy Statement. Each construction contractor is covered under Executive Order 11246, as amended if the contract amount exceeds \$10,000 and must submit a copy of its Equal Employment Opportunity (EEO) Policy. The EEO policy must also be included in the Contractor's subcontracts. The policy shall state that 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 covering all provisions of this nondiscrimination clause.

- b. The construction 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.

SECTION 500 - RESOLUTION OF DISPUTES BETWEEN METRO CONTRACTOR AND SUBCONTRACTORS

500 INFORMAL MEETINGS:

Disputes between the Contractor and any lower tier DBE subcontractors, which cannot be settled by discussions between the parties involved, shall be settled as described herein. Contractor shall notify Metro of such dispute within ten 10 days of failure to resolve through written cure notice process described above.

These provisions shall not apply to disputes between the Contractor and Metro. These provisions do not alter in any way or waive compliance with any provisions in Section GC36 "Submittal of Claims" included in the Contract Documents.

The Contractor and Subcontractors shall include the dispute resolution provision in their contract. Both parties shall agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof. Dispute submittals shall include terms and timeframes and the service or assistance to be employed.

501 INFORMAL MEETINGS:

The Diversity and Economic Opportunity Department will coordinate informal meeting requests, to assist in the resolution of disputes between Contractor and subcontractor. The assigned Diversity and Economic Opportunity Representative will conduct the informal meetings with parties in dispute. All parties must agree to the procedure.

502 MEDIATION:

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third party organizations. Metro's Diversity and Economic Opportunity Department is considered an independent third party. Submission to informal mediation is voluntary; is not binding and offers advisory opinions.

503 ARBITRATION:

Should the parties fail to resolve any DBE related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration within 120 days from date Metro is notified of dispute. Arbitration conducted pursuant to the contract shall be binding upon all parties to the arbitration. All arbitration is to be conducted in a manner consistent with section 1020 et seq. of the Public Contract Code and Section 1296 of Code of Civil Procedure.

Available mediation and arbitration services include:

The American Arbitration Association (213) 383-6516
Dispute Resolution Center (818) 793-7174

The Contractor shall incorporate this Section into each DBE subcontract related to work arising under this contract and shall not incorporate by reference.

Only when resolution of DBE disputes attempted through informal meetings, mediation, and/or arbitration has failed may the Contractor formally request substitution of a DBE subcontractor.

504 TIMELINESS:

Should the parties proceed to arbitration, moneys due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) working days of a determination being issued by the arbitrator.

NOTE: Arbitration findings are binding upon the parties. However, the findings do not in any way relieve the contractor of its obligation to meet the DBE goals.

SECTION 600 - ADDING OR SUBSTITUTING OR TERMINATING A DBE

Contractors shall obtain written approval from DEOD prior to adding, substituting, or terminating DBE subcontractors.

600 ADDING DBE SUBCONTRACTORS:

If contractors determine that there are additional opportunities for DBEs not originally listed, they may exercise good faith efforts by requesting to add DBE firm(s) to their contract. Metro shall authorize the addition of DBE subcontractor(s) for credit toward the contract commitment upon verification of certification. Prior to adding DBE subcontractors, written requests must be submitted to DEOD and Contract Administration for approval. This request must include the Request to Add DBE or Non-DBE Subcontractor form (reference Appendix B) specifying the scope of work, dollar amount, period of performance, and applicable North American Industry Classification System (NAICS) code(s), with a DBE certification letter attached.

The request to add a new certified firm to the contract is to be submitted to DEOD and approved prior to any commencement of work. In addition to the Request to Add DBE or Non-DBE Subcontractor form, the prime contractor request must include the following documentation:

- A. Written justification for adding additional firm(s) to contract team;
- B. Provide subcontract agreement for added firm(s) with dollar amount of scope of work, period of performance, and required flow down provisions;
- C. Provide certified letter evidencing certification status of firm(s) to be added;
- D. Documentation of prime contractor outreach efforts and selection process undertaken for the scope of work to be performed by the proposed added firm(s);

- E. Identify if the added firm(s) replacing another originally listed certified firm or is a result of reducing scope of work originally listed. (The prime contractor shall comply with substitution requirements when making changes to originally scope committed to another certified firm).

Enforcement: Failure by the contractor to comply with the “request to add requirements,” shall constitute a material breach of the contract and may result in termination of contract or imposition of administrative sanctions for non-compliance.

After formal approval by Metro, the contractor may add the subcontractor to the reporting system and must provide a copy of the Subcontract Agreement.

601 SUBSTITUTING OR TERMINATING DBE SUBCONTRACTORS:

Pursuant to 49 Code of Federal Regulations (CFR) Part 26 and the California Public Contract Code Section 4100, no contractor at any tier may terminate a DBE subcontractor for convenience and then perform that work with its own workforce or that of its affiliate. The contractor shall provide written request to DEOD to substitute a DBE subcontractor.

- A. Metro shall only authorize the substitution of a subcontractor for one or more of the following reasons:
 - 1. The listed DBE, after having had a reasonable opportunity, fails or refuses to execute a written contract.
 - 2. The listed DBE becomes bankrupt or has credit unworthiness.
 - 3. The listed DBE fails or refuses to perform his subcontract with normal industry standard.
 - 4. The listed DBE subcontractor, after having had a reasonable opportunity, fails or refuses to meet the contractor’s non-discriminatory bond requirements.
 - 5. The prime contractor demonstrates to Metro, pursuant to Public Contract Code, Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
 - 6. The listed subcontractor is not licensed pursuant to the Contractor’s License Law.
 - 7. It was determined that the work performed by the listed subcontractor is substantially unsatisfactory and is not in accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work
 - 8. The DBE is ineligible to work because of suspension and debarment.
 - 9. It has been determined that the DBE is not a responsible contractor.
 - 10. The DBE voluntarily withdraws, with written notification, from the contract.
 - 11. The DBE is ineligible to receive credit for the type of work required.
 - 12. The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
 - 13. Other documented compelling reasons.
- B. DEOD shall send written notice to the listed DBE subcontractor of the Contractor’s request for substitution, including the reasons for the request. The DBE subcontractor shall have five (5) working days to submit written objections to the

substitution to DEOD. Failure to respond to a written objection may constitute the listed DBE subcontractor's consent for substitution.

- C. If written objections are filed by a DBE subcontractor, Metro shall give written notification within at least five (5) working days, to the prime contractor and the listed subcontractor of an informal mediation regarding the request for substitution.
- D. Contractor(s) shall replace a DBE subcontractor with another DBE firm, after following dispute resolution procedures, pursuant to the provisions of the California Public Contracts Code.
- E. If no written objections are filed by the DBE subcontractor, the prime's request to substitute shall be approved. A new DBE listing shall include the commitment amount and the type of work covered by each Subcontractor. All substitutions and additions are subject to Metro's approval.
- F. If substitution with another DBE firm is not viable, the Contractor shall submit a written request for a substitution with a non-DBE. This request must include documentation of good faith efforts demonstrating the contractor's attempt to substitute the DBE firm with another DBE firm for Metro's review and approval.

The Contractor shall obtain the written consent prior to making any substitutions. If adding DBE firms for credit toward the goal, verification of certification is required prior to receiving credit toward the contract specific goal. DBEs must be certified at the time of the substitution or addition.

Failure to comply with this or any other DBE requirement may result in assessment of appropriate administrative sanctions.

SECTION 700 - GOAL ATTAINMENT DURING LIFE OF CONTRACT

- A. The Contractor shall not make any falsification of a Subcontract as to Subcontractor's name, Subcontract amount and/or actual work to be performed by DBE firms.
- B. The Contractor shall utilize DBEs according to the participation levels committed to at the time of contract award, and demonstrate an adequate and positive good faith effort to do so throughout the life of the contract.
- C. The dollar amount of Change Orders, contract modifications, or provisions sums for design, construction, O&M that increase or decrease the scope of work committed to DBEs shall be commensurately added to or subtracted from the total contract amount used to compute actual dollars paid to DBEs regardless of who performed the work.
- D. All contract amounts revised as a consequence of a Change Order, contract modification or provisional sums shall be reflected in the Contractor's monthly referenced herein in Diversity and Economic Opportunity Submittals, herein.
- E. All submittal forms, containing any contract value, revised as a consequence of a Change Order, contract modification, provisional sums shall be accompanied with copy of relevant support documentation.

- F. The Contractor shall submit the final DBE report within fourteen (14) calendar days of final payment, retention and acceptance of the contract work by Metro as prescribed in Section 3.6.
- G. Listed first-tier subcontractors shall enter into subcontract agreements with the Contractor within the specified time frame of fourteen (14) working days following NTP. Failure to execute subcontract agreements in a timely manner shall be considered a violation of the DBE Program requirements.
- H. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- I. When a DBE performs in a joint venture, only the percentage of the DBE joint venture is eligible for credit. Work must be performed by the DBEs own work forces.
- J. Failure to adhere to any of the requirements of this Section shall constitute a breach of contract and may result in Metro's terminating the contract for default and/or imposing appropriate sanctions as outlined in the section Remedies for Breach of DBE Requirements.

SECTION 800 - SANCTIONS FOR VIOLATIONS

A. Failure to Comply

1. Failure to adhere to any of the DBE Program requirements shall constitute a breach of contract and may result in Metro terminating the contract for default and/or imposition of appropriate sanctions as outlined in this section.
2. Staff shall review the contractor's monthly progress reports to determine whether the utilization of DBE firms is consistent with the contractor's commitment at the time of contract award.
3. Failure to utilize a DBE as listed toward the goal is a breach of contract and may result in the imposition of administrative sanction.
4. If it is determined that the Contractor's DBE utilization is not consistent with the commitment, the contractor shall be required to submit written evidence of its good faith efforts (GFE) within ten (10) working days. For failure to respond, the contractor will be deemed non-compliant and subject to administrative sanctions.
5. If it is determined that the contractor's good faith efforts documentation is acceptable, the contractor shall be deemed to be in compliance with the requirements of the DBE program.
6. If it is determined that the contractor's good faith efforts documentation is not acceptable, the contractor will receive written details of any deficiencies. If additional clarification is required, the contractor must respond to the request within five (5) working

days. Failure to comply may result in the assessment of appropriate administrative sanctions and/or penalties.

7. If it is determined that the contractor is in non-compliance with prompt payment provisions, the contractor will receive written details of this deficiency. If additional clarification is required, the contractor must respond to the request within five (5) working days. Failure to comply may result in the assessment of appropriate administrative sanctions and/or penalties.

B. Remedies for Breach of DBE Requirements

Contractor(s) found in violation of Metro's DBE program requirements, during the performance of the contract, shall be required to "correct" its deficiency or be subject to the Administrative Sanctions listed in this Section. Being subject to appropriate administrative remedies or sanctions does not preclude Metro from invoking other contract and/or legal remedies available under federal, state or local law

C. Appropriate Administrative Remedies

Appropriate administrative remedies will be imposed on Contractors deemed non-compliant to the DBE Program requirements. Contractors' failure to provide documentation of good faith efforts, as requested, will also be subject to appropriate administrative remedies. Contractor notifications shall be made by certified mail.

The appropriate administrative remedies shall include, but is not limited to the following:

1. Mandatory DBE Training Session(s) for Contractor(s) found in violation of DBE program requirements (DBE Training will be coordinated by DEOD, and all associated expenses, including, but not limited to, travel, lodging, meals and etc., will be the responsibility of the Contractor.)
2. Penalties as described in the, "Assessment for DBE Non-Compliance," (referenced in Sub-Section D)
3. Suspension of payment(s) to the Contractor by Metro
4. Termination of the Contract for default.
5. Debarment (29 CFR 5.6).

D. Assessment for DBE Non-Compliance

If the Contractor fails to comply with the DBE Program requirements, contract payments shall be reduced by one or more of the following methods:

1. A penalty of five thousand dollars (\$5,000) per day, from the date the Contractor is determined to be in non-compliance with the DBE Program requirements until compliance is determined.

2. Penalties of ten percent (10%) of the total contract value, including any approved change orders, for failure to meet DBE commitments or to demonstrate good faith efforts.
3. Penalties may be deducted from payments due the Contractor, from any funds retained.

E. Appeal of Sanction Determination

The Contractor shall be given ten (10) working days from the date of the notice to file a written appeal with the Director of Diversity and Economic Opportunity or his/her designee. Failure to respond within the ten (10) day period shall constitute a waiver of the Contractor's right to appeal. If the Contractor files an appeal, the Director of Diversity and Economic Opportunity, or his/her designee, shall issue a written recommendation within ten (10) working days of receipt of the written appeal.

If, after review of the Contractor's appeal, the Director of Diversity and Economic Opportunity or his/her designee decides to uphold the decision to impose administrative sanctions on the Contractor, the written recommendation shall state the specific sanction(s) to be imposed and inform the Contractor of its right to a hearing on the merits.

F. Contractor's Right to a Hearing

After receipt of the notice of administrative sanction, The Contractor shall be given ten (10) working days from the date of the written recommendation to file a written request for a hearing. Failure to respond within the ten (10) day period shall constitute a waiver of the Contractor's right to a hearing.

The Director of Diversity and Economic Opportunity Department, shall issue a written final determination within five (5) working days of the hearing. There shall be no right of appeal to the final decision.

APPENDIX A – DIVERSITY AND ECONOMIC OPPORTUNITY MANUAL (FEDERAL) DEFINITIONS

Change Order (CO): A written order by Metro's Contracting Officer directing Changed Work.

Changed Work (or Change): Changed Work is directed by Metro by a Change Order or is agreed to by the parties in an amendment or modification. Changed work includes work that does not involve an adjustment in the contract price and/or contract time; does not include work performed or time spent by contractor to correct any deficiency, additions, deletions or other revisions to the work within the general scope of the contract.

Commercially Useful Function: work performed by a DBE firm in a particular transaction that in light of industry practices and other relevant considerations, has a necessary and useful role and the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in Metro's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

Contractor: The individual, firm, partnership, corporation, joint venture, or combination thereof, which may also be referred to by the term "it", that has entered into the contract with Metro. Includes contractors, successors, employees, officers, contractors' representatives, and agents. Context may also include subcontractors, suppliers and any other persons for whom the contractor may be legally or contractually responsible.

Contracting Opportunity: Any decision by Metro or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

Department: Functional unit of Metro responsible for management and administration of specific projects included within the capital and operating budget.

Directory of Certified Firms: List of Certified Firms used by Metro and its contractors to identify potential DBE subcontractors and suppliers.

Disadvantaged Business Enterprise (DBE):

A for-profit small business, owned and controlled by socially and economically disadvantaged individuals, as defined in 49 CFR, Part 26.

- (1) At least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals
- (2) Appropriate to the type of work the DBE seeks to perform in DOT-assisted contracts and has average annual gross receipts as defined by SBA regulations found at 13 CFR 121.402 over the previous three years, and does not exceed \$21.4 million
- (3) Personal net worth does not exceed \$1.32 million
- (4) An independent business whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it

DOT Assisted Contract: Any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with DOT financial assistance.

FHWA: Federal Highway Administration, an operating administration, of the U.S. Department of Transportation

FTA: Federal Transit Administration, an operating administration, of the U.S. Department of Transportation.

LACMTA: The Los Angeles County Metropolitan Transportation Authority

Manufacturer: Means a business that operates, or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

Metro Rail Project: The design, engineering and construction of the high-capacity, high-speed conventional rapid rail system, currently proposed as an 18 mile subway system with multi-car trains, steel rails and at least 16 stations serving the Los Angeles' Regional Core.

Non-Compliance: The condition existing when a contractor has failed to implement or meet the requirements of 49 CFR 26, as amended or Metro policy or procedure pertaining to DBE participation.

Payroll Form: The State of California WH 347 Dept. of Transportation form for completing the Contractor employee's number of hours worked, hourly rate of pay, employee's classification, name, SSN, address, and fringe benefits paid, etc.

Pre-Bid/Construction Conference: A meeting held by Metro after award of contract on a particular construction project, but prior to the beginning of any work, at which the prime contractor is advised of its federal compliance obligations and any final technical requirements.

Pre-Bid/Proposal Conference: A meeting held by Metro prior to the bid/proposal closing date of a particular project, at which prospective bidders/proposers are advised of Metro specification requirements which include DBE provisions.

Professional/Technical Services Contract: Contracts for the professional and technical services of accountants, architects, engineers, landscape architects, lawyers, planners, surveyors, companies, urban designers, appraisers, option negotiators, and other persons performing similar services for Metro.

Public Works Contract: Contracts for the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Secretary: The Secretary of U.S. Department of Transportation or any person whom he/she has designated to act for him/her.

Small Business Diversity Section: The staff that oversees and monitors labor standards activities for applicability to the State of California Labor Code and, where applicable, of the California code of Regulations.

State: State of California.

Statement of Compliance: The statement on the back of Payroll Form WH 347, whereby the Contractor declares how the fringes are paid whether by cash or through a bona fide fringe program.

Subcontract: Any contract, including contracts of any tier, to furnish Work, Goods or Equipment between the Contractor and/or any Subcontractor or Supplier.

Subcontractor: Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor that enters into a legal agreement with the Contractor or any Subcontractor to furnish Work, Construction Equipment or Goods. Unless otherwise specified, Subcontractor includes a Subcontractor of any tier.

U.S. Department of Transportation Regulation (49 CFR Part 26): Federal rules and regulations published in the Federal Register dated February 2, 1999; as amended by the Department of Transportation, Office of the Secretary; "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," and codified at 49, Code of Federal Regulations, Part 26.

Wages: The basic hourly rate of pay, any contribution made pursuant to, or cost anticipated to provide, a bona fide fringe benefit plan, fund or program.

APPENDIX B - DBE ATTACHMENTS

REQUEST TO ADD DBE OR NON-DBE SUBCONTRACTOR

Project Name: _____ **Contract No.** _____

Prime Contractor: _____

Contractor herewith requests that _____, a ___ Disadvantaged Business Enterprise (DBE)* or ___ Non-DBE, subcontracted to _____, be added to the approved list of subcontractors on this project in accordance with our approved subcontracting plan.

*If the proposed subcontractor is a DBE, Contractor must attach a DBE certification letter to this form.

Description of Work (Specify Subcontractor's Portion of Work): Design ☐ Construction ☐

Expected Start Date: _____ **Expected End Date:** _____

NAICS Codes/ Description (List only those codes that are applicable):

Code(s)	Description:

Name of Proposed Firm: _____

Address _____ **City** _____ **State** _____ **Zip** _____

Email _____ **Telephone** _____

Contact Person _____ **Title** _____

Public Work Contractor Registration # _____

☐ Copy of Public Works Registration Attached

☐ Copy of Certification Regarding Debarment, Suspension and Other Responsibility Matters Attached

[California Contractors State License](#) # _____

If the Work/Services require DIR Registration, per California Labor Code §1725.5, complete below:

a. DIR Registration No.: _____

b. DIR Registration Date: _____

Subcontractor Counting and Calculating DBE Credit:

- ☐ As Subcontractor ☐ As Joint Venture ☐ As Supplier (60% for DBE Credit)
☐ Trucking (Owner Operator) ☐ As Broker (DBE credit for fees/commissions only)

Subcontract Amount \$ _____ **Amount Claimed as DBE Commitment: \$** _____

Contract Type (for proposed subcontractor):

- ☐ Time & Material (Not to Exceed) ☐ Contract Term: _____ through _____
- ☐ Lump Sum / Firm Fixed Price / Unit Price

Solicitation Process: This subcontractor was selected using the following process:

Competitive Selection:

- ☐ 3 Quotes (Best Value) ☐ Advertisement – Negotiated (Best Value)
- ☐ Advertisement – Low Bid ☐ Other _____

Subcontractor	DBE	Bid or Proposal Amount
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Non-Competitive:

- ☐ Sole Source Award ☐ Other _____

Justification for selection: _____

Has this subcontractor teamed with any other subcontractors on this contract?

- ☐ Yes ☐ No

List all lower tier subcontractors that this subcontractor has teamed with on this contract and provide a separate Request to Add DBE or Non-DBE Subcontractor form for each.

Subcontractor	DBE	Scope of Work
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

SECTION 3 – BID/PROPOSAL DOCUMENTS

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INSTRUCTIONS TO BIDDERS

IB-01 PRE-QUALIFICATION REQUIREMENTS

- A. All Bidders, proposed first-tier subcontractors, and material suppliers (supplying directly to Metro), competing for award of contracts or subcontracts of \$100,000 or more will be required to complete and submit a Contractor Pre-Qualification Application. Failure to do so may cause your bid to be rejected as non-responsive.
- B. Contractor Pre-Qualification Applications are due to the Pre-Qualification Office no later than the bid due date and time. Do not put copies of pre-qualification documents in your bid. All first-tier subcontractors must be pre-qualified prior to performing any Work. Contractor is responsible for ensuring a timely submittal of all Contractor Pre-Qualification Applications.
- C. For contact information, please refer to the Letter of Invitation (LOI). For detailed instructions, refer to the Pre-Qualification Application which can be downloaded from Metro website (<http://media.metro.net/uploads/EBB/PQA/images/Pre-Qualification.pdf>), or provided by the Pre-Qualification Office.

IB-02 BIDDERS LIST FORM

- A. In accordance with 49 CFR 26.11 (c), the Los Angeles County Metropolitan Transportation Authority (Metro) is required to maintain a Bidders List, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts, who seek an award or participation on Metro contracts funded in whole or in part with Federal funds. Each Bidders List is a compilation of Bidders, Proposers, Quoters, subcontractors, manufacturers, and suppliers of materials who have submitted bids during the advertising period of a specific project.
- B. **If the Letter of Invitation identifies this IFB as federally funded, all businesses are required to complete and submit a Bidders List Form (PRO FORM 132) when submitting a Bid, Proposal, or Quote directly to Metro.**
- C. All businesses that submit a Bid, Proposal, or Quote directly to Metro must also ensure that all of its quoting subcontractors, suppliers, manufacturers and suppliers that the Bidder included in its response to Metro, are required to complete and submit a Bidders List Form (PRO FORM 132).
- D. Bidders List Forms (PRO FORM 132) are due at time of Bid due date as provided in the Letter of Invitation. Failure to submit the Bidders List Form(s) may deem the Bidder non-responsive.

- E. LACMTA will use the Bidders List to identify the universe of DBE and non-DBE contractors and subcontractors who seek to work on Metro contracts for use in establishing Metro overall goals.

IB-03 RESERVED

IB-04 EXAMINATION OF IFB DOCUMENTS

- A. All bids shall be in strict accordance with the Invitation for Bid (IFB) Documents.
- B. Copies of the solicitation, Metro responses to all written questions, and requests for interpretation and clarification will be available for examination and/or purchase as noted in the Invitation for Bid letter. The bidder shall be solely responsible for examining the solicitation documents, reviewing all Amendments; comprehending all conditions that may impact the bid and the performance of the Work should the bidder be selected. Failure of the bidder to so examine and inform itself must be at its sole risk.

IB-05 INTERPRETATION OF IFB DOCUMENTS

- A. Requests for interpretation or clarification of the solicitation documents shall be submitted in writing. All written requests shall be forwarded to Metro Contract Administrator identified in the Invitation for Bid Letter.
- B. To ensure that responses are provided to all Planholders, inquiries shall be received at least **ten (10) working days** prior to the submittal due date, unless otherwise noted in the Invitation for Bid Letter. Where such interpretation or clarification requires a change in the solicitation documents, Metro will issue an Amendment.
- C. Metro shall not be bound by, and the Planholder shall not rely on for any purpose, any oral interpretation or oral clarification of the solicitation documents.

IB-06 AMENDMENT

- A. Metro reserves the right to revise the solicitation documents prior to the bid opening. Such revisions, if any, will be made by Amendment to this IFB.
- B. Bidders shall acknowledge receipt of all Amendments to the IFB Documents in the Bid Letter. Failure to acknowledge receipt of all Amendments may render the bid non-responsive.
- C. Prior to submitting the bid to Metro for consideration, each bidder is responsible for checking Metro website to ensure that it has received all applicable Amendments.

IB-07**PREPARATION OF SUBMITTAL**

- A. Bids must include the bid forms and submittal requirements outlined in the solicitation documents, or on legible photocopies of the forms. Bidders shall complete the forms in accordance with the directions specified in these Instructions and the bid forms. All required explanatory narratives and the supplementary data are to be included with the bid forms as indicated.
- B. All certifications located in Section 6, Required Certifications, must be fully completed and included in the Bid. For the Ethics Declaration, Bidder must submit its completed Ethics Declaration, as well as a completed Ethics Declaration from each of the Bidder's prospective subcontractors, in the Bid.
- C. Pencil or erasable ink shall not be accepted. Initial all modifications made to bidder's entries and identify the bidder's name on the top right of each page. Liquid or dry correction materials shall not be used.
- D. Failure to comply with the requirements outlined in these solicitation documents may cause the Bid(s) to be incomplete and rejected as non-responsive.
- E. Metro is not obligated to pay for any costs incurred in the preparation and submission of Bids.

IB-08**MODIFIED AND ALTERNATIVE BIDS**

A bid shall be rejected when the bidder imposes conditions that would modify requirements of the solicitation documents.

IB-09**SIGNING OF BIDS**

- A. An authorized signatory shall execute the Bid Letter and all applicable Bid Forms.
- B. If the bidder is a joint venture/partnership, it shall submit with its bid a duly notarized venture/partner-executed irrevocable Power of Attorney that designates one of the ventures as a Management Sponsor along with a signed copy of the Joint Venture/Partnership Agreement. The Management Sponsor shall be empowered to execute the bid on behalf of the bidder and to act for and bind the bidder in all matters relating to the bid. The Power of Attorney shall specifically state that each venture/partner shall be jointly and severally liable for any and all of the duties and obligations of the bidder that is assumed under the bid and under any contract arising there from. The Management Sponsor on behalf of the joint venture/partnership in its legal name shall execute the bid.

IB-10 SUBMISSION AND OPENING OF SEALED BIDS

- A. The complete bid shall be submitted in a sealed bid envelope with the bidders name and the IFB number clearly marked on the envelope. The envelope must also be clearly marked "Sealed Bid".
- B. Bids submitted to Metro shall be received at the address and place shown in the Letter of Invitation up to the date and time shown therein.
- C. It is each bidder's sole responsibility to ensure that its bid is received as stipulated. The bid opening is a public process and the bidder may attend.

IB-11 BID EVALUATION PROCESS

- A. The bid evaluation period shall close upon Metro's completion of its review and evaluation of IFB Documents, including any Good Faith Effort documents submitted. Metro shall not give bidders notice at the completion of bid evaluation. A recommendation for award will be sent to all bidders and bid results will be available on Metro's website.
- B. During the bid evaluation period, staff shall determine if bids are responsive and bidders are responsible. Bids submitted in strict accordance with the solicitation documents will be deemed responsive. A responsible bidder has the apparent ability to meet and successfully complete the requirements of the Contract. Responsibility determination includes, but is not limited to consideration of a bidder's trustworthiness, the quality of past performance, financial ability, and the fitness and capacity to do the proposed Work in a satisfactory manner. Bidder may be required to present further evidence that it has successfully performed similar work of comparable magnitude or provide other proof satisfactory to Metro that it is competent to successfully perform the Work.
- C. For solicitations over \$100,000, a debriefing is available to interested parties after award. Bidders must request the debriefing in writing within five (5) days of receipt of the notice of intent to award. Debriefing will be held after award. Any request for a debriefing should be addressed to the Contracting Officer.

IB-12 DISCREPANCIES IN BID ITEMS

- A. The bidder shall furnish a price for each individual bid item, unless otherwise stated in the Schedule of Quantities and Prices. Failure to do so may render the bid(s) incomplete and non-responsive and may cause its rejection. The bid shall state the unit prices, the total amount of each bid item, and the "Total Bid Price" for which the bidder proposes to supply the labor, goods, and completely perform the Contract. If the unit price and the extended amount expressed by the bidder for any item are not in agreement, the unit price alone will be considered as representing the bidder's intention. Metro will correct the extended unit price and the Total Bid Price.

- B. Should any unit price be left blank the bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., unit price can be determined by dividing the total price by the estimated quantity) or is not required as identified in the Schedule of Quantities and Prices.
- C. Should any total price be left blank the bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., total price can be determined by multiplying the unit price by the estimated quantity).
- D. If any one line item is left blank, and the above situations do not apply, no attempt shall be made to reconcile the amounts. The bid in this case shall be considered non-responsive.

IB-13 WITHDRAWAL OF BID (BEFORE BID OPENING)

The bidder may withdraw its bid before the bid opening without forfeiture of its Bid Guarantee by means of a written request signed by the bidder or its properly authorized representative, clearly identified on the outside of the submittal, as a withdrawal of bid, delivered to the address identified in the Letter of Invitation.

IB-14 BID MISTAKES (AFTER OPENING)

- A. A bidder who seeks to rescind its bid due to a mistake or error in preparation of its bid, shall notify Metro in writing within five (5) business days of public opening.
- B. For public works contracts, bidders alleging mistakes in bids may seek relief in accordance with § 5100, et. Seq. of the California Public Contract Code.

IB-15 METRO RIGHTS

Metro may investigate the qualifications of any bidder under consideration inclusive of, but not limited to, the information provided in the Pre-Qualification Application. Metro may require confirmation of information furnished by the bidder, and require additional evidence of qualifications to perform the Work described in this IFB. Metro reserves the right to:

- A. Reject any or all of the bids, at its discretion, including multiple bids if the multiple bids are prejudicial to the interests of Metro or to other bidders;
- B. Reject any bid that, in the opinion of Metro, is so unbalanced in comparison to other bids received and/or to Metro's internal estimates that it does not accurately reflect the cost to perform the Work;
- C. Cancel the entire IFB;
- D. Issue subsequent IFB's;

- E. Appoint evaluation committees to review bids;
- F. Seek the assistance of outside technical experts to evaluate bids;
- G. Disqualify the bid(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the bidder(s);
- H. Waive any errors or informalities in any bid, to the extent permitted by law; and,
- I. Award a Contract without interviews, discussions, or negotiations, if permitted by the bid process.

IB-16 PUBLIC RECORDS ACT

- A. Responses to this IFB are subject to the provisions of the California Public Records Act (California Code Government Code, §6250 et seq.).
- B. Any documents provided by the Contractor to Metro marked "Trade Secret", "Confidential" or "Proprietary" or any financial records provided by the Contractor to Metro shall be submitted in a separate sealed envelope clearly marked with the bidders name and the IFB number. The envelope must also be clearly marked as applicable, "Confidential", "Proprietary", "Trade Secret", Confidential. Metro will only handle envelopes marked as such, in accordance with the General Condition entitled "Public Records Act."

IB-17 COMMUNICATION WITH METRO

- A. All communications between Metro and the bidders must be in writing.
- B. Written bid communications shall be addressed to the Contract Administrator identified in the Invitation for Bid Letter, direct assistance is available as follows:
 - 1. Pre-Qualification assistance may be obtained by contacting the responsible Pre-Qualification staff noted in the Invitation for Bid Letter.
 - 2. Diversity and Economic Opportunity (DEO) assistance (such as a list of certified firms and the certification status of a particular firm) may be obtained by contacting the responsible party noted in the Invitation for Bid Letter.
- C. Any written correspondence with these support groups should include a copy to the Contract Administrator's attention.

IB-18 DISQUALIFICATION OF BIDDERS

- A. Any person, firm, corporation, joint venture, or other interested party that has been compensated by Metro or a consultant/contractor engaged by Metro for assistance in preparing the IFB Documents and/or estimate shall be

considered to have gained an unfair competitive advantage in bidding and shall be precluded from submitting a bid in response to the IFB.

- B. After the IFB is issued, any person, firm, corporation, joint venture, or other interested party that has discussions regarding the IFB with anyone at Metro other than the Contract Administrator may be considered to have gained an unfair competitive advantage. They may be disqualified from this IFB process, except for communications with Metro as stated above in instructions entitled, COMMUNICATIONS WITH METRO.

IB-19

FILING OF PROTESTS & PROTEST PROCEDURES

- A. All Protests must be filed and resolved in a manner consistent with the Metro, "PROTEST INSTRUCTIONS" (available for download at <http://media.metro.net/ebb/protest.pdf>).
- B. Appeals related to a Pre-Qualification Denial must be filed in accordance with the Pre-Qualification Appeal entitled Contractor Pre-Qualification Program (available for download at http://media.metro.net/uploads/EBB/PQA/images/Vendor_Prequal_Program.pdf).

SUPPLEMENTAL INSTRUCTIONS TO BIDDERS/PROPOSERS

1. BID GUARANTEE

Yes ☒ No ☐

No bid shall be considered unless it is accompanied by an unconditional Bid Guarantee that ensures that the Bidder will, if its bid is accepted, execute a Contract. The guarantee shall be in the amount of 10 percent of the Total Bid Price as defined in the Bid Form entitled SCHEDULE OF QUANTITIES AND PRICES, Section entitled DETERMINATION OF TOTAL BID PRICE. The guarantee shall be in the form of cash (in U.S. dollars), a certified or cashier's check or Bid Bond executed by an admitted surety in the State of California, or any combination thereof. Checks and bonds shall be made payable to the Los Angeles County Metropolitan Transportation Authority.

If a Bid Bond is submitted, it shall be documented on the form furnished by Metro or a legible photocopy thereof. Certified or cashiers checks must be drawn on a solvent state or national bank, or branch thereof, in the State of California.

If the Bidder to whom the award is made fails or refuses to sign a Contract or to furnish the required insurance certificates as defined in Instruction to Bidders entitled INSURANCE REQUIREMENTS, bonds as defined in Instruction to Bidders entitled PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS, and Alcohol-and-Drug-Free Workplace Program as defined in the Alcohol-and-Drug-Free Workplace Manual, the Bid Bond shall be subject to forfeiture to Metro.

The liability of Metro in connection with such Bid Guarantees will be limited to the return of the Bid Guarantees to the successful Bidder after all acts, for the performance of which said security is required, have been fully performed. The remaining Bid Guarantees will be returned after Metro has made an award to the successful Bidder.

2. PERFORMANCE AND PAYMENT BOND REQUIREMENTS

Yes ☒ No ☐

Within 10 days after award, but prior to Metro's execution of a Contract for Construction or Furnish and Install (Systems) Services, the successful Bidder shall deliver to Metro an original of the Performance Bond and Payment Bond on the forms supplied by Metro or legible photocopy thereof. The Bonds shall be executed by a surety acceptable to Metro and authorized to issue such bonds in the State of California.

The bond requirements for Furnish Only (Equipment) Contracts are defined in the Special Provisions.

- A. Concurrent with the execution of the Contract, the Contractor shall furnish Metro, at its own expense, a Performance Bond and Payment Bond satisfactory to Metro in the form supplied herein, issued by a surety satisfactory to Metro and authorized to issues such bond in the State of California.

- B. The Performance Bond shall be for 100 percent of the Total Contract Price as a guarantee of good faith and timely performance on behalf of the Contractor that the terms of the Contract shall be complied with in every particular.
- C. The Payment Bond shall be for 100 percent of the Total Contract Price as security for the payment of all obligations arising under the Contract or incurred by reason of performance of the Work and shall meet the requirements of Civil Code Section 3247et seq.

3. ESCROW OF BID DOCUMENTS

Yes ☒ No ☐

Bidders submitting bids having a value over \$5 million may be required to submit one copy of all documentary information generated in preparation of the bid prices to Metro within 48 hours after the time of receipt of bids. See the Article entitled ESCROW OF BID DOCUMENTS in the Special Provisions.

END OF SUPPLEMENTAL INSTRUCTIONS

DBE INSTRUCTIONS TO BIDDERS/PROPOSERS AND FORMS (FEDERAL)

SECTION 100 - DBE PROGRAM

100 FEDERAL OBLIGATION: This 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.

101 METRO POLICY STATEMENT: It is Metro's policy to provide equal opportunity for Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, to receive and participate on DOT-assisted contracts. It is also our policy to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensure that Metro's DBE program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- Assist the development of firms that can compete successfully in the market place outside the DBE program.

102 INTERPRETATION: Any conflict, error, omission or ambiguity which may arise between these instructions and the federal regulations or the above mentioned DBE Program obligation, shall be resolved first in favor of the federal regulations and second the DBE Program. Failure of a Bidder/Proposer, its subcontractors, consultants, suppliers or other entities to carry out these requirements may be grounds for Metro to implement administrative penalties or other remedies imposed by Metro.

103 SUSPENSION OR DEBARMENT: Suspension or debarment proceedings may be initiated by Metro against any firm that:

- A. Attempts to participate in a DOT-assisted program as a DBE and does not meet the eligibility criteria stated in the certification standards for DBE programs; or on the basis of false, fraudulent or deceitful statements; or under circumstances indicating a serious lack of business integrity or honesty.
- B. Attempts to use false, fraudulent or deceitful statements, or representations in order to meet its DBE administrative requirements, or uses another firm that does not meet the DBE eligibility criteria stated in the certification standards.

In accordance with 49 CFR Part 26.107 DOT may take action itself through its Fraud and Civil Remedies Program or refer the matter to the Department of Justice for prosecution under appropriate criminal statutes.

Metro may refer any false, fraudulent, or dishonest conduct to the attention of the Department of Transportation in connection with the DBE program, so that DOT can

take the steps (e.g., referral to the Department of Justice for criminal prosecution, and/or referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules).

- 104** **METRO OVERALL DBE GOAL:** Metro has established a triennial overall DBE goal for DBE participation. Metro will use both Race-Conscious (RC) and Race-Neutral (RN) measures to achieve its overall goal. To ascertain whether the overall DBE goal is being achieved, Metro will monitor contractor's DBE commitments and will track the payments to all firms (DBE and Non-DBE).

- 105** **DBE MEASURES:** Race Conscious (RC) DBE Measures for FTA funded contracts include setting RC DBE contract goals for the participation of DBE groups found in Metro's Disparity Study to have significant statistical disparity in Metro contracting. The RC DBE groups are African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, Subcontinent Asian Americans, and Women (including Caucasian Women).

DBE Measures for FHWA funded contracts include setting DBE contract goals for the participation of DBE groups found in the California Department of Transportation (Caltrans) DBE Program, as [amended](#).

- 106** **RACE NEUTRAL (RN) DBE MEASURES:** The DBE group(s) that have not been found in Metro's Disparity Study to have significant statistical disparity in Metro contracting and cannot be counted toward the RC DBE contract goal, but will be counted as RN DBE participation in accordance with 49 CFR Part 26.

Participation by all DBE groups will be tracked and reported to meet Metro's overall DBE goal.

SECTION 200 - DBE PARTICIPATION

- 200** **DBE CONTRACT GOAL:** DBE goals are established based on the analysis of the scope of work, and the availability of DBE firms that are ready, willing, and able to perform. If established, the contract goal is listed in the "Letter of Invitation Supplement" contained in the solicitation document.

If a contract goal is not established, Bidders/Proposers are encouraged to utilize DBE firms when opportunities are available during the performance of the contract. The successful Bidder/Proposer will be required to report DBE participation throughout the period of performance. DBE participation obtained when a contract goal is not established is counted as RN participation.

- 201** **RESPONSIVENESS TO CONTRACT GOAL:** If a RC DBE contract goal is established for this contract, obtaining the contract goal is a matter of responsiveness. Bidders/Proposers are required to document sufficient DBE participation to meet the goals or, alternatively, document adequate good faith efforts (GFE). Bidders/Proposers shall provide the following:

- A. Names and addresses of DBE firms that will participate in this contract;
- B. Description of the work each DBE will perform. To count toward meeting the DBE

- goal, each DBE firm must be certified in a NAICS code applicable to the scope of work the firm would perform on the contract;
- C. Dollar commitments of each DBE firm participating;
 - D. Written documentation of the Bidder's/Proposer's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 - E. Written confirmation of prime contractor's commitment to each listed DBE, including the scope(s) of work and dollar commitment; and
 - F. If the contract goal is not met, evidence of good faith efforts must be submitted by bid/proposal due date. Documentation of good faith efforts shall include copies of all DBE and non-DBE subcontractor quotes submitted to the Bidder/Proposer, when a non-DBE subcontractor was selected over a DBE for scopes of work identified. (refer to Section 400 - GFE Requirements). In addition, the Bidders/Proposers shall submit Attachment H – Bidder/Proposer Notarized Certification of Good Faith Efforts with their GFE documentation.

202 CONTRACTOR ASSURANCE: The Bidders/Proposers shall make the following assurance and shall, after contract award, include this assurance verbatim in each subcontract and/or purchase agreement awarded to both DBE and non-DBE subcontractors, suppliers, truckers, and brokers:

Contractors, subrecipients, nor subcontractors shall 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 federally-assisted contracts. 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 recipient deems appropriate, which may include, but is not limited to:

- 1. Withholding monthly progress payments;
- 2. Assessing sanctions;
- 3. Liquidated damages; and/or
- 4. Disqualifying the contractor from future bidding/proposing as non-responsible.

203 DBE COMMITMENT FORMS: Bidder/Proposer shall submit with its bid/proposal completed DBE Forms as provided in these Instructions to Bidders/Proposers (See: TABLE 1 – DBE COMMITMENT FORMS).

SUBMITTAL FORMS: Submit DBE Forms 1 through 5 with bid/proposal (even if DBE goals were not established).

- Form 1 Proposed Subcontractors & Suppliers
- Form 2 Affidavit
- Form 3 Business Data Sheet
- Form 4 Proposed Lower Tier Subcontractors & Suppliers
- Form 5 DBE Affirmation

The Bidder/Proposer shall provide, as part of its bid/proposal, a complete listing of DBE and non-DBE subcontractors that will perform any portion of the work, together with a description of their scope of work and dollar value of their participation.

204 DBE INFORMATION: Bidders/Proposers are informed of the following:

- A. DBE firms must be certified by the California Unified Certification Program (CUCP) by bid/proposal due date (reference Section 500 DBE Certification Requirements).
- B. DBE firms must be certified in the North American Industry Classification System (NAICS) code(s) representing the scope(s) of work listed for DBE credit.
- C. DBE firms listed to meet the contract goal must be in the designated RC DBE groups. (See: Section 106 Race Conscious (RC DBE) Measures). Bidders/Proposers will receive credit toward the contract goal for DBE groups designated as race conscious.
- D. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company. Bidders/Proposers are encouraged to consider achieving the DBE goal by purchasing materials and commodities from DBE firms.
- E. A DBE joint venture partner must be responsible for performing a clearly defined scope of work. DBE joint venture partners must actually perform, manage and supervise the work with its own forces; and share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- F. DBE firms must perform a commercially useful function, by being responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising at least 30% of the project work with its own workforce (See: Section 301- "Commercial Useful Function").

205 REPLACEMENT OF A DBE FIRM: Prior to contract award, if a Bidder/Proposer lists a DBE firm that was denied prequalification, the Bidder/Proposer shall replace the DBE firm with another DBE subcontractor. The Bidder/Proposer shall notify the Diversity & Economic Opportunity Department of this occurrence, and shall obtain prior written approval for replacement of the DBE firm. Bidder/Proposer shall document good faith efforts to replace DBE firm by following the good faith effort steps outlined in Section 400 Good Faith Efforts Requirements.

A Bidder's/Proposer's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The Fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

SECTION 300 - COMMERCIAL USEFUL FUNCTION AND COUNTING DBE PARTICIPATION

300 COMMERCIAL USEFUL FUNCTION: To receive DBE participation credit towards the DBE contract commitments, DBE firm(s) must perform a commercially useful function

(CUF). A DBE must perform at least 30% of its listed work with its own workforce or must not subcontract a greater portion of the work than would be expected on the basis of normal industry practices for that type of work. A DBE performs a CUF when it is responsible for a clearly defined and distinct scope of work. DBE firms must be responsible for the execution of the work and carrying out its responsibilities by actually performing, managing, and supervising the work involved and normal industry practices.

Metro will count DBE participation, for firms performing a CUF, in accordance with 49 CFR Part 26.55. When a DBE participates in a contract, Metro will count only the value of the work actually performed by the DBE toward the DBE contract goal(s).

1. DBE as the Prime Contractor: 100% DBE credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies, for a construction contract, obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliates). When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE contract goal(s).
2. DBE as a Joint Venture Contractor: 100% DBE credit shall apply to the clearly defined and distinct portion of work performed by the DBE's own workforce.
3. DBE as a Subcontractor: 100% DBE credit shall apply to the work performed with the DBE's own forces, including the cost of materials and supplies (does not include: the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the prime contractor or its affiliates). Work that a DBE subcontractor subcontracts to a non-DBE firm shall not be credited towards the DBE contract goal.
4. DBE as a Material Supplier or Broker:
 1. 60% DBE credit for the cost of the materials or supplies purchased from a DBE regular dealer.
 2. 100% DBE credit for the cost of materials or supplies obtained from a DBE manufacturer.
 3. 100% DBE credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.
5. DBE as a Trucker: 100% DBE credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the contract. Credit will be given for the full value of all such DBE trucks operated using DBE employed drivers. DBE credit will be limited to the value of the reasonable fee or commission received by the DBE if trucks are leased from a non-DBE company. Metro uses the following six (6) factors in determining whether to count expenditures to a DBE trucking firm, to determine if it is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases the trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For the purposes of determining whether a DBE trucking company is performing a commercially useful function, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

SECTION 400 - GOOD FAITH EFFORTS

400 REQUIREMENTS: Bidders/Proposers are reasonably expected to take active and aggressive measures sufficient to meet the DBE goal(s), even if not fully successful. Metro will consider whether the quality, quantity, volume and intensity of the efforts were sufficient to meet the DBE goal. Mere pro forma efforts are not good faith efforts and are not sufficient to meet the DBE contract requirements. Only those efforts made prior to bid/proposal due date shall be considered for GFE evaluation. Attachment H, "Bidder/Proposer Notarized Certification of Good Faith Efforts," must be submitted at the bid/proposal due date if the Bidder(s)/Proposer(s) did not meet the goal.

GFE measures undertaken by a third party shall be at the Bidder's/Proposer's own risk and shall not relieve Bidder(s)/Proposer(s) of the responsibility for meeting the GFE requirements. Bidder/Proposer(s) shall also identify all Third Parties utilized to prepare GFE responses for each GFE indicator.

401 RESPONSIVENESS: To determine if a Bidder/Proposer who failed to meet the DBE contract goal is responsive, Metro will determine if the effort taken to obtain DBE participation satisfies GFE requirements. Further, Metro will ensure that all good faith effort information supplied by each Bidder/Proposer is complete, accurate and

adequately documented prior to award of any contract.

1. Any of the following conditions constitute failure to meet the contract goal and will require submittal of good faith effort documentation:
 - a. The DBE commitment reflected in the DBE Commitment Forms is less than the DBE contract goal established.
 - b. Firms listed toward meeting the DBE contract goal that are not certified by the bid/proposal due date in the NAICS codes for the listed work to perform.
2. If the Bidder/Proposer has not met the stated contract goal, documentation of its GFE must be submitted at the time of bid/proposal due date.
3. Metro will evaluate each GFE item on a pass/fail basis. Bidders/Proposers:
 - a. Will receive either full or zero (0) points for each GFE item.
 - b. Must receive a score of 90 – 100 points to pass the GFE requirements.
 - c. Achieving a passing score of 90 or more points are considered responsive to the GFE requirements.
 - d. Who receive a score less than 90 points are considered to have failed the GFE requirements.
4. Metro shall notify Bidders/Proposers in writing whether GFE requirements were met or not met. The notification will explain the basis and include the reasons for the determination. If a Bidder/Proposer fails GFE, the Bidder/Proposer will be provided the opportunity for administrative reconsideration of Metro's GFE determination.

402 RECONSIDERATION: Bidders/Proposers shall receive written notification from Metro detailing the results of their GFE evaluation. If the Bidder/Proposer failed to achieve adequate good faith efforts to meet the established DBE goal(s), they shall have the right to request a Reconsideration Hearing. Hearing procedures include:

1. Right to Reconsideration Hearing: If a Bidder/Proposer receives notice that they failed GFE requirements, they may request a reconsideration hearing. Hearing requests shall be made in writing, via U.S. Mail or delivery service to Metro, Attn: Karen Gorman, GFE Reconsideration Officer, One Gateway Plaza, Mail Stop 99-11-12, Los Angeles, CA 90012-2952. Requests may also be submitted by facsimile to the Reconsideration Officer's ("RO") fax number at 213.922.2986, provided, however, that requests must be received by the RO within two (2) business days after the date the Bidder/Proposer receives the GFE determination notice. The Bidder/Proposer shall be presumed to have received the notification five (5) days after the date of the DEOD notice letter. The RO shall provide DEOD with a copy of the hearing request.
2. Scheduling of Reconsideration Hearing: Upon receipt of a request for a reconsideration hearing, the RO or his/her designee will contact the Bidder/Proposer and the DEOD to schedule the hearing. Reconsideration hearings will be held no later than five (5) business days after receipt of the Bidder/Proposer's request, unless the RO agrees to extend this time period based on good cause. Extensions are disfavored.

3. Decision: The RO will provide a written decision to the Bidder/Proposer and DEOD within five (5) business days of the hearing, or as soon as possible thereafter. The decision will explain the basis for finding that the Bidder/Proposer did or did not meet the goal or make adequate good faith efforts to do so. Pursuant to 49 CFR 26.53, the decision is final and not administratively appealable to any other person within Metro, the United States Department of Transportation or any other authority.

403 GOOD FAITH EFFORTS STEPS: The achievement of good faith efforts (GFE) will be based on evaluation of the following criteria in accordance with 49 CFR Part 26.53, and Appendix A.

- (1) ADVERTISEMENT
- (2) NOTIFICATION TO SMALL BUSINESS ORGANIZATIONS/COMMUNITY GROUPS
- (3) SELECT PORTION OF THE WORK TO BE SUBCONTRACTED
- (4) REQUEST FOR BID/PROPOSAL, SPECIFICATION INFORMATION
- (5) SOLICITATION FOLLOW-UP
- (6) ASSISTANCE IN OBTAINING BONDS & INSURANCE
- (7) ATTEND PRE-BID/PRE-PROPOSAL CONFERENCE
- (8) LIST OF SUBCONTRACTORS SUBMITTING BIDS/PROPOSALS
- (9) COMMITMENT OF OTHER BIDDERS/PROPOSERS

1. ADVERTISEMENT

(10 POINTS)

(Ref: "Attachment A – Sample Advertisement" and complete "Attachment B - Newspaper Advertisement Log")

Effort: Advertisements soliciting sub-bids/proposals from DBE firm(s) shall appear no fewer than 21 days prior to the initial bid/proposal due date. If the bid/proposal schedule established by Metro is less than 21 days, advertisements for a shorter reasonable period of time are acceptable. When amendments extend bid/proposal due dates, GFE consideration shall only be given to Bidders/Proposers who extend or revise advertised dates for the benefit of increased DBE opportunities.

Advertisements will refer only to bids/proposals for Metro projects only and will specify the categories of work for DBE subcontracting opportunities. The advertisements shall be placed in a minimum of three (3) paid weekly publications.

Advertisements shall consist of the following:

- A. Bidder/Proposer shall advertise in general newspaper publications or media that are

reasonably be expected to reach DBE firms that are likely to bid/propose on this contract.

- B. Bidder/Proposer shall advertise in two (2) varied minority and/or women trade association newspapers or other minority and/or women trade focus publications or media that will reach all DBE firms.
- C. The advertisement shall include, at a minimum, the name of the newspaper, company contact person, type of publication, circulation dates of advertisement, project name and number, date of DBE subcontractor bid/proposal or quote due date to the Bidder/Proposer, Bidder/Proposer bid/proposal due date to Metro, detailed description of subcontracting work solicited, and time and location where bid/proposal plans, specifications and other documents may be reviewed.
- D. The advertisement must further identify Metro as owner, and indicate that the solicitation is in response to Metro's DBE requirements and that the Bidder/Proposer will extend opportunities to DBEs and conduct itself in good faith with DBE firms seeking subcontract opportunities for the contract.
- E. Bidders/Proposers shall advertise to DBEs only
- F. If bid/proposal due date was amended, explain positive and/or negative impact(s) to DBE solicitations.

Evidence: Include a list of advertisements placed, including a copy of the advertisements and/or tear sheets, advertisement commitment form and/or transaction receipt, and copy of advertisement specs submitted to the selected media source. Metro will closely analyze the tear sheets and the advertisement commitment form to verify dates and adherence to GFE requirements.

Bidders/Proposers are reasonably expected to take active and aggressive measures sufficient to meet the DBE goal and advertise to DBEs reasonably expected to perform the identified subcontractable work items.

2. NOTIFICATION TO SMALL BUSINESS ORGANIZATIONS AND COMMUNITY GROUPS

(10 POINTS)

Effort: Outreach notification must be made to outreach to a minimum of five (5) small business and disadvantaged business organizations, and Southern California Small Business Development Centers. For assistance, reference the listing of member organizations included in Metro's Transit Business Advisory Council (TBAC) website: <http://business.metro.net/VendorPortal/faces/home1/advisoryCouncils>. Notification to organizations shall include, at a minimum, the items that are required for advertisement (under GFE item #1).

Bidder/Proposer shall obtain a listing of additional DBEs from the small business organizations and/or the Southern California Small Business Development Centers. Follow-up shall be conducted consistent with the "Guidelines for Contacts for Various Work Categories" included in GFE Indicator #4, no less than 10 days after mailing the initial solicitation letters.

Evidence: Copies of letters, e-mails, faxes, fax confirmation sheets, telephone logs, etc. used to contact organizations. The documentation must include names of organizations/groups, dates, names of contacts, telephone numbers, and DBE goal.

Bidder/Proposer must include documented evidence of correspondence received from the small business organizations and/or the Southern California Business Development Centers. Documented evidence of a minimum of five (5) organizations/groups must be included in GFE submittal.

Follow-up activity must be documented in telephone logs or other written documentation which provide, at a minimum, the following information:

- A. Type of contact (e.g., telephone call, visit, email, letter)
- B. Name and position of person who made contact on behalf of the Bidder/Proposer
- C. Name and address and/or email of firm contacted
- D. Name and position of person contacted, telephone number, and date of contact
- E. Indicate response from the firm contacted with regard to its interest in submitting a sub-bid/proposal.
- F. Email return receipts to document successful delivery to DBE subcontractors, and in the case of returned email correspondence, documentation from the mail server that the email was undeliverable.
- G. Follow-up, if any, to the assistance offered in the initial solicitation letter with regard to breakdown of work into economically feasible units, bonding, insurance, lines of credit, and plans and specifications.
- H. Bidder/Proposer shall provide written justification for decisions to self-perform work using its own workforce.

3. SELECT PORTION OF THE WORK TO BE SUBCONTRACTED (15 POINTS)

(Complete "Attachment C – Selected Work Categories Form")

Effort: The Bidder/Proposer shall identify work categories it intends to self-perform with its own workforce and all work/services that it intends to subcontract. This includes, breaking out scopes of work into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own workforce.

To increase the likelihood of meeting DBE goal requirements, Bidders/Proposers shall as part of its planning process to actively and aggressively seek DBE participation, review NAICS codes provided by Metro to ensure that they support the selected portion(s) of work identified by the Bidders/Proposers as subcontractable.

Evidence: Documents showing all the work that the Bidder/Proposer intends to perform with its own work force and all the work that the Bidder/Proposer has identified for subcontracting/supply should be evidenced on the Selected Work Categories Form. Bidders/Proposers shall provide documentation of efforts to utilize DBE firms that can reasonably be expected to perform the identified subcontractable work items. Include additional comments when selected work categories are not sufficient to meet the goal and provide supporting documentation.

4. INVITATION FOR BID/REQUEST FOR PROPOSAL, SPECIFICATIONS AND INFORMATION (15 POINTS)

(Complete "Attachment G – Sample Letter of Solicitation" and use "Attachment D – Written Solicitation Submittal Form")

Effort: Using Sample Letter of Solicitation (Attachment D), written Requests for Bid or Proposal to DBE firms included in the Metro DBE certified list. Attach copies of solicitation letters to the "Written Solicitation Submittal Form" (Attachment G).

See "Guidelines for Contacts for Various Work Categories" following Evidence #4 in this section. Solicitation letters shall be mailed, emailed or sent no fewer than 21 days prior to the bid/proposal due date. If, due to the schedule established by Metro, 21 days are not available, a mailing providing a shorter reasonable period of notice is acceptable.

Evidence: Bidder/Proposer shall provide interested DBEs with adequate information about the plans, specifications, and requirements in a timely manner to assist them in responding to the solicitation. Bidder/Proposer shall include names, contact persons, addresses, phone numbers, and dates of all DBE firms solicited at least 21 days prior to bid/proposal due date and by what means (certified letters, fax, phone, emails, etc.). Copies of the solicitation letters must be included. Only certified DBE firms will be taken into consideration. Bidders/Proposers notifications shall:

- A. Clearly identify portions of the work to be subcontracted, and offer to break down any portion of the work into economically feasible units in order to facilitate DBE participation.
- B. Identify if there is a bond requirement for subcontractors for this contract and specify requirements.
- C. Offer assistance with regard to bonding requirements and insurance requirements, where applicable, and/or financing (e.g., lines of credit), specifying the type of assistance that the Bidder/Proposer is offering. Assistance may include, but is not limited to the following:
 - 1. Contact bonding and/or insurance companies on behalf of DBEs.
 - 2. Arrange with sureties incremental or phased bonding for the DBEs and/or paying for the cost of the bond or insurance
 - 3. Waive bond or other requirements.

4. Refer DBEs to Business Development Centers or other resource agencies, which may assist DBEs in obtaining bonding, insurance, or lines of credit.
 5. Offer to make plans and specifications available to DBEs at reasonable hours for viewing, copying, or borrowing and provide a list containing the location of plan rooms.
- D. When complying with the guidelines for contacting an adequate number of DBE firms, Bidders/Proposers shall use Metro's DBE certified list included in the solicitation. When soliciting DBEs, Bidder/Proposer are required to use the list of DBEs provided by Metro in the Letter of Invitation Supplement included in the referenced IFB/RFP.

Bidders/Proposers are encouraged to identify additional NAICS codes and request assistance from Metro to increase its efforts for achieving the DBE goal. Bidders/Proposers shall outreach to utilize DBE firms that can reasonably be expected to perform the identified subcontract work items.

- E. As an additional outreach resource, Bidders/Proposers may obtain additional DBE listings from the California Unified Certification Program (CUCP) directory. Bidders/Proposers shall ensure that all DBE firms listed shall be certified under NAICS codes applicable to the scopes of work associated with the project. Additional DBE listings, not included in the solicitation, must be included in the Bidders/Proposers good faith efforts response.

Note: Determination of an adequate number of DBE's contacted shall depend on the number of DBEs available in each of the NAICS code work categories.

Guidelines for Contacts for various Work Categories:	
Number of DBEs Identified	Guidelines for number of DBEs to Contact
1 - 50	Contact 50% of all listed DBEs
51 - 199	Contact 50% of all listed DBEs
200 or more	Contact 40% of all listed DBEs

5. SOLICITATION FOLLOW-UP

(15 POINTS)

(Complete Attachment E – Solicitation Follow-up Log)

Effort: Bidder/Proposer shall conduct follow up with the number of DBE, referenced in the "Guidelines for Contacts for Various Work Categories" included in GFE Item #4. Bidders/Proposers shall conduct solicitation follow-up 10 days after the making the initial solicitation letters. Follow-up must be with same firms solicited from the Metro DBE certified list.

Bidders/Proposers may obtain additional DBE listings from the California Unified Certification Program (CUCP) directory. Bidder/Proposer shall ensure that all DBE firms listed shall be certified under NAICS codes applicable to the scopes of work associated with

the project. Additional DBE listings, not included in the solicitation, must be included in the Bidder/Proposer good faith efforts response.

Bidder/Proposer shall designate someone familiar with the project and capable of answering questions from potential DBE subcontractors and shall be responsible for solicitation follow-up. Additional consideration is given if, 10 days are not available between the mailing of the solicitations and the bid/proposal due date, follow-up will occur within a shorter, but reasonable period. Follow up communication may be conducted orally or in writing. Oral communication must include documentation of follow-up (email, letter or fax) and submitted with Attachment E.

Evidence: Follow-up must be done with a minimum of 75% of the required number of DBEs referenced in GFE Item #4. Follow-up activity must be documented in telephone logs or other written documentation which provide, at a minimum, the following information:

- A. Type of contact, e.g., telephone call, visit, email, letter.
- B. Name and position of person who made contact on behalf of the Bidder/Proposer.
- C. Name and address and/or email of firm contacted.
- D. Name and position of person contacted, telephone number, and date of contact.
- E. Indicate response from the firm contacted with regard to its interest in submitting a sub-bid/proposal.
- F. Email return receipts to document successful delivery to DBE subcontractors, and in the case of returned email correspondence, documentation from the mail server that the email was undeliverable.
- G. Follow-up, if any, to the assistance offered in the initial solicitation letter with regard to breakdown of work into economically feasible units, bonding, insurance, lines of credit, and plans and specifications.
- H. Bidder/Proposer shall provide written justification for decisions to self-perform work using its own workforce.

6. ASSISTANCE IN OBTAINING BONDS AND INSURANCE (3 POINTS)

Effort: Assist DBE firms in obtaining bonding and insurance. The maximum points given if bonding and insurance is not required.

Evidence: Includes a description of assistance provided by Bidder/Proposer to DBEs in obtaining bonding and insurance.

7. ATTENDANCE AT PRE-PROPOSAL CONFERENCE (2 POINTS)

Effort: Attendance at the Pre-Bid/Pre-Proposal Conference scheduled by Metro. Each Bidder/Proposer is strongly encouraged to attend the pre-bid/proposal meetings to be informed of the DBE requirements and provides an opportunity for Bidders/Proposers to

meet, network and outreach to DBE firms. Regardless of whether a Bidder/Proposer attends the meeting, the Bidder/Proposer assumes responsibility for being informed and complying with DBE and GFE requirements.

Evidence: Name and date of person(s) attending (verified by conference sign-in sheet).

8. LIST OF SUBCONTRACTORS SUBMITTING BIDS/PROPOSALS (15 POINTS)

(Complete Attachment F – List of All Firms/Solicitation Responses Received)

Effort: When negotiating with subcontractors, Bidders/Proposers shall include DBE subcontractors, take price and capabilities as well as contracts goals into consideration. The Bidder/Proposer shall negotiate in good faith with DBEs and not unjustifiably reject bids/proposals prepared by any DBE.

Bidder/Proposer shall not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities and must demonstrate justification based on a thorough investigation of their capabilities. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. Please note that nothing in this paragraph shall be constructed to require the bidder/proposer or prime contractor to accept unreasonable quotes to satisfy contract goals. If the reason cited relates to bonding, financing or insurance, or requested further breakdown of the work the Bidder/Proposer must provide documentation describing in detail the assistance offered by the Bidder/Proposer to the DBE.

Evidence: Names, addresses, dates, contact person, phone numbers, and emails of all subcontractors DBE and non-DBE firms who submitted bids/proposals and copies of all bids/proposals including telephone bids/proposals for all work categories identified in GFE item #3. Identify number of total bids, proposal or quotes received for each work category and corresponding number from DBE firms. Indicate reason for your choice of subcontractor(s). Submit written (e.g. emails, letters or faxes) documentation evidencing good faith negotiations between subcontractor and Bidder/Proposer. Only significant price differences (10% or more) between selected subcontractor/supplier, rejected DBE and prime contractors are valid cause for rejecting bids/proposals. Bidders/Proposers must have selected enough subcontracting item to meet the goal.

9. COMMITMENT OF OTHER BIDDERS/PROPOSERS (15 POINTS)

Effort: In determining whether a Bidder/Proposer has made good faith efforts, Metro will take into account the performance of other Bidders/Proposers in meeting the contract goal. If an apparent successful Bidder/Proposer fails to meet the contract goal, but others meet it, Metro will reasonably raise the question of whether, with additional reasonable efforts, the apparent successful Bidder/Proposer could have met the goal. If the apparent successful Bidder/Proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders/Proposers, Metro may view this, in conjunction with other factors, as evidence of the apparent successful Bidder/Proposer having made good faith efforts.

Evidence: Metro will review the Bidder/Proposer efforts in conjunction with other factors, which includes but is not limited to the contract goal, DBE commitments, and additional efforts made by other Bidders/Proposers.

404 **GOOD FAITH EFFORTS DOCUMENTATION FORMS:** The following GFE attachments must be included in the Bidder's/Proposer's GFE:

ATTACHMENT A - SAMPLE ADVERTISEMENT
ATTACHMENT B - NEWSPAPER ADVERTISEMENT LOG
ATTACHMENT C - SELECTED WORK CATEGORIES FORM
ATTACHMENT D - SAMPLE LETTER OF SOLICITATION
ATTACHMENT E - SOLICITATION FOLLOW-UP LOG
ATTACHMENT F - LIST OF ALL FIRMS/SOLICITATION RESPONSES RECEIVED
ATTACHMENT G - WRITTEN SOLICITATION SUBMITTAL FORM
ATTACHMENT H – BIDDER/PROPOSER NOTARIZED CERTIFICATION OF GOOD FAITH EFFORTS

ATTACHMENT A - SAMPLE ADVERTISEMENT

**DBE SUBCONTRACTORS/SUPPLIER BIDS/PROPOSALS
REQUESTED**

**CONTRACT NO. B234
WINDOW INSTALLATION, LOS ANGELES, CA.**

BID/PROPOSAL SUBMITTAL DATE: DECEMBER 29, 20xx @ 2:00 PM

**OWNER: LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
(METRO)**

PERFORMANCE/PAYMENT/SUPPLY BOND MAY BE REQUIRED

**THIS ADVERTISEMENT IS IN RESPONSE TO METRO'S DBE PROGRAM. LA CORP.
INTENDS TO CONDUCT ITSELF IN "GOOD FAITH" WITH DBE FIRMS REGARDING
PARTICIPATION ON THIS PROJECT. DRAWINGS AND SPECS WILL BE REVIEWED IN
OUR OFFICE MONDAY THROUGH FRIDAY, 8:00 AM TO 5:00 PM. QUOTES ARE
REQUIRED BY COB, DECEMBER 25, 20xx, SO THAT ALL BIDS/PROPOSALS CAN BE
FAIRLY EVALUATED. PLEASE SUBMIT BIDS/PROPOSALS FOR THE FOLLOWING
WORK (BUT NOT LIMITED TO): SIGNS, TRACK CONSTRUCTION, TIMBER TIES,
BALLAST, APPURTENANCES, RAIL WELDING, A.C. PAVING, REINFORCING STEEL,
SUPPLY PORTLAND CEMENT, CONCRETE PUMPING, METAL FABRICATIONS AND
ELECTRICAL.**

**CONTACT: JOE DOE, PROJECT MANAGER - LA CORP.
134 MAYFLOWER AVE LOS ANGELES, CA 90343
213/555-5555 FAX 213/555-5555**

ATTACHMENT B - NEWSPAPER ADVERTISEMENT LOG
(Attach copies of ads)

Newspaper	Phone No.	Type of Publication Minority/General/Trade	Circulation	Dates of Advertisement	Number of Days Advertised

1. Was Bid/Proposal due dates extended by Metro? Yes ☐ No ☐
2. If the response to #1 is yes, explain positive and/or negative impact to DBE solicitations.

ATTACHMENT C - SELECTED WORK CATEGORIES FORM

Identify if Bidder/Proposer or Subcontractor	Work Categories	Bidder's/Proposer's Estimated Budget	Percentage of Estimate	Additional Comments*
		\$	%	
		\$	%	
		\$	%	
		\$	%	
		\$	%	
		\$	%	
		\$	%	
		\$	%	
		\$	%	
Total		\$	%	

***Note: Provide additional comment/justification for each work categories that does not provide opportunities for DBEs, if the percentage of contracting is not sufficient to meet the established goal; and provide supporting documentation**

ATTACHMENT D - SAMPLE LETTER OF SOLICITATION

Date

DBE Firm

Address

City, State, Zip

ATTN: Chief Estimator

Project: B234, Trackwork Installation

Owner: Metropolitan Transportation Authority

Bid/Proposal Due Date: December 29, 20xx at 2:00 p.m.

We are bidding/proposing the above project as a prime contractor and would appreciate quotes from DBEs who are currently certified with Metro for the following work/services and/or materials:

- Clearing and Grubbing
- Signal & Lighting
- Excavation
- Fencing
- Backfill
- Construction Area Signs
- Landscaping

Plans and specifications are available for inspection at our office or at a local plan room (give name and location of alternate plan rooms, if available). Should you need any assistance in obtaining bonding or insurance, please feel free to call us. DBE firms are also referred to the Small Business Administration (SBA) and/or the Federal Department of Transportation (DOT) Bond Assistance Programs.

We are an Equal Opportunity Employer and, as a matter of policy, encourage the participation of Small Business Enterprises.

All DBE firms must be certified by the bid/proposal due date and must provide our office with a copy of your DBE certification to include with the bid/proposal. Should you have any questions regarding Metro's certification process, contact Metro's certification Hotline at (213) 922-2600.

We will be contacting you by phone regarding this project, but feel free to contact us at (phone number) or by fax (phone number).

Yours truly,

Mr. Jim Mason
Chief Estimator

ATTACHMENT E - SOLICITATION FOLLOW-UP LOG

NOTE: All Oral communication must include documented (email, fax or letter) follow-up – Attach Evidence.

Date and Time	Follow-up Method	Name of DBE Firm	Contact Person	Email and/or Phone No.	DBE Response	Bidding / Proposing Yes/No	Bid/Proposal Submittal Date

ATTACHMENT F - LIST OF ALL FIRMS/SOLICITATION RESPONSES RECEIVED
for
METRO - PROJECT NAME AND NUMBER

Subcontractor/Supplier/ Broker/Regular Dealer	Address	Email and Phone	Work Category	Amount	Lowest Bidder/Proposer, Will Subcontract	Reasons for Rejecting

ATTACHMENT G – WRITTEN SOLICITATION SUBMITTAL FORM

Please check one:

- ☐ I've attached a list of solicitations*
- ☐ Refer to log below

Date Sent	Name of DBE Firm	Contact Person	Email and/or Phone Number	Work Category

* If attaching list of solicitations, the list must contain same information required on the log.

ATTACHMENT H - BIDDER/PROPOSER NOTARIZED CERTIFICATION OF GOOD FAITH EFFORTS

Date _____

Metro _____

RE: Bid/Proposal Contract No. _____

I hereby certify under the penalty of perjury that Bidder/Proposer [insert name of company] has actively and aggressively undertaken comprehensive "good faith" efforts to solicit and utilize DBE firms to meet the DBE participation requirements of this contract, as demonstrated by the documentation submitted in response to our efforts.

By signing below, the Bidder/Proposer hereby affirms that it has made good faith efforts and has documented all such efforts as stated in attached supporting documentation.

I have the authority to make this statement for and on behalf of [company name]. All information provided herein and attached as evidence of our company's good faith efforts is true, valid and accurate to the best of my knowledge.

Signature: _____

Date: _____

NOTARIZATION: Must be completed by a licensed Notary

County of _____ State of _____

Subscribed and sworn before me this _____ day of _____

Notary Signature _____

Notary Address _____

SECTION 500 - DBE CERTIFICATION

500 CERTIFICATION REQUIREMENTS: A firm only holding a current DBE certification issued by a certifying agency in the California Unified Certification Program (CUCP) may participate in the Metro DBE Program. Firms listed by Bidders/Proposers to meet DBE contract goal(s) must be certified by bid/proposal due date. Metro has a responsibility to ensure that eligible DBE firms participate in Metro contracting. If not, firm's participation may not be counted toward the Bidder's/Proposer's DBE commitment. Bidders/Proposers shall ensure DBE firms are certified in the North American Industry Classification System (NAICS) codes for the work in which the DBE firm is listed to perform and for which the Bidder/Proposer seeks DBE credit towards its DBE commitment. Certifications as a Metro DBE firm, means the firm met the DBE certification requirements and eligibility standards of the CUCP in accordance with 49 CFR Part 26 –Subpart D Certification Standards as followed by the CUCP. These standards and procedures are described in detail in the Certification Instructions, provided with the Application for Certification. Interested individuals or companies seeking certification will start the process by obtaining a copy of the DBE Application and Instructions.

501 DBE CERTIFICATION ELIGIBILITY:

- A. Each applicant for DBE certification must prove to Metro's Certification Unit, by a preponderance of the evidence, that the applicant meets the criteria of social and economic disadvantaged, business size, ownership and control.
- B. Certifications with respect to economic disadvantage, including signed statements of personal net worth and supporting documentation are required. If an individual's Statement of Personal Net Worth shows that the individual's personal net worth exceeds \$1.32 million the individual's presumption of economic disadvantage is rebutted and the person is not qualified to be a SBE owner.
- C. The applicant firm can only be an eligible DBE, if the firm is an existing small business and including its affiliates, has had average gross receipts over the previous three years of less than 23.98 million or as adjusted for inflation by the US Secretary of Transportation.
- D. A firm's ownership by at least 51-percent majority owned by socially and economically disadvantaged individuals and must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in merely the ownership documents but possess the power to control the firm's management and policies.
- E. The firm must be independent and not depend on its relationship with another firm or firms to be viable.

502 VERIFY THAT DBE CERTIFICATION IS CURRENT: Bidders/Proposers shall confirm the DBE certification status of listed DBE firms. To verify status of firms, for additional certification information, questions and to obtain a certification application, Bidders/Proposers or other interested parties may contact the Metro Certification Unit via email at CertificationUnit@metro.net and by calling the DEOD Hotline at (213) 922-2600. Requests for verification of a firm's DBE certification status, granted by Metro, can also be sent by fax to (213) 922-7660. It is recommended that verification be made within 72

hours of the bid/proposal due date. Bidders/Proposers shall include in its bid/proposal a copy of the DBE certification letter for each DBE firm listed. The letter serves to assist in verifying a firm's eligibility.

SECTION 700 - CONTRACT COMPLIANCE

700 COMPLIANCE MONITORING: Metro will monitor the Contractor's compliance with the DBE Program and administrative requirements for this contract as provided in the Contract Compliance Manual Federal incorporated into the executed contract.

TABLE 1 - DBE COMMITMENT FORMS

Form No.	Form Name	To Be Completed By	
		Bidder/Proposer (Includes DBE Primes)	All Subcontractors/Suppliers
Form 1	Proposed Subcontractors & Suppliers	<input checked="" type="checkbox"/>	
Form 2	Affidavit	<input checked="" type="checkbox"/>	
Form 3	Business Data Sheet	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Form 4	Proposed Lower Tier Subcontractors & Suppliers		<input checked="" type="checkbox"/>
Form 5	DBE Affirmation (Only if subcontracting with DBE business)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

- The Bidder/Proposer is required to complete and submit DBE Forms 1, 2 and 3. The Bidder/Proposer and each DBE subcontractor are required to complete and submit Form 5.
- All Subcontractors/Suppliers are required to complete and submit Form 3 and Form 4 (if they are subcontracting). Subcontractors and Suppliers are required to complete and submit Form 5 if subcontracting with a DBE business.

NOTE: All DBEs are included in the DBE contract goal: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, Subcontinent Asian Americans, and Women (including Caucasian Women). Only RC DBEs listed in the Bidder's/Proposer's bid or proposal will be counted towards the contract goal.

Metro will achieve its overall DBE goal using race conscious and race neutral measures in accordance with the US Department of Transportation DBE Program Rule 49 Code of Federal Regulations, Part 26.

FORM 1 - PROPOSED SUBCONTRACTORS & SUPPLIERS

TO BE COMPLETED BY PRIME ONLY

The Prime is requested to list ALL first-tier businesses which include DBEs & Non DBEs to be utilized on this project. Completion of this form and Form 3, Business Data Sheet, also fulfills the requirements of the California Subletting and Subcontracting Fair Practices Act.

IFB/RFP/RFIQ Number: _____ Project Name: _____
 Total Proposal/Bid Price: _____ Proposal/Bid Due Date: _____

A		B	C	D	E	F
NAME OF BUSINESS		DBE? (Y/N)	Supplier? ¹ (Y/N)	Broker? ² (Y/N)	Proposal/Bid Price Breakdown \$	DBE Credit \$
Your Firm						
Subcontractors	1.					
	2.					
	3.					
	4.					
	5.					
	6.					
	7.					
	8.					
	9.					
	10.					
Total:						
				(Should match Total Proposal/Bid Price listed on top of page)	(Total DBE Commitment)	

¹If a DBE business is a supplier providing materials/supplies, only sixty-percent (60%) of the cost will be credited toward the DBE goal. Metro will take 60% of the cost for materials/supplies listed in Column E to credit for DBE participation. If a DBE supplier, please list 60% of the Proposal/Bid Price in Column F.

²If a DBE business is providing brokering services, only the broker's fee cost will be credited toward the DBE goal. If a broker, please only list broker's fees in Column F. Appropriate credit will be reviewed by Metro according to 49 CFR part 26.55

FORM 2 - AFFIDAVIT

TO BE COMPLETED BY PRIME ONLY

Complete Parts A and C **or** Parts B and C

PART A: DBE – MET OR EXCEEDED GOAL

☐ **HAS LISTED RACE CONSCIOUS DBE PARTICIPATION FOR THIS CONTRACT**

The Bidder/Proposer declares to the best of its knowledge, information and belief that by its efforts, it ACHIEVED a level of participation greater than or equal to the DBE goal established by Metro for DBE participation.

The Bidder/Proposer declares it achieved the following DBE percentage:

_____ Percent (____%)

PART B: DBE – DID NOT MEET GOAL

☐ **HAS NOT LISTED RACE CONSCIOUS DBE PARTICIPATION FOR THIS CONTRACT**

The Bidder/Proposer declares to the best of its knowledge, information and belief that while it made efforts to achieve the DBE goal, it DID NOT ACHIEVE the DBE goal established by Metro. Bidder/Proposer must submit Good Faith Efforts documentation by proposal due date.

The Bidder/Proposer achieved the following DBE percentage:

_____ Percent (____%)

PART C: SIGNATURE

Executed on: _____, 20____, at, _____, _____
(Date) (City) (State)

Business Name: _____

Business Address: _____
(Street) (City) (State)

Authorized Signature: _____

Printed Name: _____ Title: _____

Phone: _____ Email: _____

FORM 3 - BUSINESS DATA SHEET

Page 1 of 2

TO BE COMPLETED BY PRIME AND ALL SUBCONTRACTORS LISTED ON FORM 1

Completion of this Form and Form 1 (or Form 4) fulfills the requirements of the California Subletting & Subcontracting Fair Practices Act.

PART A: BUSINESS DATA

1. Business Name: _____
2. Is your business currently a **DBE** certified by California Unified Certification Program (CUCP)?
(If marked "DBE", a copy of the certification letter for this business must be attached to this Form)

	DBE	Non-DBE
a. Certified by an organization outside of California?	<input type="checkbox"/>	<input type="checkbox"/>
Name of Certifying Agency: _____		
3. Is your business currently participating in a Joint Venture?
(If answered YES, a copy of the Joint Venture Agreement must be attached to this Form)

	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>
4. Name of Joint Venture and Partners. Is this business currently a certified DBE?

a. Business Name: _____	DBE	Non-Cert.
Name of Certifying Agency: _____	<input type="checkbox"/>	<input type="checkbox"/>
b. Business Name: _____	DBE	Non-Cert.
Name of Certifying Agency: _____	<input type="checkbox"/>	<input type="checkbox"/>
c. Business Name: _____	DBE	Non-Cert.
Name of Certifying Agency: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. Primary Business Address: _____
(Street) (City) (State) (Zip)
6. Mailing Address: _____
(Street) (City) (State) (Zip)
7. County Business is located in: _____
8. Name of Contact Person: _____, _____
(Name) (Title)
9. Owner(s) Ethnicity: _____
10. Phone: (_____) _____ - _____
11. Email Address: _____
12. Fax: (_____) _____ - _____
13. Age of Business: _____ Years, and _____ Months
14. If your business requires a license, complete below.

a. License Type: _____	a. <input type="checkbox"/> Less than \$500,000
b. License #: _____	b. <input type="checkbox"/> \$500,000 to \$1,000,000
c. Expiration: _____	c. <input type="checkbox"/> \$1,000,000 to \$2,000,000
	d. <input type="checkbox"/> \$2,000,000 to \$5,000,000
	e. <input type="checkbox"/> \$5,000,000 to \$25,000,000
	f. <input type="checkbox"/> Over \$25,000,000
15. Business Annual Gross Receipts:

a. <input type="checkbox"/> Less than \$500,000	a. <input type="checkbox"/> Less than \$500,000
b. <input type="checkbox"/> \$500,000 to \$1,000,000	b. <input type="checkbox"/> \$500,000 to \$1,000,000
c. <input type="checkbox"/> \$1,000,000 to \$2,000,000	c. <input type="checkbox"/> \$1,000,000 to \$2,000,000
d. <input type="checkbox"/> \$2,000,000 to \$5,000,000	d. <input type="checkbox"/> \$2,000,000 to \$5,000,000
e. <input type="checkbox"/> \$5,000,000 to \$25,000,000	e. <input type="checkbox"/> \$5,000,000 to \$25,000,000
f. <input type="checkbox"/> Over \$25,000,000	f. <input type="checkbox"/> Over \$25,000,000
16. If the Work/Services require DIR Registration, per California Labor Code §1725.5, complete below:

a. DIR Registration No.: _____	a. DIR Registration No.: _____
b. DIR Registration Date: _____	b. DIR Registration Date: _____

PART B: WORK DESCRIPTIONS

17. Identify the scope of work that will be performed by this DBE business. Please provide ONLY applicable Northern America Industry Classification System (NAICS)¹ code(s) to be performed on this contract.

Description of Work, Service, or Materials Supplied	DBE NAICS (6 digits)

18. Will your business provide trucking company services on this project?

Yes ☐No ☐

If marked YES, please complete items a. to c. below. If answered NO, answer "Not Applicable."

a. How many trucks does your company own? _____

b. How many trucks does your company lease? _____

c. How many trucks are registered to your company? _____

PART C: SIGNATURE

The undersigned Director, Officer, General Partner, or similarly situated Principal of the business declares he/she is informed and believe, and thereon allege, that to the best of their knowledge, information and belief, the information set forth on this page of this document and any attachments, is current, complete and accurate.

Business Name: _____

Authorized Signature: _____
(Signature of Director, Officer, General Partner or similarly situated Principal of the Business)

Printed Name: _____

Title: _____

Date: _____

¹To receive credit, your firm must be certified in applicable NAICS Codes

FORM 4 - PROPOSED LOWER TIER SUBCONTRACTORS & SUPPLIERS

TO BE COMPLETED ALL SUBCONTRACTORS LISTED ON FORM 1

All subcontractors listed on Form 1 that are subcontracting work are requested to list **ALL lower-tier businesses**, which include DBEs & Non DBEs to be utilized on this project. Completion of this form and Form 3, Business Data Sheet, fulfills the requirements of the California Subletting and Subcontracting Fair Practices Act.

Your Business Name: _____ Project Name: _____
 Total Proposal/Bid Price: _____ Your Prime Name: _____

A		B	C	D	E	F
NAME OF BUSINESS		DBE? (Y/N)	Supplier? ¹ (Y/N)	Broker? ² (Y/N)	Proposal/Bid Price Breakdown \$	DBE Credit \$
Your Firm						
Subcontractors	1.					
	2.					
	3.					
	4.					
	5.					
	6.					
	7.					
	8.					
	9.					
	10.					
Total:				(Should match Total Proposal/Bid Price listed on top of page)	(Total DBE Commitment)	

¹If a DBE business is a supplier providing materials/supplies, only sixty-percent (60%) of the cost will be credited toward the DBE goal. Metro will take 60% of the cost for materials/supplies listed in Column E to credit for DBE participation. If a DBE supplier, please list 60% of the Proposal Price in Column F.

²If a DBE business is providing brokering services, only the broker's fee cost will be credited toward the DBE goal. If a broker, please only list broker's fees in Column F. Appropriate credit will be reviewed by Metro according to 49 CFR part 26.55

FORM 5 - DBE AFFIRMATION

TO BE COMPLETED BY PRIME AND ALL SUBCONTRACTORS THAT WILL SUBCONTRACT TO A DBE BUSINESS.

Prime and subcontractor(s) at any tier level that will subcontract work to a DBE business are required to complete this form to affirm that it will utilize the DBE businesses listed on Form 1 or Form 4. This form must be signed by the DBE business acknowledging that it has submitted a written quote to the respective Prime or Subcontractor, and has been listed to perform work on this contract.

1. IFB/RFP/RFIQ Number: _____
2. Project Name: _____
3. Prime Name: _____
4. Prime Business Address: _____
(Street) (City) (State) (Zip)
5. Name of Proposed DBE Business: _____
6. DBE Business Address: _____
(Street) (City) (State) (Zip)
7. **Financial Description** Total \$ Amount listed for this DBE business is: \$ _____
(amount should match \$ Amount listed for this business on Form 1 and Form 4)
8. **Technical Description** Identify the scope of work that will be performed by this DBE business. Please provide applicable Northern America Industry Classification System (NAICS) code(s) only.

Description of Work, Service, or Materials Supplied	DBE NAICS (6 digits)

Affirmation:

Signatures of the authorized representatives of this Contractor and of the DBE business below represent the commitment by both parties to enter into a formal subcontract agreement for the work and any terms or conditions described above and in the accompanying attachments, conditioned on the Proposer/Proposer being awarded this Contract.

(Prime Name)

(DBE Business Name)

(Authorized Signature of Business)¹ (Date)

(Authorized Signature of Business) (Date)

(Typed or Printed Name of Signee)

(Typed or Printed Name of Signee)

(Title of Signee)

(Title of Signee)

(Email)

(Email)

(Telephone)

(Telephone)

¹ Signature of the Contractor to which the DBE business will report to directly.

SUBMITTAL REQUIREMENTS

1.1 GENERAL FORMAT

- A. Bidder shall provide one original and two hard copies and one unalterable electronic copies (on a flash drive or CD/DVD) of the entire Bid with all completed forms, including Bid Forms, Schedule of Quantities and Prices, Certification Forms and DEOD submittal forms.
- Contractor Pre-Qualification Application documents shall not be included with the Bid documents. The contractor Pre-Qualification Application documents shall be delivered directly to the Pre-Qualification Office no later than the Bid due date and time.
- B. ELECTRONIC COPIES:

The unalterable electronic copies shall be provided in a searchable Adobe PDF format (on a flash drive or CD/DVD). The electronic copies shall be organized in the same manner as in the original hard copy and bookmarked for ease of navigation. If there is any variance between the original hard copy and the electronic copies, the original hard copy shall prevail.

Do not provide promotional materials or advertising information.

1.2 BID FORMS

This solicitation requires the following completed documents in the Bid:

- Firm Fixed Price - Schedule of Quantities and Prices

The Price Proposal shall identify the Firm Fixed Price offer for the performance of the Scope of Work identified herein. This Firm Fixed Price proposal shall be in accordance with the format prescribed by Metro and as attached hereto:

- Bidders List Form
- Bid Letter
- List of Current Projects (Backlog)
- List of Completed projects – Last Five Years
- Bid Bonds, Surety Letter establishing Bidder's ability to provide required Payment and Performance Bonds
- Quality Assurance/Quality Control
- Safety
- Bidder's Industrial Safety Record

1.3

CERTIFICATIONS FORMS

This solicitation requires the following completed certifications in the Bid:

- Ethics Declaration (Bidder must submit its completed Ethics Declaration, as well as a completed Ethics Declaration from each of Bidder's prospective Subcontractors, in the Bid.)
- General Certifications
- Certificate of Compliance with 49 C.F.R Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations
- Buy America Certificate For Compliance With Title 49 USC § 5323 (J) (1) (For Procurement of Steel, Iron, or Manufactured Products)
- Buy America Certificate For Compliance With Title 49 USC § 5323 (J) (1) (For Procurement of Buses, Other Rolling Stock and associated Equipment)
- Certification of Compliance with Federal Lobbying Requirements (49 C.F.R Part 20)
- Certification of Prospective Contractor and Lower Tier participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- Noncollusion Affidavit to Be Executed by Bidder

1.4

DEOD FORMS

This solicitation requires the following completed DEOD forms, as instructed in the Section titled DBE INSTRUCTIONS TO BIDDERS:

- Form 1 - Proposed List of Subcontractors and Suppliers
- Form 2 - DBE Affidavit
- Form 3 – Business Data Sheet (DBE)
- Form 4 - DBE Proposed Lower Tier Subcontractors & Suppliers
- Form 5 - DBE Affirmation

DBE Good Faith Efforts Forms

- Form A - Sample Advertisement
- Form B - Newspaper Advertisement Log
- Form C - Selected Work Categories Form
- Form D - Sample Letter of Solicitation
- Form E - Solicitation Follow-Up Log
- Form F - List of All Firms/Solicitation Responses Received
- Form G - Written Solicitation Submittal Form
- Form H - Bidder/Proposer Notarized Certification of Good Faith Efforts
- Form I – Supplier Broker Questionnaire DBE

SECTION 4 – PRE-QUALIFICATION DOCUMENTS

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Metro[®]

**Los Angeles County
Metropolitan Transportation Authority
CONTRACTOR PRE-QUALIFICATION APPLICATION**

Construction Related Projects

If this Application is being submitted in response to a Request For Proposal (RFP), Invitation For Bid (IFB), or other procurement action, please reference the RFP or IFB name and number in the spaces provided below.

If this Application is not in response to a specific contracting action and is being submitted for general purposes, please write "GENERAL" in the "Name of Procurement" space.

Name of Procurement: _____

RFP or IFB Number: _____

Name of Applicant Firm: _____

Date Submitted: _____

Preparer's Name: _____

THIS PAGE MUST BE COMPLETED AND INCLUDED WITH THE APPLICATION

**READ THE INSTRUCTIONS
BEFORE FILLING OUT THE QUESTIONNAIRE**

PRE-QUALIFICATION APPLICATION INSTRUCTIONS

1. This is a Pre-Qualification Application for the Los Angeles County Metropolitan Transportation Authority (LACMTA). There are two different applications to be used for firms seeking contracts of \$100,000 or greater with the LACMTA.
2. **Which application should you use?** Use the Construction Related Projects application if you are a construction company that will be bidding on any type of construction work. Use the Other than Construction Projects application if you are an engineering firm, consultant, legal firm, product vendor, or other business entity seeking a contract with the LACMTA for the furnishing of goods or services.
3. The application should be completed by a person in the firm who is knowledgeable of and duly authorized to attest to the past and present operations of the firm and its policies. A corporate officer of the firm, owner or partner, as appropriate, must sign the Pre-Qualification Certification form (or Validation form if the firm is already approved).
4. All questions must be answered completely and any Yes answers must be fully explained. Disclaimers, general statements with global qualifications, or notations of Not Applicable (N/A) are not acceptable. Please note that a Yes answer to any question does not automatically result in denial of pre-qualification for a particular procurement.

DEFINITIONS

1. **Affiliate** is defined as any one of the following: (1) any Firm other than Applicant Firm which owns 25% or more of Applicant Firm, such as parent companies or holding companies; (2) a subsidiary or a Firm in which Applicant Firm owns 25% or more; (3) a Firm in which a major stockholder or owner of Applicant Firm owns controlling interest; (4) a Firm with which Applicant Firm has or has had an unseverable business or professional identity, and (5) any permanent or temporary common business enterprise relationship in which the parties share operating responsibility and profits such as joint ventures.
2. **Key Person** – For purposes of pre-qualification a key person is (1) any person in Applicant Firm who owns 10% or more of the Firm and/or those who make decisions with respect to its operations, finances, or policies, such as the President, CEO, CFO, COO, and, in the case of partnerships, the General Partner(s); (2) Corporate Secretaries and Treasurers, as well as Directors, if they meet criteria #1, above; (3) Division or Regional Business Managers who operate away and independently from the Applicant Firm, but only if the division or regional office is bidding directly with the LACMTA.

APPLICATION SUBMITTAL

Do not submit applications with bid or proposal, mail or deliver them to:

LACMTA Pre-Qualification Office
Mail Stop 99-9-1
One Gateway Plaza
Los Angeles, CA 90012-2952

If you have questions, call the Pre-Qualification Office at (213) 922-4130.

Applicant Firm: _____
Tax ID No. or SSN: _____

SECTION I: IDENTIFICATION

1. Identification Of Applicant Firm

- A. _____
Name of Applicant Firm
- B. _____
Address City State Zip Code
- C. _____
(Mailing Address, if different from above)
- D. _____
(If doing business with the LACMTA under a DBA or other name, include legal name of the company and Tax ID No., if different)
- E. Primary Company Telephone No. () _____ Fax No. () _____
- F. Applicant Firm's Contact Person for Pre-Qualification Office follow-up:
- | Print or Type Name | Position | E-Mail | Telephone Number |
|--------------------|----------|--------|------------------|
| | | | |
- G. Has the Applicant Firm changed its address or has the Firm or its owner operated under any other name(s) including other DBAs in the past five years? If yes, explain fully on a separate sheet of paper.
☐ No ☐ Yes
- H. Type of business organization: _____
- YEAR organization established: _____ NUMBER of current employees: _____
- ☐ Sole Proprietor ☐ Corporation
[Date and State of Incorporation _____]
- ☐ Limited Liability Corporation (LLC)
(Date and State of Incorporation _____)
- ☐ Limited Partnership (LP) ☐ Limited Liability Partnership (LLP)
- ☐ General Partnership (GP)
[Date and State of Partnership filing _____]
- ☐ Other (describe) _____

Applicant Firm: _____
Tax ID No. or SSN: _____

- I. List general type of business in which Applicant Firm is engaged (may include more than one).
Attach copies of business licenses, if appropriate:

- J. List type of product or service to be provided to the LACMTA.

SECTION II: OWNERSHIP/MANAGEMENT, PROJECT TEAM MEMBERS, AND RELATED ENTITIES

1. Owners/Key Persons

List Owners and Key Persons of Applicant Firm. For large publicly traded companies, list only Key Persons. (See DEFINITIONS for clarification if necessary.)

Full Legal Name	Title	Social Security No. (last four digits only)	% Of Ownership

[Use additional sheets if necessary]

2. Related Entities (Affiliates/Subsidiaries/Joint Ventures)

- A. List Affiliates, subsidiaries, holding companies, joint ventures, etc., of Applicant Firm. If no affiliates, state NONE. N/A is not an acceptable answer. Provide organizational, geographical or functional chart, if it would assist in clarifying the line(s) of authority. (See DEFINITIONS for clarification if necessary.)

Affiliate Name & Address	Tel. #	% Owned	Top Executive's Name	*Type of Relation

*Type of Relationship: 1. Joint Venture (JV), 2. Parent Co (PC), 3. Holding Co (HC), 4. Subsidiary (S), 5. Other (O), please explain.

Applicant Firm: _____
Tax ID No. or SSN: _____

- B. At any time during the past five years have any Owners or Key Persons of Applicant Firm (if yes, explain fully):
1. Served as Key Person, Officer or Director, in any other Firm not affiliated with applicant Firm?
If so, please explain in a separate sheet.
☐ No ☐ Yes
 2. Had any ownership interest in any other Firm other than shares of publicly owned companies? If so, please explain in a separate sheet.
☐ No ☐ Yes

SECTION III: CONTRACTING HISTORY

1. Contracting History

- A. List the applicant Firm's three largest government contracts, subcontracts, or sales. If none, list the three largest contracts with non-governmental entities.

	Contract #1	Contract #2	Contract #3
Agency/Owner			
Contract No.			
Name/Location			
Describe Goods or Services Furnished			
Were you a Prime or Subcontractor?			
Start Date/Complete Date			
Contract Amount			
Agency/Owner Contact to Verify (Name/Telephone No.)			

NOTE: ANY "YES" ANSWERS BELOW MUST BE FULLY EXPLAINED ON A SEPARATE SHEET OF PAPER AND ATTACHED TO THIS APPLICATION.

- B. Is the applicant Firm currently certified by the LACMTA or other public agency as a disadvantaged business entity, minority, or woman-owned business?
☐ No ☐ Yes
- C. During the past five years, has Applicant Firm or any of its Key Persons had any certificates or certifications revoked or suspended, including disadvantaged-, minority-, or woman-owned business certifications?
☐ No ☐ Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

In the past five years has the Applicant Firm or any Affiliate been the subject of any of the following actions?

- D. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?
☐ No ☐ Yes
- E. Failed to complete a contract for a commercial or private owner?
☐ No ☐ Yes
- F. Been denied a low-bid contract in spite of being the low bidder?
☐ No ☐ Yes
- G. Had a contract terminated for any reason, including default?
☐ No ☐ Yes
- H. Had liquidated damages assessed against it during or after completion of a contract?
☐ No ☐ Yes

SECTION IV: CIVIL ACTIONS

If "Yes" to Sections IV, V or VI, provide details including a brief summary of cause(s) of action, indicate if Applicant Firm, Key Person or Affiliate Firms were plaintiffs (P) or defendants (D); define charges explicitly, by what authority, court or jurisdiction, etc. In the case of tax liens, please indicate whether the liens were resolved with the tax authorities. Please submit proof of payment or agreements to pay the liens.

Complete details are required!

1. Violations Of Civil Law

In the past five years has Applicant Firm, any of its Key Persons, or any Affiliate been the subject of an investigation of any alleged violation of a civil antitrust law, or other federal, state or local civil law?

☐ No ☐ Yes

2. Lawsuits With Public Agencies

At the present time is, or during the past five years has the Applicant Firm, any of its Key Persons, or any Affiliate been a plaintiff or defendant in any lawsuit regarding services or goods provided to the LACMTA or to a public agency?

☐ No ☐ Yes

3. Bankruptcy

During the past five years, has the Applicant Firm or any Affiliate filed for bankruptcy or reorganization under the bankruptcy laws?

☐ No ☐ Yes

4. Judgments, Liens And Claims

During the past five years, has the Applicant Firm been the subject of a judgment, lien or claim of \$25,000 or more by a subcontractor or supplier?

☐ No ☐ Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

5. Tax Liens

During the past five years, has the Applicant Firm been the subject of a tax lien by federal, state or any other tax authority?

☐ No

☐ Yes

SECTION V: COMPLIANCE WITH LAWS AND OTHER REGULATIONS

1. Criminal

In the past five years has the Applicant Firm, any of its principals, officers, or Affiliates been convicted or currently charged with any of the following:

A. Fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction?

☐ No

☐ Yes

B. Federal or state antitrust statutes, including price fixing collusion and bid rigging?

☐ No

☐ Yes

C. Embezzlement, theft, forgery, bribery, making false statements, submitting false information, receiving stolen property, or making false claims to any public agency?

☐ No

☐ Yes

D. Misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors?

☐ No

☐ Yes

E. Non-compliance with the prevailing wage requirements of the California or similar laws of any other state?

☐ No

☐ Yes

F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement?

☐ No

☐ Yes

G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction?

☐ No

☐ Yes

H. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction?

☐ No

☐ Yes

I. Do any Key Persons in Applicant Firm have any felony charges pending against them that were filed either before, during, or after their employment with the Applicant Firm?

☐ No

☐ Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

2. Regulatory Compliance

In the past five years, has Applicant Firm, any of its Key Persons, or Affiliates:

- A. Been cited for a violation of any labor law or regulation, including, but not limited to, child labor violations, failure to pay wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies?
☐ No ☐ Yes
- B. Been cited for an OSHA or Cal/OSHA "serious violation"?
☐ No ☐ Yes
- C. Been cited for a violation of federal, state or local environmental laws or regulations?
☐ No ☐ Yes
- D. Failed to comply with California corporate registration, federal, state or local licensing requirements?
☐ No ☐ Yes
- E. Had its corporate status, business entity's license or any professional certification, suspended, revoked, or had otherwise been prohibited from doing business in the State of California, in the last three years?
☐ No ☐ Yes

SECTION VI: ETHICS

1. Conflict Of Interest

- A. Does the Applicant Firm or any of its Key Persons have any existing relationships that could be construed as either personal or organizational conflicts of interest, or which would give rise to a conflict if Applicant Firm should be a recipient of a contract with the LACMTA?
☐ No ☐ Yes
- B. Has any Owner, Key Person or Project Team member of Applicant Firm ever (if yes explain fully):
1. Been an employee of the LACMTA, or served as a Member of the LACMTA Board of Directors or as an Alternate?
☐ No ☐ Yes
 2. Been related by blood or marriage to an LACMTA employee, LACMTA Board Member or Alternate?
☐ No ☐ Yes

2. Political, Charitable, And Other Contributions

Has the Applicant Firm, any of its Key Persons, or Affiliates ever, regardless of amount:

- A. Given (directly or indirectly), or offered to give on behalf of another or through another person, money, contributions (including political contributions), or other benefits, to any current LACMTA Board Member or Alternate?
☐ No ☐ Yes

Applicant Firm: _____
Tax ID No. or SSN: _____

- B. Given, or offered to give on behalf of another, money, contributions, or other benefits, directly or indirectly, to any current or former LACMTA employee?
☐ No ☐ Yes
- C. Been directed by any LACMTA employee, Board member or Alternate Board member, or contractor to offer or give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member or alternate Board member?
☐ No ☐ Yes
- D. Directed any person, including employees or subcontractors, to give money, contributions or other benefits, directly or indirectly, to any current or former LACMTA employee, Board member, Alternate Board member, or to someone else in order to benefit an LACMTA employee, Board member, or Alternate Board member?
☐ No ☐ Yes
- E. Been solicited by any LACMTA employee, Board member, or Alternate Board member to make a contribution to any charitable nonprofit organization?
☐ No ☐ Yes

IF YES TO ANY OF THE ABOVE, SUBMIT LIST OF CONTRIBUTIONS AND FULL DETAILS.

SECTION VII: ADDITIONAL DOCUMENTATION REQUIRED

Copies of the following documents are to be submitted with this application:

1. **Applicant Firm's Current Local Business Licenses, if required by city, county or state, and**
2. **Applicant Firm's Financial Statements (see specific requirements below):**
 - A. **PUBLICLY TRADED COMPANIES:** Financial information will be accessed on-line. However, if additional information is needed, it will be specifically requested from the firm.
 - B. **NON-PUBLICLY TRADED COMPANIES WITH AUDITED OR REVIEWED FINANCIAL STATEMENTS:** Statements, including balance sheet, statement of earnings and retained income, with footnotes, for the most recent three years.
 - C. **NON-PUBLICLY TRADED COMPANIES WITHOUT AUDITED OR REVIEWED FINANCIAL STATEMENTS:** Company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years. The Chief Financial Officer of the corporation, a partner, or owner, as appropriate, must certify these financial statements.
 - D. **SOLE PROPRIETORSHIPS:** Refer to C. If financial statements are not generated, please fill out and sign the Financial Statement form (page 10). Submit one form for each of the most recent three years.

NOTE: The LACMTA reserves the right to ask for additional documentation if it is reasonably required to make a determination of integrity and responsibility relevant to the goods or services the Applicant Firm will provide to the LACMTA if awarded a contract.

FINANCIAL STATEMENT

To be completed by Applicant Firms that do not produce company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years (one sheet per year.)

ASSETS

Cash on Hand and in Banks.....\$
Account and Notes Receivable\$
Fixed Assets (net of depreciation)\$
Other Assets.....\$
Total Assets.....\$

LIABILITIES

Accounts Payable\$
Notes Payable to Banks in next twelve months.....\$
Notes Payable to Others.....\$
Taxes Payable\$
Long Term Liabilities (More than twelve months)\$
Other Liabilities\$
Total Liabilities\$
Net Worth\$

INCOME FROM OPERATIONS

Revenue\$
Interest from Bank Accounts\$
Cost of Goods Sold (if appropriate)\$
Gross Profit\$
General & Administrative Expenses\$
Depreciation\$
Interest Paid.....\$
Net Gain or Loss\$

This information is provided for pre-qualification purposes only. It is considered a confidential document not subject to public disclosure under California law.

I hereby certify that the above information is true and accurate to the best of my knowledge and belief. I understand false statements may result in denial of pre-qualification, and possible debarment for a period of five years.

Signature of Owner or Officer

Date Signed

Company Name

For the Year Ended

Federal ID #

Tax ID No. or SSN: _____

PRE-QUALIFICATION CERTIFICATION

A COPY OF THIS CERTIFICATION MUST BE COMPLETED AND SIGNED BY A GENERAL PARTNER, OWNER, PRINCIPAL OR CORPORATE OFFICER AUTHORIZED TO LEGALLY COMMIT THE APPLICANT FIRM, AND SUBMITTED WITH THE APPLICATION.

The signer of this declaration recognizes that the information submitted in the questionnaire herein is for the express purpose of inducing the LACMTA to award a contract, or to allow the Applicant to participate in LACMTA projects as contractor, subcontractor, vendor, supplier, or consultant. The signer has read and understands the requirements of the program, and has read and understands the instructions for completing this form.

DECLARATION

County of: _____

I, (printed name) _____, Social Security Number (last four digits) _____, being first duly sworn, state that I am the (title) _____ of Applicant Firm. I certify that I have read and understood the questions contained in the attached Application, and that to the best of my knowledge and belief all information contained herein and submitted concurrently or in supplemental documents with this Application is complete, current, and true. I further acknowledge that any false, deceptive or fraudulent statements on the Application will result in denial of pre-qualification.

I authorize the LACMTA to contact any entity named herein, or any other internal or outside resource, for the purpose of verifying information provided in the questionnaire or to develop other information deemed relevant by the LACMTA.

Signature of Certifying Individual

Date _____

Subscribed and sworn to (or affirmed) before me this _____ day of _____, _____,
Date Month Year

by _____, ☐ Personally known to me, or ☐ Proved to me on the basis of _____
Name of Signer

satisfactory evidence to be the person who appeared before me.

Signature of Notary Public

Place Notary Seal Above

NOTICE TO APPLICANTS

A material false statement, omission or fraudulent inducement made in connection with this pre-qualification application is sufficient cause for denial of the application or revocation of a prior approval, thereby precluding the applicant Firm from doing business with, or performing work for, the LACMTA, either as a vendor, prime contractor, subcontractor, consultant or subconsultant for a period of five years. In addition, such false submission may subject the person and/or entity making the false statement to criminal charges. (Title 18 USC 1001, false statements; California Penal Code Section 132, offering altered or antedated or forged documents or records; and Section 134, preparing false documentary evidence).

NOTE: Applicant information submitted to the LACMTA in connection with pre-qualification is considered confidential. All such applicant information is confidential business information and will be afforded protection to the fullest extent permitted by law.

Applicant Firm: _____
Tax ID No. or SSN: _____

LACMTA PRE-QUALIFICATION VALIDATION

A copy of this VALIDATION must be completed and signed by at least one General Partner, Owner, Principal or Officer authorized to legally commit the Applicant Firm.

RFP or IFB Name and Number: _____

DECLARATION

I, (printed full name) _____, Social Security Number _____ being first duly sworn, hereby declare that I am the (position or title) _____ of (Firm name) _____, and that I am duly authorized to execute this Validation Statement on behalf of this entity. I acknowledge that any false, deceptive or fraudulent statements on this validation will result in denial of pre-qualification. I hereby state:

☐ the Pre-Qualification Application dated _____ on file with LACMTA is correct and current as submitted.

OR

☐ the Pre-Qualification Application dated _____ on file with LACMTA is correct and current as submitted, except as modified by the attached changed pages and/or attachments to said Application. (Applicant may attach additional sheets to describe changes). Attach recent financial statements if previous are more than one year old.

Signature of Person Certifying for Applicant Firm

Date

~~~~~  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,

(Notary Seal or Stamp)

\_\_\_\_\_  
Notary Public Signature

My Commission expires \_\_\_\_\_

**NOTICE TO APPLICANTS**

A material false statement, omission or fraudulent inducement made in connection with this pre-qualification application is sufficient cause for denial of the application or revocation of a prior approval, thereby precluding the applicant Firm from doing business with, or performing work for, the LACMTA, either as a vendor, prime contractor, subcontractor, consultant or sub-consultant for a period of three years. In addition, such false submission may subject the person and/or entity making the false statement to criminal charges. (Title 18 USC 1001, false statements; California Penal Code Section 132, offering altered or antedated or forged documents or records; and Section 134, preparing false documentary evidence).

NOTE: Applicant information submitted to the LACMTA in connection with pre-qualification is considered confidential. All such applicant information is confidential business information and will be afforded protection to the fullest extent permitted by law.

**Validation Submittal Do not submit validations with bid or proposal, mail or deliver them to:**

LACMTA Pre-Qualification Office  
Mail Stop 99-9-1  
One Gateway Plaza  
Los Angeles, CA 90012-2952

## **SECTION 5 – BID/PROPOSAL FORMS**

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## BID LETTER

HONORABLE CHAIRMAN AND MEMBERS OF THE  
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
ONE GATEWAY PLAZA  
LOS ANGELES, CA 90012-2952

SUBJECT: INVITATION FOR BIDS FOR CONTRACT NO. IFB No. C1230

In response to the above-referenced Invitation For Bids (IFB) and in accordance with the accompanying Instructions to Bidders, the Bidder hereby commits to the Los Angeles County Metropolitan Transportation Authority (Metro) to perform the Work in accordance with the provisions of the Bid Level Contract Documents and any amendment thereto and at the prices stated opposite the respective items set forth in the form entitled SCHEDULE OF QUANTITIES AND PRICES, included and made a part of the Contract.

The Bidder agrees that the Bid constitutes a firm offer that cannot be withdrawn for ninety (90) calendar days from the bid opening or until the Contract for the Work is fully executed between Metro and a third party, whichever is earlier.

If awarded a Contract, the Bidder agrees to execute the Contract and deliver it to Metro within ten (10) calendar days after receiving a Letter of Award together with the necessary Certificates of Insurance, Performance Bond, Payment Bond, and Alcohol and Drug-Free Workplace Program. The Contractor shall proceed with the Work upon receipt of a Notice to Proceed in accordance with Article entitled NOTICE TO PROCEED of the General Conditions.

Attached is a certified check, a cashier's check (in U.S. Dollars), Bid Bond, or a combination thereof in an amount not less than ten percent (10%) of the Total Bid Price. The undersigned agrees that said amount shall be retained by Metro if we fail or refuse to execute the Contract or furnish the required Bonds, Certificates of Insurance, and Alcohol and Drug-Free Workplace Program within the time provided.

In addition to the formal certifications provided in the following, the Bidder certifies that it has:

1. Examined and is fully familiar with all of the provisions of the IFB Documents and any amendment thereto;
2. Satisfied itself as to the requirements of the Contract, the nature and location of the Work, the general and local conditions to be encountered in performance of the Work, and all other matters that can in any way affect the Work and/or the cost thereof;
3. Examined the experience, skill and certification requirements specified in the Statement of Work and that the entities (Bidder, Subcontractor, Supplier) performing the Work under the Contract fulfill the specified requirements; and
4. Carefully reviewed the accuracy of all statements and figures shown in the Bid and attachments hereto.



Therefore, the undersigned hereby agrees that Metro will not be responsible for any errors or omissions in the Bid.

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

Amendment No(s):

---

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The Bidder further certifies that:

1. The only persons, firms, corporations, Joint Ventures/partnerships, and/or other parties interested in the Bid as principals are those listed as such in the Bid Forms; and that,
2. The Bid has been prepared without collusion with any other person, firm, corporation, Joint Venture/partnership, and/or other party.

(Joint Ventures/partnerships are to provide a signed copy of their agreement with their bid)

Bidder's Name: \_\_\_\_\_

Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor's License No.: \_\_\_\_\_

License Expiration Date: \_\_\_\_\_

Classification Type: \_\_\_\_\_

If the Work/Services require DIR Registration, per California Labor Code §1725.5, complete below:

a. DIR Registration No.: \_\_\_\_\_

b. DIR Registration Date: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph  
is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

# BIDDERS LIST FORM

The Los Angeles County Metropolitan Transportation Authority (LACMTA) is required per 49 CFR 26. 11 (c) to create and maintain a comprehensive Bidders List. The Bidders List Form (PRO FORM 132) will be used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and will assist with establishing the agency's annual DBE goal. Each Bidders List is a compilation of bidders, proposers, quoters, subcontractors, manufacturers, and suppliers of materials and services who have submitted bids during the advertising period of a specific acquisition. Please provide the following mandatory data:

## Part A: Business Data

10. Business Name: \_\_\_\_\_

11. Business Address:

\_\_\_\_\_

|        |      |       |     |
|--------|------|-------|-----|
| Street | City | State | Zip |
|--------|------|-------|-----|

3. County Business is located in: \_\_\_\_\_

4. Name of Contact Person: \_\_\_\_\_

5. Phone: (       ) \_\_\_\_\_ 6. Fax: (       ) \_\_\_\_\_

7. Email Address: \_\_\_\_\_

8. Is this business certified as a Disadvantaged Business Enterprise? a. ☐ Yes b. ☐ No

9. Business Annual Gross Receipts: 10. Age of Business: \_\_\_\_\_ Years \_\_\_\_\_ Months

a. ☐ Less than \$500,000 b. ☐ \$500,000 to \$1,000,000 c. ☐ \$1,000,000 to \$2,000,000

d. ☐ \$2,000,000 to \$5,000,000 e. ☐ Over \$5,000,000

## Part B: Project and Work Description

11. RFIQ, IFB, or RFP # \_\_\_\_\_

12. Project Name: \_\_\_\_\_

13. Provide brief description of scope of work, services, and/or materials to be performed/furnished:

\_\_\_\_\_  
\_\_\_\_\_

14. Will you subcontract any of your work? a. ☐ Yes \* b. ☐ No

(\* If "Yes," the subcontractor(s) must complete an individual Bidders List Form also.)

## Part C: Signature

The undersigned declares that the information set forth on this page is current, complete and accurate.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

## **SCHEDULE OF QUANTITIES AND PRICES INSTRUCTIONS**

1. The Bidder shall submit its firm unit prices and lump sum prices for the Work set forth in the Bid and described in the Invitation for Bids (IFB) Documents on the following Bid Form entitled SCHEDULE OF QUANTITIES AND PRICES.
2. The estimated quantities shown on the SCHEDULE OF QUANTITIES AND PRICES are approximate and are based on the best information available at the time of Bid; they are used solely for the purpose of evaluating the Bids. Metro does not represent, expressly or by implication, that the actual quantities used in the Work will equal the estimated quantities.
3. In the case of Bid items for which a fixed dollar amount predetermined by Metro has already been entered on the SCHEDULE OF QUANTITIES AND PRICES, the dollar amount so entered shall be binding on all Bidders as the price for such item; said dollar amount shall not be revised unless Metro directs a Change in the Work affecting the item to which said dollar amount relates.
4. The Bidder's unit price shall be based on the estimated Work and shall remain firm within the range of a 25 percent increase or decrease in actual quantity.
5. Unit prices, lump sum prices, and other values must be entered in the appropriate spaces provided in the SCHEDULE OF QUANTITIES AND PRICES. Unit prices must be multiplied by the estimated quantity shown and the total inserted in the "Total Price" column. The "Total Prices" must be added together in arriving at the "Total Bid Price". The Total Bid Price shall be for the completion and acceptance of all Work as required by the Contract.
6. The unit prices and lump sum prices must conform to their respective requirements and parameters as specified in the Statement of Work. They also must be inclusive of all costs for the Work specified in other Contract Documents, including the proportional costs for overhead, profit, all applicable taxes, tariffs, insurance and other expenses of the Contractor, Subcontractors, and Suppliers of all tiers.
7. DETERMINATION OF TOTAL BID PRICE
  - A. The Contract will be awarded on the basis of the Total Bid Price shown on the SCHEDULE OF QUANTITIES AND PRICES.
  - B. In event of error or discrepancy between the unit price bid and the Total Bid Price calculated, the unit price is agreed to be the valid bid per unit. The Total Bid Price shall be the sum of the Total Prices (unit prices multiplied by the estimated quantities). The award amount will be based on the actual sum as recalculated by Metro.
  - C. Should any unit price be left blank, the Bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., unit price can be determined by dividing the total price by the estimated quantity).
  - D. Should any total price be left blank, the Bid will be considered non-responsive unless the blank item can be calculated from the information available (i.e., total price can be determined by multiplying the unit price by the estimated quantity).

- E. If any one line item is left blank, and the above situations do not apply, no attempt will be made to reconcile the amounts. The Bid in this case will be considered non-responsive.
- F. If Option pricing is requested, the evaluation for Contract Award will be based upon the Base Contract, plus Option(s), in any possible combination, as determined by Metro.

BIDDER/PROPOSER: \_\_\_\_\_

**CONTRACT NO. IFB No. C1230**

**SCHEDULE OF QUANTITIES AND PRICES FORM**

| ITEM NO.                           | SOW Section | DESCRIPTION                               | EST. QTY. | UNIT     | UNIT PRICE | TOTAL PRICE |
|------------------------------------|-------------|-------------------------------------------|-----------|----------|------------|-------------|
| <b>A. Base Work: Hoists 1 - 8</b>  |             |                                           |           |          |            |             |
| <b>Hoist 1: Division 8, Bay 3W</b> |             |                                           |           |          |            |             |
| 1                                  | 1.02 A      | General Conditions                        | 1         | LUMP SUM | \$         | \$          |
| 2                                  | 1.07 A      | Demo & existing lift removal              | 1         | LUMP SUM | \$         | \$          |
| 3                                  | 1.07 B      | Earthwork                                 | 1         | LUMP SUM | \$         | \$          |
| 4                                  | 1.07 B      | Concrete install                          | 1         | LUMP SUM | \$         | \$          |
| 5                                  | 1.07 C      | Mechanical, Electrical, Plumbing install  | 1         | LUMP SUM | \$         | \$          |
| 6                                  | 1.07 B      | New lift install, testing & commissioning | 1         | LUMP SUM | \$         | \$          |
|                                    |             | <b>Subtotal</b>                           |           |          |            | <b>\$</b>   |
| <b>Hoist 2: Division 8, Bay 4W</b> |             |                                           |           |          |            |             |
| 7                                  | 1.02 A      | General Conditions                        | 1         | LUMP SUM | \$         | \$          |
| 8.                                 | 1.07 A      | Demo & existing lift removal              | 1         | LUMP SUM | \$         | \$          |
| 9                                  | 1.07 B      | Earthwork                                 | 1         | LUMP SUM | \$         | \$          |
| 10                                 | 1.07 B      | Concrete install                          | 1         | LUMP SUM | \$         | \$          |

|                                    |        |                                           |   |          |    |    |
|------------------------------------|--------|-------------------------------------------|---|----------|----|----|
| 11                                 | 1.07 C | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$ |
| 12                                 | 1.07 B | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$ |
|                                    |        | <b>Subtotal</b>                           |   |          |    | \$ |
| <b>Hoist 3: Division 8, Bay 5W</b> |        |                                           |   |          |    |    |
| 13                                 | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$ |
| 14                                 | 1.07 A | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$ |
| 15                                 | 1.07 B | Earthwork                                 | 1 | LUMP SUM | \$ | \$ |
| 16                                 | 1.07 B | Concrete install                          | 1 | LUMP SUM | \$ | \$ |
| 17                                 | 1.07 C | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$ |
| 18                                 | 1.07 B | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$ |
|                                    |        | <b>Subtotal</b>                           |   |          |    | \$ |
| <b>Hoist 4: Division 8, Bay 4E</b> |        |                                           |   |          |    |    |
| 19                                 | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$ |
| 20                                 | 1.07 A | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$ |
| 21                                 | 1.07 B | Earthwork                                 | 1 | LUMP SUM | \$ | \$ |
| 22                                 | 1.07 B | Concrete install                          | 1 | LUMP SUM | \$ | \$ |
| 23                                 | 1.07 C | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$ |
| 24                                 | 1.07 B | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$ |
|                                    |        | <b>Subtotal</b>                           |   |          |    | \$ |
| <b>Hoist 5: Division 8, Bay 5E</b> |        |                                           |   |          |    |    |
| 25                                 | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$ |



|                            |        |                                           |   |          |    |    |
|----------------------------|--------|-------------------------------------------|---|----------|----|----|
| 26                         | 1.07 A | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$ |
| 27                         | 1.07 B | Earthwork                                 | 1 | LUMP SUM | \$ | \$ |
| 28                         | 1.07 B | Concrete install                          | 1 | LUMP SUM | \$ | \$ |
| 29                         | 1.07 C | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$ |
| 30                         | 1.07 B | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$ |
|                            |        | <b>Subtotal</b>                           |   |          |    | \$ |
| <b>Hoist 6: CMF, Bay 1</b> |        |                                           |   |          |    |    |
| 31                         | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$ |
| 32                         | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$ |
| 33                         | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$ |
| 34                         | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$ |
| 35                         | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$ |
| 36                         | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$ |
|                            |        | <b>Subtotal</b>                           |   |          |    | \$ |
| <b>Hoist 7: CMF, Bay 2</b> |        |                                           |   |          |    |    |
| 37                         | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$ |
| 38                         | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$ |
| 39                         | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$ |
| 40                         | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$ |
| 41                         | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$ |
| 42                         | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$ |

|                                           |        |                                           |   |          |    |           |
|-------------------------------------------|--------|-------------------------------------------|---|----------|----|-----------|
|                                           |        | <b>Subtotal</b>                           |   |          |    | <b>\$</b> |
| <b>Hoist 8: CMF, Bay 3</b>                |        |                                           |   |          |    |           |
| 43                                        | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 44                                        | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 45                                        | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 46                                        | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 47                                        | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 48                                        | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                                           |        | <b>Subtotal</b>                           |   |          |    | <b>\$</b> |
| <b>A. Base - Total Price (Hoists 1-8)</b> |        |                                           |   |          |    | <b>\$</b> |
|                                           |        |                                           |   |          |    |           |
| <b>B. Option Work: Hoists 9 -21</b>       |        |                                           |   |          |    |           |
| <b>Hoist 9: CMF, Bay 4</b>                |        |                                           |   |          |    |           |
| 49                                        | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 50                                        | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 51                                        | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 52                                        | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 53                                        | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 54                                        | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                                           |        | <b>Subtotal</b>                           |   |          |    |           |

| Hoist 10: CMF, Bay 5 |        |                                           |   |          |    |           |
|----------------------|--------|-------------------------------------------|---|----------|----|-----------|
| 55                   | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 56                   | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 57                   | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 58                   | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 59                   | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 60                   | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                      |        | <b>Subtotal</b>                           |   |          |    | <b>\$</b> |
| Hoist 11: CMF, Bay 6 |        |                                           |   |          |    |           |
| 61                   | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 62                   | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 63                   | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 64                   | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 65                   | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 66                   | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                      |        | <b>Subtotal</b>                           |   |          |    | <b>\$</b> |
| Hoist 12: CMF, Bay 7 |        |                                           |   |          |    |           |
| 67                   | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 68                   | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 69                   | 1.07 B | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 70                   | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |

|                              |        |                                           |   |          |    |           |
|------------------------------|--------|-------------------------------------------|---|----------|----|-----------|
| 71                           | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 72                           | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                              |        | <b>Subtotal</b>                           |   |          |    | <b>\$</b> |
| <b>Hoist 13: CMF, Bay 8</b>  |        |                                           |   |          |    |           |
| 73                           | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 74                           | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 75                           | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 76                           | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 77                           | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 78                           | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                              |        | <b>Subtotal</b>                           |   |          |    | <b>\$</b> |
| <b>Hoist 14: CMF, Bay 9</b>  |        |                                           |   |          |    |           |
| 79                           | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 80                           | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 81                           | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 82                           | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 83                           | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 84                           | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                              |        | <b>Subtotal</b>                           |   |          |    | <b>\$</b> |
| <b>Hoist 15: CMF, Bay 44</b> |        |                                           |   |          |    |           |
| 85                           | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |

|                              |        |                                           |   |          |    |           |
|------------------------------|--------|-------------------------------------------|---|----------|----|-----------|
| 86                           | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 87                           | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 88                           | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 89                           | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 90                           | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                              |        | <b>Subtotal</b>                           |   |          |    | <b>\$</b> |
| <b>Hoist 16: CMF, Bay 45</b> |        |                                           |   |          |    |           |
| 91                           | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 92                           | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 93                           | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 94                           | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 95                           | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 96                           | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                              |        | <b>Subtotal</b>                           |   |          |    | <b>\$</b> |
| <b>Hoist 17: CMF, Bay 46</b> |        |                                           |   |          |    |           |
| 97                           | 1.02 A | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 98                           | 1.07 D | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 99                           | 1.07 E | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 100                          | 1.07 E | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 101                          | 1.07 F | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 102                          | 1.07 E | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |

|                              |          |                                           |   |          |    |    |
|------------------------------|----------|-------------------------------------------|---|----------|----|----|
|                              |          | <b>Subtotal</b>                           |   |          |    | \$ |
| <b>Hoist 18: CMF, Bay 47</b> |          |                                           |   |          |    |    |
| 103                          | 1.02 A   | General Conditions                        | 1 | LUMP SUM | \$ | \$ |
| 104                          | 1.07 D,G | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$ |
| 105                          | 1.07 E   | Earthwork                                 | 1 | LUMP SUM | \$ | \$ |
| 106                          | 1.07 E   | Concrete install                          | 1 | LUMP SUM | \$ | \$ |
| 107                          | 1.07 F,G | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$ |
| 108                          | 1.07 E   | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$ |
|                              |          | <b>Subtotal</b>                           |   |          |    | \$ |
| <b>Hoist 19: CMF. Bay 48</b> |          |                                           |   |          |    |    |
| 109                          | 1.02 A   | General Conditions                        | 1 | LUMP SUM | \$ | \$ |
| 110                          | 1.07 D,G | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$ |
| 111                          | 1.07 E   | Earthwork                                 | 1 | LUMP SUM | \$ | \$ |
| 112                          | 1.07 E   | Concrete install                          | 1 | LUMP SUM | \$ | \$ |
| 113                          | 1.07 F,G | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$ |
| 114                          | 1.07 E   | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$ |
|                              |          | <b>Subtotal</b>                           |   |          |    | \$ |
| <b>Hoist 20: CMF, Bay 49</b> |          |                                           |   |          |    |    |
| 115                          | 1.02 A   | General Conditions                        | 1 | LUMP SUM | \$ | \$ |
| 116                          | 1.07 D,G | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$ |
| 117                          | 1.07 E   | Earthwork                                 | 1 | LUMP SUM | \$ | \$ |

|                                                  |                                                                                  |                                           |   |          |    |           |
|--------------------------------------------------|----------------------------------------------------------------------------------|-------------------------------------------|---|----------|----|-----------|
| 118                                              | 1.07 E                                                                           | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 119                                              | 1.07 F,G                                                                         | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 120                                              | 1.07 E                                                                           | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                                                  |                                                                                  | <b>Subtotal</b>                           |   |          |    | \$        |
| <b>Hoist 21: CMF, Bay 50</b>                     |                                                                                  |                                           |   |          |    |           |
| 121                                              | 1.02 A                                                                           | General Conditions                        | 1 | LUMP SUM | \$ | \$        |
| 122                                              | 1.07 D,G                                                                         | Demo & existing lift removal              | 1 | LUMP SUM | \$ | \$        |
| 123                                              | 1.07 E                                                                           | Earthwork                                 | 1 | LUMP SUM | \$ | \$        |
| 124                                              | 1.07 E                                                                           | Concrete install                          | 1 | LUMP SUM | \$ | \$        |
| 125                                              | 1.07 F,G                                                                         | Mechanical, Electrical, Plumbing install  | 1 | LUMP SUM | \$ | \$        |
| 126                                              | 1.07 E                                                                           | New lift install, testing & commissioning | 1 | LUMP SUM | \$ | \$        |
|                                                  |                                                                                  | <b>Subtotal</b>                           |   |          |    | \$        |
| <b>B. Option Work- Total Price (Hoists 9-21)</b> |                                                                                  |                                           |   |          |    | <b>\$</b> |
|                                                  |                                                                                  |                                           |   |          |    |           |
|                                                  | <b>Total Price, including all Work listed under the items above (sum A + B).</b> |                                           |   |          |    | <b>\$</b> |

**TOTAL BID PRICE:** \_\_\_\_\_ **DOLLARS**

**END OF SCHEDULE OF QUANTITIES AND PRICES**

**Notes:**

1. Bidder shall provide a firm fixed **fully burdened price** proposal for the supply and installation of 5 new bus hoists at Division 8 and 16 new bus hoists at the Central Maintenance Facility (CMF).
2. Base Work includes five (5) bus bays at Division 8 and three (3) bus bays at Central Maintenance Facility (CMF) (Hoists 1-8) .
3. Option Work includes thirteen (13) bus bays at CMF (Hoists 19-21). Metro will exercise its sole discretion to add to the project scope.



BIDDER/PROPOSER: \_\_\_\_\_

### LIST OF CURRENT PROJECTS (BACKLOG)

(Click here for the pdf with form fields version: [http://media.metro.net/ebb/contract\\_templates/5-005\\_054\\_and\\_055\\_List\\_of\\_Curr\\_and\\_Comp\\_Proj\\_%28Backlog%29.pdf](http://media.metro.net/ebb/contract_templates/5-005_054_and_055_List_of_Curr_and_Comp_Proj_%28Backlog%29.pdf))

| PROJECT NAME AND LOCATION | DESCRIPTION OF WORK                                         | OWNER'S NAME, ADDRESS, PHONE NO. CONTACT PERSON EMAIL ADDRESS | ESTIMATED COST OF BIDDER'S WORK | ESTIMATED COMPLETION |
|---------------------------|-------------------------------------------------------------|---------------------------------------------------------------|---------------------------------|----------------------|
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                              |                      |
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                              |                      |
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                              |                      |
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                              |                      |
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                              |                      |

BIDDER/PROPOSER: \_\_\_\_\_

### LIST OF COMPLETED PROJECTS - LAST THREE YEARS

(Click here for the pdf with form fields version [http://media.metro.net/ebb/contract\\_templates/5-005\\_054\\_and\\_055\\_List\\_of\\_Curr\\_and\\_Comp\\_Proj\\_%28Backlog%29.pdf](http://media.metro.net/ebb/contract_templates/5-005_054_and_055_List_of_Curr_and_Comp_Proj_%28Backlog%29.pdf))

Include only projects that are pertinent for this Invitation For Bids/Request for Proposal, in order to demonstrate Bidder's/Proposer's ability to perform the required Work.

| PROJECT NAME AND LOCATION | DESCRIPTION OF WORK                                         | OWNER'S NAME, ADDRESS, PHONE NO. CONTACT PERSON EMAIL ADDRESS | ACTUAL FINAL CONTRACT VALUE | DATE CONTRACT DURATION |
|---------------------------|-------------------------------------------------------------|---------------------------------------------------------------|-----------------------------|------------------------|
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                          |                        |
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                          |                        |
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                          |                        |
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                          |                        |
|                           | Prime <input type="checkbox"/> Sub <input type="checkbox"/> |                                                               | \$                          |                        |

## BID BOND

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT,**

\_\_\_\_\_ as Principal  
and,

\_\_\_\_\_ as Surety

are held firmly bound unto the LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY, hereinafter called Metro,

in the sum of

\_\_\_\_\_ (use words)

\_\_\_\_\_ DOLLARS

(\$), \_\_\_\_\_  
(figures)

being not less than ten percent (10%) of the Total Bid Price; for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severably, firmly by these presents.

**WHEREAS**, said Principal has submitted a bid to Metro to perform all Work required under Metro's Invitation For Bids (IFB) Contract No. IFB No. C1230.

**NOW, THEREFORE**, if said Principal is awarded a Contract for the Work by Metro and, within the time and in the manner required by the Invitation For Bids (IFB), enters into the written Contract Agreement bound with said IFB and furnishes the required bonds, one to guarantee faithful performance and the other to guarantee payment for labor and materials, and furnishes the required certificate of insurance and Alcohol and Drug-Free Workplace Program, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. In the event suit is brought upon this Bond by Metro and judgment is recovered, said Surety shall pay all costs incurred by Metro in such suit, including reasonable attorneys' fees to be fixed by the court.

**SIGNED AND SEALED**, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

(SEAL)

(SEAL)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

BY: \_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
Signature

## ATTACHMENT 1 - PERFORMANCE BOND

### LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

#### CONTRACT NO. IFB No. C1230

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to \_\_\_\_\_ ("Principal"), Contract No **IFB No. C1230, Division 8 and Central Maintenance Facility (CMF) Bus Hoists Replacement** and

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

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

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

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

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: \_\_\_\_\_  
(Principal)

\_\_\_\_\_

By: \_\_\_\_\_  
(Surety)

\_\_\_\_\_

By: \_\_\_\_\_

## ATTACHMENT 2 - PAYMENT (MATERIAL AND LABOR) BOND

### LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

IFB No. C1230

#### PAYMENT (MATERIAL AND LABOR) BOND

WHEREAS the Los Angeles County Metropolitan Transportation Authority ("Metro") has awarded to \_\_\_\_\_ ("Principal"), **IFB No. C1230, Division 8 and Central Maintenance Facility (CMF) Bus Hoists Replacement** and

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

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

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

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

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

IN WITNESS WHEREOF, three identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety named herein, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

By: \_\_\_\_\_  
(Principal)

\_\_\_\_\_

By: \_\_\_\_\_  
(Surety)

\_\_\_\_\_

By: \_\_\_\_\_

**BIDDER/PROPOSER:** \_\_\_\_\_

## **QUALITY ASSURANCE/QUALITY CONTROL**

The Bidder shall submit the following items with its bid/proposal by attaching them directly behind this page:

1. A copy of the current corporate organization chart;
2. A proposed site/project organization chart depicting the reporting relationship of those responsible for quality to executive and project management; and
3. A copy of the table of contents of the Bidder's Quality Assurance/Quality Control Plan/Program that it currently has in effect and that meets the requirements outlined in the Technical Specifications.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

\_\_\_\_\_  
Typewritten or Printed Name

\_\_\_\_\_  
Signature of Authorized  
Official

\_\_\_\_\_  
Title



**BIDDER/PROPOSER:** \_\_\_\_\_

## **SAFETY**

The bidder/proposer shall submit the following items with its bid/proposal by attaching them directly behind this page.

1. The Table of Contents of bidder's/proposer's currently implemented safety program.
2. A resume of the proposed Project/Site Safety Representative, along with copies of certification cards. The resume and certification cards must indicate that the proposed individual meets the criteria for the position at the time of bid/proposal. A separate Submittal after NTP will be required of the successful Bidder/Proposer.

The Bidder/Proposer affirms by signature below that it has an established Safety Program that complies with the provisions of these Contract Documents and all government regulations, including California Labor Code Section 6401.7 and Cal-OSHA General Industry Order, Title 8, Subchapter 7, Section 3203.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

| _____<br>Typewritten or Printed Name | _____<br>Signature of Authorized<br>Official | _____<br>Title |
|--------------------------------------|----------------------------------------------|----------------|
|--------------------------------------|----------------------------------------------|----------------|

**BIDDER/PROPOSER:** \_\_\_\_\_

## BIDDER'S INDUSTRIAL SAFETY RECORD

The information entered on the Bid Form must include all construction work undertaken nationwide and in the state of California by the Bidder, as well as by any partnership, corporation or joint venture that any principal of the Bidder participated in as a principal or owner, for the current calendar year and the prior five calendar years. A separate Bid Form shall be submitted for each individual, partnership, corporation and/or joint venture that make up the Bidding entity. The Bidder may be requested to submit additional information or explanation of data that the Metro requires for evaluating the safety record.

| ITEM            | INFORMATION                                    | 2012 | 2013 | 2014 | 2015 | 2016 | Current Year |
|-----------------|------------------------------------------------|------|------|------|------|------|--------------|
| 1.              | Total Hours Worked                             |      |      |      |      |      |              |
|                 | Nationwide:                                    |      |      |      |      |      |              |
|                 | California:                                    |      |      |      |      |      |              |
| 2. <sup>1</sup> | Number of fatalities                           |      |      |      |      |      |              |
|                 | Nationwide:                                    |      |      |      |      |      |              |
|                 | California:                                    |      |      |      |      |      |              |
| 3. <sup>1</sup> | Number of OSHA recordable injury/illness cases |      |      |      |      |      |              |
|                 | Nationwide:                                    |      |      |      |      |      |              |
|                 | California:                                    |      |      |      |      |      |              |
| 4. <sup>1</sup> | Number of lost workday cases                   |      |      |      |      |      |              |
|                 | Nationwide:                                    |      |      |      |      |      |              |
|                 | California:                                    |      |      |      |      |      |              |
| 5. <sup>1</sup> | Number of lost workdays                        |      |      |      |      |      |              |
|                 | Nationwide:                                    |      |      |      |      |      |              |
|                 | California:                                    |      |      |      |      |      |              |

**BIDDER/PROPOSER:** \_\_\_\_\_

| ITEM | INFORMATION                               | 2012 | 2013 | 2014 | 2015 | 2016 | Current Year |
|------|-------------------------------------------|------|------|------|------|------|--------------|
| 6.1  | Recordable Incident Rates: <sup>2</sup>   |      |      |      |      |      |              |
|      | Nationwide:                               |      |      |      |      |      |              |
|      | California:                               |      |      |      |      |      |              |
|      | Lost Workday Incident Rates <sup>3</sup>  |      |      |      |      |      |              |
|      | Nationwide:                               |      |      |      |      |      |              |
|      | California:                               |      |      |      |      |      |              |
|      | Lost Days Rates <sup>4</sup>              |      |      |      |      |      |              |
|      | Nationwide:                               |      |      |      |      |      |              |
|      | California:                               |      |      |      |      |      |              |
|      |                                           |      |      |      |      |      |              |
| 7.1  | Worker's Compensation Experience Modifier |      |      |      |      |      |              |
|      | Nationwide:                               |      |      |      |      |      |              |
|      | California:                               |      |      |      |      |      |              |

The above information was compiled from records available at the time the Bid was prepared. I declare under penalty of perjury under the laws of the state of California that the information is true and correct within the limitation of those records.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
 (Date) (City) (State)

\_\_\_\_\_  
 Typewritten or Printed Name      Signature of Authorized Official      Title

- 1 The information required for items is the same as required for columns 3 to 13, code 10, Log and Summary of Occupational injuries and Illnesses, OSHA (Cal-Osha) Form 300A
- 2 Recordable Incidence Rate =  $\frac{\text{Recordable Cases} \times 200,000}{\text{Total Hours Worked}}$
- 3 Lost Workday Incident Rate =  $\frac{\text{Lost Workday Cases} \times 200,000}{\text{Total Hours Worked}}$
- 4 Lost Days Rate =  $\frac{\text{Total Lost Days} \times 200,000}{\text{Total Hours Work}}$

## **SECTION 6 – REQUIRED CERTIFICATIONS**

This page is intentionally blank

**BIDDER/PROPOSER:** \_\_\_\_\_

## ETHICS DECLARATION

This form must be completed separately by all bidders/proposers, including all Prime Contractors and Subcontractors. The information provided by bidders/proposers is necessary for the Los Angeles County Metropolitan Transportation Authority (LACMTA) to make decisions under state law and Metro code.

**Failure to complete the form in its entirety may result in significant delays and potential disqualification from the procurement. Bidders/Proposers must review the “Ethics Guidance for Proposers” reference page attached to this Declaration.**

Your company, including all entities identified below (collectively, “Declarant Company”) must answer the questions below. The term “employee(s)” shall be defined as employees, officers, partners, owners, or directors of Declarant Company.

An affirmative response to any questions will not automatically cause disqualification. However, failure to answer questions in good faith or providing materially false answers may subject a bidder/proposer to disqualification from the procurement.

Contact the Ethics Department with any questions related to this Declaration.

*Complete each section below. State “none” if applicable.*

### A. COMPANY INFORMATION

(1) Declarant Company Name:

a. Proposing or Bidding as ☐ Prime Contractor or ☐ Subcontractor

b. Variations and acronyms of Declarant Company’s name used within the

past 4 years:

- (2) Identify **only** the Parent(s), Subsidiaries and Related Business Entities that Declarant Company has controlled or directed, or been controlled or directed by. "Controlled or directed" means shared ownership or 50% or greater ownership
  - a. Parent(s):
  - b. Subsidiaries:
  - c. Related Business Entities:
- (3) If Declarant Company is a closed corporation (non-public, with under 35 shareholders), identify the majority shareholder.
- (4) Identify any individuals, including employees and agents (individuals representing the company), that have communicated or will communicate with a LACMTA Board Member or LACMTA employee regarding the award of **this contract or project**, including any individuals, employees and agents that have sought or will seek to influence the award of **this contract or project**.
- (5) Identify any lobbyists and lobbying firms acting on behalf of Declarant Company that have lobbied a LACMTA Board Member or LACMTA employee on **this contract or project**.

B. CAMPAIGN CONTRIBUTIONS

**Failure to disclose any contribution information may result in disqualification from this procurement.**

- (6) Has Declarant Company solicited or directed its employees or agents to make campaign contributions, whether through fundraising events, communications, or any other means, to LACMTA Board Members? \_\_\_\_\_
- a. If so, provide details of each occurrence, including the date.
- (7) Identify any entities or individuals, including employees and agents (individuals representing the company, *e.g.* , lobbyists), who make decisions for Declarant Company on any campaign contributions provided to elected officials.
- (8) Disclose all campaign contributions made by the entities and individuals identified in Sections A and B to LACMTA Board Members within the past 4 years. Include the name of the contributor, the name of the recipient, the amount of the contribution, and the date the contribution was made.



C. EMPLOYEE AND COMPANY INFORMATION

*If you answer "yes" to any question below, provide a detailed explanation of the facts and circumstances on a separate page.*

(9) In the past 12 months, has Declarant Company hired a former LACMTA Board Member or staff to a LACMTA Board Member? \_\_\_\_

(10) In the past 36 months, has Declarant Company hired a former LACMTA employee? \_\_\_\_

a. If so, and the former LACMTA employee was hired within the past 12 months, does Declarant Company anticipate the former LACMTA employee will work on this contract? \_\_

(11) Is any Declarant Company employee related to, or does the employee have a close personal relationship with, a LACMTA Board Member or LACMTA employee? \_\_\_\_

(12) In the past 12 months, has any Declarant Company employee given any gifts to a LACMTA Board Member or LACMTA employee? \_\_

(13) In the past 12 months, has Declarant Company employed as a lobbyist any former LACMTA Board Member or former LACMTA employee? \_\_

(14) Has any Declarant Company employee performed any work relating to the following:

a. The development of the Statement of Work/Statement of Services or any specifications on this procurement? \_\_\_\_

b. Earlier phases of the project or services to be provided under this procurement? \_\_\_\_

c. If so, provide an explanation of the previously performed work.



D. DECLARATION

By signing this Ethics Declaration, Declarant Company attests that: (1) Declarant Company has read, understands, and shall abide by LACMTA's Contractor Code of Conduct at all times during its relationship with LACMTA; (2) Declarant Company's consultants and subcontractors have read or will promptly read and abide by LACMTA's Contractor Code of Conduct.

There are \_\_\_\_\_ additional pages attached to this Ethics Declaration.

I, \_\_\_\_\_ (Authorized Representative), on behalf of  
\_\_\_\_\_ (Declarant Company), at which I am employed as  
\_\_\_\_\_ (Title), declare that after having made or caused to be made a reasonably diligent investigation regarding the Declarant Company, the foregoing responses, and the explanation on the attached sheet(s), if any, are correct to the best of my knowledge and belief.

Further, I understand that failure to answer the questions in good faith or providing materially false answers may subject Declarant Company to consequences, including disqualification of its Bid/Proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Revised Jan. 2022



## ETHICS GUIDANCE FOR PROPOSERS

### Campaign Contribution Restrictions

After a bid/proposal has been submitted, no bidder/proposer, or their employees or immediate family members, may make campaign contributions over \$10 to Metro Board Members during the time the bid/proposal is pending before Metro. If a bidder/proposer *wins* an award, they may not make any campaign contributions over \$10 to Metro Board Members for 4 years after the Board vote for award of the contract. For all other bidders/proposers, they may not make any campaign contributions over \$250 to Metro Board Members for 3 months after the Board vote for award of the contract. (Public Utilities Code § 130051.20; Cal. Gov. Code § 84308.)

### Procurement Communications Blackout

Beginning when a procurement's solicitation documentation is issued and continuing until Metro staff makes a public recommendation for award, bidders/proposers shall not contact by any means any 1) Metro Board Member or their staff; or 2) Metro staff other than those authorized to represent Metro concerning the procurement. Any contact shall be grounds for the disqualification of the proposer. (Public Utilities Code § 130685; Contractor Code of Conduct § 5-20-170.)

### Gift Restrictions

Bidders/Proposers may not offer, give, or promise to offer or give, directly or indirectly, any gift to any Metro Board Member or employee. (Contractor Code of Conduct § 5-20-080.)

### Lobbying

Any bidder/proposer not in compliance with Metro's lobbyist registration code, will not be awarded a contract. (Public Utilities Code § 130051.18; Contractor Code of Conduct § 5-20-070; Metro Admin. Code §§ 5-25-010 *et seq.*)

Please consult the Contractor Code of Conduct for a full review of all applicable codes and laws, available at <https://www.metro.net/about/ethics/>.

Revised Jan. 2022

**BIDDER/PROPOSER:** \_\_\_\_\_

## **GENERAL CERTIFICATIONS**

The Bidder/Proposer shall respond either "Yes" or "No" to each of the following where indicated. If the Bidder/Proposer's response is "No", a full explanation shall be provided in the space following the last item.

### **1.0 CERTIFICATE OF NONDISCRIMINATION**

Yes ☐ No ☐

The Bidder/Proposer hereby certifies: that it does not unlawfully discriminate against any employee or applicant for employment with regard to race, sex, color, religion, ancestry, national origin, marital status, age (over 40), or disability (including AIDS, and cancer-related medical condition); that it is in compliance with all applicable Federal, state, and local directives and executive orders regarding nondiscrimination in employment; and that it agrees to pursue positively and aggressively the principle of equal opportunity in employment. The Bidder/Proposer and its Subcontractors shall comply with the provisions of the Fair Employment and Housing Act Gov. Code § 12900 and the applicable regulations promulgated thereunder. The Bidder/Proposer agrees specifically to adhere to the following:

- A. Establish and observe employment policies that actively promote opportunities for minority persons and women at all job levels.
- B. Communicate this policy to all company employees, outside recruiting services, especially those serving minority communities and women, and minority communities and women at large.
- C. State in all solicitations or advertisements for employees that the Bidder/Proposer will consider all qualified applicants for employment without regard to race, sex, color, religion, ancestry, national origin, marital status, age (over 40), or disability (including AIDS, and cancer-related medical condition).

### **2.0 AFFIRMATIVE ACTION**

Yes ☐ No ☐

The Bidder/Proposer certifies that it and those Subcontractors with subcontracts in excess of ten thousand dollars (\$10,000) are maintaining Affirmative Action Programs consistent with those required under Federal Executive Order 11246. The detailed requirements are set forth in the Contract Compliance Manual.

### 3.0 FRAUDULENT USE OF DBE FRONTS

Yes ☐ No ☐

Only certified Disadvantaged Business Enterprises are eligible to participate in Metro contracts as DBEs. The Bidder/Proposer certifies that it has not knowingly and willfully used "fronts" as defined in section 100.6 of Metro's Contract Compliance Manual (Federal) to meet the DBE goal established for this contract. The use of "fronts" and "pass through" Subcontracts to non-disadvantaged firms may constitute a criminal violation<sup>2</sup>.

### 4.0 WHISTLEBLOWER REQUIREMENTS

Yes ☐ No ☐

The Bidder/Proposer certifies that it will take no action, or adopt any rule, regulation or policy which is contrary to the provisions set forth in California Labor Code § 1101.

A full explanation of all "No" answers shall be provided below.

a

Bidder/Proposer hereby declares under the penalty of perjury under the laws of the State of California that the certifications made above in No. 1-4 are true and correct.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

|                             |                                     |       |
|-----------------------------|-------------------------------------|-------|
| _____                       | _____                               | _____ |
| Typewritten or Printed Name | Signature of Authorized<br>Official | Title |

<sup>2</sup> Any indication of fraud, waste, abuse, or mismanagement of these funds should be immediately reported to the Metro Small Business Diversity and Labor Compliance Office, at (213) 922-6000; the Metro Inspector General Office at (213) 344-7300 or the toll free hotline number (800) 221-1142; or to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline number (800) 424-9071; or to the following field office: 201 Mission Street, Suite 2210; San Francisco, CA 94105-1926; (415) 744-3133.

**BIDDER/PROPOSER:** \_\_\_\_\_

**CERTIFICATE OF COMPLIANCE WITH 49 CFR PART 655,  
PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN  
TRANSIT OPERATIONS**

Bidder/Proposer hereby certifies that:

**A. Anti-drug Use and Alcohol Misuse Program**

(Choose one Alternative with "X" in the box)

1. ☐ Bidder/Proposer has established and implemented an anti-drug use and alcohol misuse program meeting the requirements on 49 CFR 655.

OR

2. ☐ Bidder/Proposer will establish and implement an anti-drug use and alcohol misuse program meeting the requirements on 49 CFR 655 prior to contract award.

**B. Drug and Alcohol Testing Program**

(Choose one alternative with "X" in the box)

1. ☐ To the best of my knowledge and belief the Work required under the Contract will not require the performance of "Safety Sensitive Functions" as defined in 49 CFR Part 655.

OR

2. ☐ To the best of my knowledge and belief the Work required under the Contract will require the performance of "Safety Sensitive Functions" as defined in 49 CFR Part 655.

(If Alternative 2 was chosen, select one of the following alternatives with an "X" in the box)

- a. ☐ Bidder/Proposer has established and implemented a drug and alcohol testing program that complies with 49 CFR Part 655.

OR

- b. ☐ Bidder/Proposer will establish and implement a drug and alcohol testing program that will comply with 49 CFR Part 655 prior to contract award.

### **C. Submittals**

Bidder/Proposer will submit its Anti-drug Use and Alcohol Misuse Program, and, if B.2 was marked above, its Drug and Alcohol Testing Program, to Metro for review and approval prior to contract award.

Bidder/Proposer: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BIDDER/PROPOSER:** \_\_\_\_\_

**BUY AMERICA CERTIFICATE  
FOR COMPLIANCE WITH TITLE 49 USC § 5323(J)(1)  
(For Procurement of Steel, Iron, or Manufactured Products)**

The Bidder/Proposer hereby certifies that it will comply with the requirements of Title 49 USC § 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

|                                      |                                              |                |
|--------------------------------------|----------------------------------------------|----------------|
| _____<br>Typewritten or Printed Name | _____<br>Signature of Authorized<br>Official | _____<br>Title |
|--------------------------------------|----------------------------------------------|----------------|

**BUY AMERICA CERTIFICATE FOR NON-COMPLIANCE WITH TITLE 49 USC §. 5323(J)(1)**

The Bidder/Proposer hereby certifies that it cannot comply with the requirements of Title 49 USC § 5323(j)(1), but it may qualify for an exception pursuant to Title 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

|                                      |                                              |                |
|--------------------------------------|----------------------------------------------|----------------|
| _____<br>Typewritten or Printed Name | _____<br>Signature of Authorized<br>Official | _____<br>Title |
|--------------------------------------|----------------------------------------------|----------------|



**BIDDER/PROPOSER:** \_\_\_\_\_

**BUY AMERICA CERTIFICATE  
FOR COMPLIANCE WITH TITLE 49 USC § 5323(J)(2)(C)  
(For Procurement of Buses, Other Rolling Stock and Associated  
Equipment)**

The Bidder/Proposer hereby certifies that it will comply with the requirements of Title 49 USC § 5323(j)(2)(C) and the applicable regulations at 49 CFR Part 661.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

|                                      |                                              |                |
|--------------------------------------|----------------------------------------------|----------------|
| _____<br>Typewritten or Printed Name | _____<br>Signature of Authorized<br>Official | _____<br>Title |
|--------------------------------------|----------------------------------------------|----------------|

**BUY AMERICA CERTIFICATE FOR NON-COMPLIANCE WITH TITLE 49 USC § 5323(j)(2)(C)**

The Bidder/Proposer hereby certifies that it cannot comply with the requirements of Title 49 USC § 5323(j)(2)(C), but may qualify for an exception pursuant to Title 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR Part 661.7.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

|                                      |                                              |                |
|--------------------------------------|----------------------------------------------|----------------|
| _____<br>Typewritten or Printed Name | _____<br>Signature of Authorized<br>Official | _____<br>Title |
|--------------------------------------|----------------------------------------------|----------------|

**BIDDER/PROPOSER:** \_\_\_\_\_

## **CERTIFICATION OF COMPLIANCE WITH FEDERAL LOBBYING REQUIREMENTS (49 CFR PART 20)**

**To be submitted with each Bid/Proposal or offer of Bidder/Proposer exceeding \$100,000**

The \_\_\_\_\_ (Bidder/Proposer) certifies to the best of its knowledge and belief that:

1. No federally 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 any agency; a member of Congress, an officer or employee of Congress, an employee of a member of Congress; or any Board member or employee of Metro in connection with the awarding of any federal contract; any federally funded contract; or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any federal contract, federally funded contract grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts, or influencing or attempting to influence; an officer or employee of any agency; a member of Congress; an officer or employee of Congress; an employee of a member or Congress or a Board member or employee of Metro in connection with this federally funded contract, grant, loan, or cooperative agreement, the undersigned shall register and comply with all federal disclosure requirements.
3. The undersigned shall require that the language of this certification be included in the solicitation and award documents for all subawards at all tiers including but not limited to subcontracts, subgrants and contracts under grants, loans and cooperative agreements and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance 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 Title 31 USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any offeror who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

\_\_\_\_\_  
Typewritten or Printed Name

\_\_\_\_\_  
Signature of Authorized  
Official

\_\_\_\_\_  
Title

## RESTRICTIONS ON LOBBYING

(a) Definitions, as used in this clause:

**Agency** as defined in Title 5 USC § 552(f), includes federal executive departments and agencies as well as independent regulatory commissions and government corporations, as defined in Title 31 USC § 9101(1).

**Metro** means the Los Angeles County Metropolitan Transportation Authority.

**Covered Federal action** means any of the following federal actions:

1. The awarding of any federal contract;
2. The making of any federal grant;
3. The making of any federal loan;
4. The entering into of any cooperative agreement, and
5. The extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

Covered federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

**Indian tribe** and **tribal organization** have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act Title 25 USC § 450(b). Alaskan Natives are included under the definitions of Indian tribes in that Act.

**Influencing or attempting to influence** means making, with the intent to influence, any communication to or appearance before 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 any covered federal action.

**Local government** means a unit of government in a state and, if chartered, established, or otherwise recognized by a state for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

**Officer or employee of an agency** includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the government under Title 5, USC, including a position under a temporary appointment;
2. A member of the uniformed services as defined in Title 37 USC § 101(3);
3. A special government employee as defined in, Title 18 USC § 202; and,
4. An individual who is a member of a federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5 USC Appendix 2.

**Person** means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization,

or any other Indian organization with respect to expenditures specifically permitted by other federal law.

**Reasonable compensation** means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the federal government.

**Reasonable payment** means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

**Recipient** includes all contractors and subcontractors at any tier in connection with a federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

**Regularly employed** means, with respect to an officer or employee of a person requesting or receiving a federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 days.

**State** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a state, and a multi-state, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

(1) Title 31 USC § 1352 provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a federal

contract if the payment is for agency and legislative liaison activities not directly related to a covered federal action.

- (B) For purposes of paragraph (b) (2) (i) (A) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.
  - (C) For purposes of paragraph (b) (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable at anytime only where they are not related to a specific solicitation for any covered federal action:
    - (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the persons products or services, conditions or terms of sale, and service capabilities, and
    - (2) Technical discussions and other activities regarding the application or adaptation of the persons products or services for an agency's use.
  - (D) For purposes of paragraph (b) (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable only when they are prior to formal solicitation of any covered federal action:
    - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered federal action;
    - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to official submission, and
    - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
  - (E) Only those activities expressly authorized by paragraph (b) (2) (i) of this section are allowable under paragraph (b) (2) (i).
- (ii) Professional and technical services by Own Employees.
- (A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a federal contract or an extension, continuation, renewal, amendment, or modification of a federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal or application for that federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal contract.
  - (B) For purposes of paragraph (b) (2) (ii) (A) of this section professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document

accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her clients proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(D) Only those services expressly authorized by paragraph (b) (2) (ii) of this section are allowable under paragraph (b) (2) (ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal contract.

(B) For purposes of paragraph (b) (2) (iv) (A) of this section professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a

professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (D) Persons other than officers or employees of a person requesting or receiving a covered federal action include consultants and trade associations.
- (E) Only those services expressly authorized by paragraph (b) (2) (iv) of this section are allowable under paragraph (b) (2) (iv).

(c) Disclosure.

- (1) Each person who requests or receives from Metro a contract with federal assistance shall file with Metro a certification, set forth in Bid/Submittal Form entitled FEDERAL LOBBYING CERTIFICATION, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from Metro a contract with federal assistance shall file with Metro a disclosure form, Standard Form-LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c) (2) of this section. An event that materially affects the accuracy of the information reported includes:
  - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or

- (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or,
  - (iii) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (c) (1) of this section a subcontract with a contract value exceeding \$100,000 at any tier under a contract with federal assistance shall file a certification, and a disclosure form, if required, to the next tier above. All disclosure forms shall be forwarded from tier to tier until received by the Prime Contractor who will forward it to Metro.



## EXHIBIT 1

### CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, \_\_\_\_\_, hereby certify on behalf of  
(Name and title of contracting or sub-contracting official)

\_\_\_\_\_ that:  
(Name of contractor or subcontractor)

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By: \_\_\_\_\_  
(Signature of Authorized Official)

\_\_\_\_\_  
(Typewritten or Printed Name)

\_\_\_\_\_  
(Title of Authorized Official)

## EXHIBIT 2

### DISCLOSURE OF LOBBYING ACTIVITIES INSTRUCTIONS FOR COMPLETION OF SF-LLL

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation of receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31 USC § 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 if the first 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 the 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 dates 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 (03-46-00046). Washington, D.C. 20503.

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to Title 31 USC § 1352  
(See reverse for public burden disclosure.)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract</p> <p><input type="checkbox"/> b. grant</p> <p><input type="checkbox"/> c. cooperative agreement</p> <p><input type="checkbox"/> d. loan</p> <p><input type="checkbox"/> e. loan guarantee</p> <p><input type="checkbox"/> f. loan insurance</p>                                                                                                                                                                                                                              | <p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application</p> <p><input type="checkbox"/> b. initial award</p> <p><input type="checkbox"/> c. post award</p> | <p>3. Status of Federal Action:</p> <p><input type="checkbox"/> a. initial change</p> <p><input type="checkbox"/> b. material change</p> <p>For Material Change Only:</p> <p>year _____ quarter _____</p> <p>date of last report _____</p>                                                                                                         |
| <p>4. Name and Address of Reporting Entity</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee</p> <p style="text-align: center;">Tier _____, if known:</p> <p>Congressional District, if known: _____</p>                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                             | <p>5. If Reporting Entity in No. 4 is subawardee. Enter name and Address of Prime:</p> <p>Congressional District, if known: _____</p>                                                                                                                                                                                                              |
| <p>6. Federal Department/Agency:</p> <p><b>Department of Transportation</b><br/><b>Federal Transit</b><br/><b>Administration</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                             | <p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>                                                                                                                                                                                                                                                               |
| <p>8. Federal Action Number, if known: _____</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                             | <p>9. Award Amount, if known:</p> <p>\$ _____</p>                                                                                                                                                                                                                                                                                                  |
| <p>10. a. Name and Address of Lobbying Entity<br/>(if individual, last name, first name, MI):</p> <p style="text-align: center;">attach continuation sheet(s) SF-LLL-A if necessary</p>                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                             | <p>b. Individuals Performing Services (including address if different from No. 10.a)<br/>(last name, first name, MI):</p> <p style="text-align: center;">attach continuation sheet(s) SF-LLL-A if necessary</p>                                                                                                                                    |
| <p>11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                    |
| <p>12. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash</p> <p><input type="checkbox"/> b. in-kind; specify: nature _____</p> <p style="text-align: center;">value _____</p>                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                             | <p>13. Type of Payment (check all that apply):</p> <p><input type="checkbox"/> a. retainer</p> <p><input type="checkbox"/> b. one-time fee</p> <p><input type="checkbox"/> c. commission</p> <p><input type="checkbox"/> d. contingent fee</p> <p><input type="checkbox"/> e. deferred</p> <p><input type="checkbox"/> f. other; specify _____</p> |
| <p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employer(s), or member(s) contacted, for Payment indicated in Item 11:</p>                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                    |
| <p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                    |
| <p>16. Information requested through this form is authorized by Title 31 USC § 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. 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 such failure.</p> |                                                                                                                                                                                             | <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>                                                                                                                                                                                                                                       |
| <p>Federal Use Only: _____</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                    |

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**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

Authorized for Local Reproduction Standard Form LLL-A

**BIDDER/PROPOSER:** \_\_\_\_\_

## **CERTIFICATION OF PROSPECTIVE CONTRACTOR REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

### **PRIMARY COVERED TRANSACTIONS MUST BE COMPLETED BY BIDDER FOR CONTRACT VALUE OVER \$100,000**

[See Instructions for Completion in Instructions to Bidders in the section entitled CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION]

Choose one alternative with "X" in the box:

- ☐ The Bidder, \_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  2. Have not within a three-year period preceding this proposal 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;
  3. Are 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; and
  4. Have not within a three-year period preceding this Bid had one or more public transactions (Federal, State or local) terminated for cause or default.

### **OR**

- ☐ The Bidder is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Bidder certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

\_\_\_\_\_  
Typewritten or Printed Name

\_\_\_\_\_  
Signature of Authorized  
Official

\_\_\_\_\_  
Title

## **CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

Pursuant to 49 CFR Part 29, to confirm the eligibility of the Bidder/Proposer or any covered Subcontractor to contract with Metro, Bidder/Proposer shall complete and submit with the bid/proposal the Certificate entitled "Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion", and comply with subsection B below related to each Lower Tier covered transaction.

1. Instructions for Bidder/Proposers Certification - Primary Covered Transactions
  - A. In addition to signing and submitting this bid/proposal, the Bidder (also referred to as "prospective primary participant") shall also provide the Certificate entitled Certification of Potential Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Primary Covered Transaction.
  - B. The inability of a person to provide the subject certification will not necessarily result in denial of participation in this Contract (also referred to as "primary covered transaction" or "covered transaction). The Bidder/Proposer shall submit an explanation of why it cannot provide the subject certification. The certification or explanation will be considered in whether or not to enter into this Contract. Failure of the Bidder/Proposer to furnish a certification or an explanation shall disqualify the Bidder/Proposer from participation of this Contract.
  - C. This certification is a material representation of fact upon which Metro will rely when Metro determines whether to enter into this Contract. If it is later determined that the Bidder/Proposer knowingly rendered an erroneous certification, Metro may terminate this Contract for cause or default in addition to other remedies available to Metro.
  - D. The Bidder/Proposer shall provide immediate written notice to Metro if at any time the Bidder/Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  - E. The terms covered transaction (or as used herein "Contract"), debarred, suspended, ineligible, lower tier covered transaction (or as used herein "Subcontract" including a subcontract with a supplier), participant (or as used herein "Bidder/Proposer"), person, primary covered transaction (or as used herein "Contract" or "Prime Contract"), principal, bid/proposal (or as used herein "Bidder/Proposer") and voluntarily excluded, as used in this Section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The Bidder/Proposer may contact Metro for assistance in obtaining a copy of those regulations.
  - F. The Bidder/Proposer agrees by submitting this bid/proposal that, should the Contract 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 by Metro.

- G. The Bidder/Proposer further agrees by submitting this bid/proposal that it will include subsection B of this section and the certification titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by Metro in the Bid/Proposal Forms without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
  - H. The Bidder/Proposer may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Bidder/Proposer may decide the methods and frequency by which it determines the eligibility of its principals. The Bidder/Proposer may, but is not required to, check the "List of Parties Excluded from Federal Procurement and Non-procurement Programs".
  - I. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Section. The knowledge and information of the Bidder/Proposer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - J. Except for transactions authorized under paragraph 6 of this subsection, if a Bidder/Proposer knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to Metro, Metro may terminate this transaction for cause or default.
2. Instructions for Prime to Require of Sub-contractors Certification - Lower Tier Covered Transactions
- A. By signing and submitting its lower tier bid/proposal, the prospective lower tier participant shall provide the certification in the Bid/Proposal Form entitled Certification of Prospective Lower Tier Participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.
  - B. The certification in this subsection is a material representation of fact upon which Metro will rely when Metro enters into the Contract. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to Metro, Metro may pursue available remedies, including suspension and/or debarment.
  - C. The prospective lower tier participant shall provide immediate written notice to the Bidder/Proposer if at any time the prospective lower tier participant learns

that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

- D. The terms covered transaction (or as used herein "Contract"), debarred, suspended, ineligible, lower tier covered transaction (or as used herein "Subcontract," including a subcontract with a Supplier), participant (or as used herein "Bidder/Proposer"), person, primary covered transaction (or as used herein "Contract" or "Prime Contract"), principal, bid/proposal, and voluntarily excluded, as used in this section, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The prospective lower tier participant may contact the Bidder/Proposer for assistance in obtaining a copy of those regulations.
- E. The prospective lower tier participant agrees by submitting its bid/proposal 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 Contract, unless authorized by Metro.
- F. The prospective lower tier participant further agrees by submitting its bid/proposal that it will include this subsection B and the Certification (in the Bid/Proposal Forms) titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- G. 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 proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, 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 List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. 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.
- I. Except for transactions authorized under paragraph 5 of this subsection, 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, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to Metro, Metro may pursue available remedies, including suspension and/or debarment.



**BIDDER/PROPOSER:** \_\_\_\_\_

**CERTIFICATION OF PROSPECTIVE LOWER TIER PARTICIPANT  
REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION**

**LOWER TIER COVERED TRANSACTIONS MUST BE COMPLETED BY PROSPECTIVE  
LOWER TIER PARTICIPANT (SUBCONTRACTOR OR SUPPLIER FOR CONTRACT  
VALUE OVER \$100,000.00)**

Choose one alternative with an "X" in the box:

☐ The prospective lower tier participant \_\_\_\_\_ certifies by submission of its lower tier bid or proposal to the best of its knowledge and belief, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

**OR**

☐ The prospective lower tier participant \_\_\_\_\_ is unable to certify that neither it nor its principals is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded and attaches its explanation to this certification.

The prospective lower tier participant certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § 3801 are applicable thereto.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

|                             |                                     |       |
|-----------------------------|-------------------------------------|-------|
| _____                       | _____                               | _____ |
| Typewritten or Printed Name | Signature of Authorized<br>Official | Title |

## **CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION INSTRUCTIONS**

Pursuant to 49 CFR Part 29, to confirm the eligibility of the Bidder/Proposer or any covered Subcontractor to contract with Metro, Bidder/Proposer shall complete and submit with the bid/proposal the Certificate entitled "Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion", and comply with Subsection B below related to each lower tier covered transaction.

### **1. Instructions for Bidder/Proposers Certification - Primary Covered Transactions.**

1. In addition to signing and submitting this bid/proposal, the Bidder (also referred to as "prospective primary participant") shall also provide the Certificate entitled Certification of Potential Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Primary Covered Transaction.
2. The inability of a person to provide the subject certification will not necessarily result in denial of participation in this Contract (also referred to as "primary covered transaction" or "covered transaction.") The Bidder/Proposer shall submit an explanation of why it cannot provide the subject certification. The certification or explanation will be considered in whether or not to enter into this Contract. Failure of the Bidder/Proposer to furnish a certification or an explanation shall disqualify the Bidder/Proposer from participation of this Contract.
3. This certification is a material representation of fact upon which Metro will rely when Metro determines whether to enter into this Contract. If it is later determined that the Bidder/Proposer knowingly rendered an erroneous certification, Metro may terminate this Contract for cause or default in addition to other remedies available to Metro.
4. The Bidder/Proposer shall provide immediate written notice to Metro if at any time the Bidder/Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction or as used herein Contract, debarred, suspended, ineligible, lower tier covered transaction or as used herein "Subcontract" including a subcontract with a supplier, participant or as used herein Bidder/Proposer, person, primary covered transaction or as used herein Contract or Prime Contract, principal, bid/proposal or as used herein Bidder/Proposer and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The Bidder/Proposer may contact Metro for assistance in obtaining a copy of those regulations.
6. The Bidder/Proposer agrees by submitting this bid/proposal that, should the Contract 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 by Metro.
7. The Bidder/Proposer further agrees by submitting this bid/proposal that it will include subsection B of this section and the certification titled Certification Regarding

Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction, provided by Metro in the Bid/Proposal Forms without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. The Bidder/Proposer may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Bidder/Proposer may decide the methods and frequency by which it determines the eligibility of its principals. The Bidder/Proposer may, but is not required to, check the "List of Parties Excluded from Federal Procurement and Non-procurement Programs."
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. The knowledge and information of the Bidder/Proposer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of this subsection, if a Bidder/Proposer knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9 subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to Metro, Metro may terminate this transaction for cause or default.

## 2. Instructions for Certification - Lower Tier Covered Transactions

1. By signing and submitting its lower tier bid/proposal, the prospective lower tier participant shall provide the certification in the Bid/Proposal Form entitled Certification of Prospective Lower Tier Participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.
2. The certification in this subsection is a material representation of fact upon which Metro will rely when Metro enters into the Contract. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to Metro, Metro may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Bidder/Proposer if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction or as used herein Contract, debarred, suspended, ineligible, lower tier covered transaction or as used herein Subcontract, including a subcontract with a Supplier, participant or as used herein Bidder/Proposer, person, primary covered transaction or as used herein Contract or Prime Contract, principal, bid/proposal, and voluntarily excluded, as used in this section, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The prospective lower tier participant may contact the Bidder/Proposer for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting its bid/proposal 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 Contract, unless authorized by Metro.
6. The prospective lower tier participant further agrees by submitting its bid/proposal that it will include this subsection B and the Certification (in the Bid/Proposal Forms) titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. 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 proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, 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 List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Section. 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.
9. Except for transactions authorized under paragraph 5 of this subsection, 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, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to Metro, Metro may pursue available remedies, including suspension and/or debarment.

**BIDDER/PROPOSER:** \_\_\_\_\_

## **NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

\_\_\_\_\_(Name) deposes and says that he or she is  
\_\_\_\_\_(Title) of \_\_\_\_\_(Company Name)  
the party making the foregoing bid 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 bidder has not directly or indirectly induced or  
solicited any other bidder to put in a false or sham bid, and has not directly or indirectly  
colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or  
that anyone shall refrain from bidding; that the bidder has not in any manner, directly or  
indirectly, sought by agreement, communication, or conference with anyone to fix the bid price  
of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price,  
or of that of any other bidder, 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 bidder has not, directly or indirectly, submitted his or her bid price  
or any breakdown thereof, or the contents thereof, or divulged information or data relative  
thereto, or paid, and will not pay, any fee to any corporation, partnership, company association,  
organization, bid depository, or to any member or agent thereof to effectuate a collusive or  
sham bid.

I certify (or declare) under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_,  
(Date) (City) (State)

|                                      |                                              |                |
|--------------------------------------|----------------------------------------------|----------------|
| _____<br>Typewritten or Printed Name | _____<br>Signature of Authorized<br>Official | _____<br>Title |
|--------------------------------------|----------------------------------------------|----------------|

## EXHIBITS

## **EXHIBIT K – LABOR COMPLIANCE MANUAL**

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**LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION AUTHORITY**

**LABOR COMPLIANCE MANUAL**

REVISED AUGUST 2019







# LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

## LABOR COMPLIANCE MANUAL

### LABOR COMPLIANCE REQUIREMENTS

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**LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION AUTHORITY**

**LABOR COMPLIANCE MANUAL  
LABOR COMPLIANCE REQUIREMENTS**

**1.0 GENERAL PROVISIONS**

**1.1 APPLICABILITY OF PUBLIC WORKS REQUIREMENTS**

This Contract is subject to the requirements of:

- A. California Labor Code (Cal. Lab. Code), Public Works requirements for contracts in excess of \$1,000; and in the case of Federally-assisted projects,
- B. The Davis-Bacon and Related Acts found in Title 29, Code of Federal Regulations (CFR) for contracts in excess of \$2,000.

**1.2 DEPARTMENT OF INDUSTRIAL RELATIONS CONTRACTOR REGISTRATION DATABASE**

All Public Works contractors responsible for the payment of prevailing wage are required to register with the Department of Industrial Relations (DIR) Contractor Registration Database (Database). The definition of public works contractor includes non-performing entities subcontracting to contractors performing prevailing wage covered work; sole proprietors and brokers who are responsible for performing prevailing wage covered work. [Cal. Lab. Code § 1771.1]

Registration with the DIR Database is required at the time of bid for all listed contractors and at the time of contract award. Registration is also required throughout the life of the contract.

Contractors subject to registration with the Database must register / renew their registration by July 1st of every fiscal year via the DIR's online registration website. A yearly fee is associated with this registration.

If a contract initially not subject to prevailing wage requirements is subject to a change order / change of scope that adds prevailing wage covered work, all contractors responsible for the payment of prevailing wage must register with the DIR Database at the time of contract modification.

Contractors bidding on contracts as a joint venture are not required to be registered at the time of bid as long as the contractors that are parties to the

joint venture are registered with the DIR Database. The joint venture must be registered by contract award.

Contractor Registration is not required for new construction, alteration, installation, demolition or repair contracts valued at \$25,000 or less, or for maintenance contracts valued at \$15,000 or less. Note that although registration with the DIR Database is not required, all other prevailing wage requirements will still be monitored. [CLC § 1771.1 (n)]

Contractors registered with the DIR Database must also submit certified payroll to the DIR via the DIR's eCPR system. Contractors subject to PLA requirements do not have to submit eCPR, but must be registered with the DIR Database.

### 1.3 CALIFORNIA PUBLIC WORKS REQUIREMENTS

The requirements of California law include, but are not limited to the following:

- A. California Labor Code (Cal. Lab. Code) Chapter 1, "Public Works of Part 7, "Public Works and Public Agencies" of Division 2, "Employment Regulation and Supervision," specifically §§1720 through 1861, and other applicable sections;
- B. California Code of Regulations (CCR), specifically §§16000 through 16414.

All pertinent California statutes and regulations, including, but not limited to those referred to above, are incorporated herein by reference as through set forth in their entirety.

### 1.4 FEDERAL PUBLIC WORKS REQUIREMENTS

The requirements of federal law include, but are not limited to, the following:

- A. 29 CFR Part 1 – Procedures for Predeterminations of Wage Rates;
- B. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States;
- C. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act);
- D. The Davis-Bacon and Related Acts;
- E. The Copeland "Anti – Kickback" Act (18 U.S.C §874).

All Pertinent Federal statutes and regulations, including but not limited to those referred to above, are incorporated herein by reference as though set forth in their entirety. Copies of selected sections of the CFR and Federal Law are provided in Appendix A through D to this Manual.

#### 1.5 RESPONSIBILITY TO OBTAIN CURRENT PUBLIC WORKS STATUTES

Copies of statutes and regulations included in this Manual, including any summaries thereof, are provided for convenience only. The Contractor is responsible for obtaining a current edition of all applicable Federal Law, CFR, Cal. Lab. Code, CCRs and Statutes; adhering to the latest edition of such statutes and regulations.

As a service to the Contractor, portions of the applicable provisions are summarized, herein. These summaries, however are provided merely as a reminder and as a guide. THIS SUMMARY DOES NOT SUPERSEDE THE FULL TEXT OF THE CALIFORNIA CODE OR THE FEDERAL CODE. NEITHER DOES THIS SUMMARY SUPERSEDE THE CFRS OR THE CCRS.

#### 1.6 RESPONSIBILITY OF CONTRACTOR FOR THE PUBLIC WORK CONTRACT

Contractor and any tier Subcontractor by entering into or performing work under this contract agree to comply with all provisions of Federal and California law that apply to public works contracts. Public works includes construction, alteration, demolition, installation or repair work. It includes work performed during the design and preconstruction phases or construction including, but not limited to, inspection and land surveying work. Public works also includes the hauling of refuse from a public works site to an outside disposal location, and maintenance work.

Failure to comply with the requirements found in this Manual, particularly at 29 CFR §5.5, may be grounds for termination of the Contract, and for the debarment as provided in 29 CFR §5.12.

#### 1.7 APPLICABILITY TO SUBCONTRACTING

The Contractor shall not subcontract part of the work covered by this Contract or permit subcontracted work to be further subcontracted without Metro's prior written approval.

The Contractor shall insert in all construction Subcontracts of any tier the clauses set forth in this Section, and such other clauses as Metro may by appropriate instructions require.

## 1.8 WORKERS' COMPENSATION CERTIFICATE

The Contractor shall secure the payment of compensation for employees in accordance with Cal. Lab. Code §3700 and shall sign and file with the Construction Manager a certification, stating Cal. Lab. Code §1860 and 1861]:

“I am aware of the provisions of §3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.”

## 1.9 EMPLOYMENT OF MINORS PROHIBITED

The Contractor and any tier Subcontractor shall abide by the provisions of the Cal. Lab. Code regarding the employment of minors.

## 1.10 TITLE OR STATUS OF EMPLOYEE IRRELEVANT

A worker's title or status with the employer is not determinative of an individual's coverage by the prevailing wage laws. What is determinative is whether the duties performed by the individual on a public works project constitute covered work. An individual who performs skilled or unskilled labor on a public works project is entitled to be paid the applicable prevailing wage rate for the time the work is performed, regardless of whether the individual holds a particular status such as partner, owner, owner-operator, independent contractor or sole proprietor, or holds a particular title with the employer such as president, vice-president, superintendent or foreman.

## 1.11 SUMMARY OF CERTAIN CAL. LAB. CODE GENERAL PROVISIONS

- A. It is a misdemeanor to willfully fail to pay over five hundred dollars (\$500) in agreed-upon health, pension, welfare, or vacation fund contributions. [Cal. Lab. Code §227]
- B. Any person who does not hold a valid State of California Contractor's License issued pursuant to Chapter 9 (commencing with §7000) of Division 3 of the Business and Professional Code, and who employs any worker to perform services for which a license is required, shall be subject to a civil penalty in the amount of two hundred dollars (\$200) per employee for each day of such employment.[ Cal. Lab. Code §1021]
- C. Contractor, upon request of the State of California Labor Commissioner, is required to withhold penalties and forfeitures from payments due from Subcontractors. Cal. Lab. Code §1727(b) and 1729]

- D. It is a felony to take, receive or conspire to take or receive the wages of a worker or working Subcontractor engaged in a public works contract. [Cal. Lab. Code §1778]
- E. It is a misdemeanor to collect fees for registering a person for public work. [Cal. Lab. Code §1779]
- F. It is a misdemeanor for any person or agent or officer thereof to charge, collect, or attempt to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work. [Cal. Lab. Code 1779]

## **2.0 CONTRACTOR'S DUTY TO COOPERATE**

The Contractor's duty to cooperate is a condition of this Contract. The Contractor's duty to cooperate is more fully described in subparagraphs 2.1 through 2.7, below.

### **2.1 MONITORING ACTIVITIES PERFORMED BY METRO**

The Contractor and any tier Subcontractor shall cooperate fully with representatives of Metro's Diversity and Economic Opportunity Department (DEOD) in their monitoring of compliance with the provisions of this Contract and provisions of California and Federal law that pertains to public works. The Contractor agrees that any representatives of the DEOD have the right to conduct employee interviews without interference or obstruction by the Contractor or any tier Subcontractor. No employee of a Contractor or Subcontractor who is interviewed by a DEOD representative or a representative of the State of California or Federal labor compliance agency, shall be threatened, intimidated or coerced in relation to the interview or as a result of such interview with DEOD, State of California or Federal labor compliance agency representatives.

### **2.2 UNUSUAL WORK HOURS**

The Contractor shall notify the Construction Manager and the DEOD in writing prior to performing work subject to this Contract on any Sunday, on any holiday, and on any day work is performed before 7:00 a.m. or after 5:30 p.m.



Alternative work weeks are not allowed on public works contracts. If a non-standard work week is required, the contractor must provide DEOD with a letter from Metro Project Management stating so.

Certain work classifications have specific overtime and holiday pay requirements. All contractors must review these requirements, available on the Department of Industrial Relation's website, and ensure that they are followed. All employees must be compensated according to their classification's regulations.

### 2.3 RETALIATION AGAINST EMPLOYEES

The Contractor and any tier Subcontractor agrees that no worker performing work subject to this Contract shall be discharged, disciplined, or in any other manner discriminated against by any contractor because such employee has made a complaint to their employer, has filed any governmental complaint, has instituted or caused to be instituted any proceeding, or has testified or is about to testify in any proceeding that is related to the labor standards applicable under this Contract.

### 2.4 CONVICT LABOR

In connection with the performance of work under this Contract, the Contractor and any tier Subcontractor agrees not to employ any person undergoing sentence of imprisonment at hard labor. This does not include convicts who are on parole or probation.

### 2.5 REPORTING LABOR COMPLIANCE VIOLATIONS

The Contractor shall promptly report in writing to the DEOD all violations of the labor standards governing all work subject to this contract.

### 2.6 NOTIFICATION OF LABOR DISPUTES

Whenever the Contractor has knowledge that any actual or potential labor dispute may delay or threaten the timely performance of this Contract, or to interfere with or delay work by other contractors, the Contractor shall immediately give written notice thereof, including all relevant information, to the Construction Manager and the DEOD.

### 2.7 SUBCONTRACTOR COOPERATION

The Contractor shall take such action with respect to any Subcontractor as may be directed by the Construction Manager as a means of enforcing provisions of this Manual, including remedies for noncompliance.

### 3.0 PAYMENT OF PREVAILING WAGES

#### 3.1 GENERAL REQUIREMENT – PAYMENT OF PREVAILING WAGES

- A. The Contractor and any tier Subcontractor shall not pay less than the specified prevailing wage rate to all workmen employed in the execution of Contracts awarded by Metro [Cal. Lab. Code §1774 and §1771, 29 CFR §5.5]
- B. Prevailing wage rates applicable to this contract have been established by the Director of Industrial Relations (DIR) [Cal. Lab. Code §1770] and, for Federally-assisted contracts, the U.S. Department of Labor, Wage and Hour Division (DOL-WHD) [29 CFR Part 1]. Copy of the prevailing wage determination(s) applicable to this contract are available from the DEOD at its headquarters office and are included in this contract by reference. On Federally-assisted Contracts, a copy of the Federal wages shall be included in the solicitation documents, in accordance with Federal requirements. In the case of Federally-assisted contracts, the prevailing wage rate applicable to any craft or classification used on the Project shall be the higher of the prevailing wage rates specified for that craft or classification by the DIR and the DOL-WHD. Contractor and any tier Subcontractor shall comply with any revision by the DIR and the DOL-WHD prevailing wage determinations applicable to this Contract at no additional cost to Metro.
- C. Every Apprentice shall be paid the prevailing wage rate of per diem wages for apprentices in the trade to which the apprentice is registered. Apprentices who work unsupervised or violate the journeyman to apprentice ratio will be paid at the full journeyman rate [Cal. Lab. Code §1777.5(b) and 29 CFR §5.5(a)(4)]
- D. For Federally assisted contracts, every Trainee must be paid at not less than the rate specified in the approved program for the trainee's level or progress. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the prevailing wage determined by the DOL-WHD for the craft or classification of work actually performed. [29 CFR §5.5(a)(4)]
- E. Contractors utilizing any class of laborers or mechanics, including apprentices and trainees, not listed in the applicable Federal prevailing wage determination, shall complete and submit a Request for Authorization of Additional Classification and Rate to Metro. [29 CFR §5.5(a)(1)(ii)(A)]. In the event Contractor is unable to find a classification in conformance with the applicable prevailing wage determination, remedies provided in the State of California and, if applicable, Federal labor code shall apply.
- F. For Federally-assisted contracts, all disputes concerning the payment of prevailing wage rates or classifications shall be promptly reported to Metro,

for the referral to the Secretary of Labor. The decision the Secretary of Labor, as the case may be, shall be final.

- G. Contractor shall monitor the payment of the specified prevailing wage rate of per diem wages by any tier Subcontractor to the employees, by periodic review of the certified payroll records of the Subcontractor. [Cal. Lab. Code §1775(b)(2)]. Upon becoming aware of failure of the Subcontractor to pay prevailing wages, the Contractor is to receive an affidavit signed under penalty of perjury from Project Subcontractors that prevailing wage rate requirements have been satisfied prior to making final payment to Subcontractor. [Cal. Lab. Code §1775(b)(4)]

### 3.2 CONTRACTS WITH BOTH PREVAILING WAGE AND LIVING WAGE REQUIREMENTS

Certain contracts are subject to prevailing wage as well as Metro's Living Wage / Service Contract Worker Retention Policy (LW/SCWRP) requirements. Contractors must comply with both prevailing wage and LW/SCWRP requirements. Contractors must also pay the higher of either wage for their covered classifications. For more information on Living Wage, please refer to DEOD's Living Wage / Service Contract Worker Retention Policy Manual

### 3.3 AUTHORIZED PAYROLL DEDUCTIONS AND FRINGE BENEFITS

- A. Per Diem wages, as provided in Cal. Lab. Code §1773.1, includes but is not limited to, employer payments for health and welfare, pension, vacation, travel time, subsistence pay and apprenticeship or other training programs authorized by Cal. Lab. Code §3093.
- B. For Federally-assisted contracts, authorized payroll deductions shall be in accordance with the Copeland Act found at 29 CFR §3.5 and 3.6.

### 3.4 POSTING OF PREVAILING WAGE DETERMINATIONS

The Contractor shall post on each job site, in a location readily available to the workers, a copy of all applicable prevailing wage determinations. [Cal. Lab. Code §1773.2 and 29 CFR §5.5(a)(1)]

### 3.5 FORFEITURE / WITHOLDING FOR PREVAILING WAGE VIOLATIONS

- A. If an underpayment is identified, restitution will be paid by the Contractor or Subcontractor to each affected worker. [Cal. Lab. Code §1775(a)(2)]
- B. As required by Labor Code Section 1775, the Contractor shall forfeit to the DIR up to two hundred dollars (\$200) per calendar day or portion thereof for each worker working for them or for any tier Subcontractor working under them who is paid less than the prevailing wage rate called for in this

Contract. Metro may withhold payment from the Contractor to ensure that the Contractor's obligation to pay prevailing wage rates is met. [Cal. Lab. Code §1775]

- C. For Federally-assisted contracts, Metro may alternatively withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the Contractor or any tier Subcontractor on the Project, the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the Work, all or part of the wages required by the Contract, Metro may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of further payment, advance or guarantee of funds until such violations have ceased. [29 CFR §5.5(a)(3)].

## **4.0 PAYROLL REPORTS**

### **4.1 GENERAL RECORDKEEPING REQUIREMENT**

- A. The Contractor and tier Subcontractor must keep and certify on a weekly basis an accurate payroll record in accordance with Cal. Lab. Code §1776(a) and, for Federally-assisted contracts, 29 CFR §3.3 and 29 CFR 5.5(a)(3).
- B. The certified payroll records shall be submitted via DEOD's online reporting system. The information submitted online shall contain all information as indicated in CLC § 1776 and in the case of federally- assisted contracts, Department of Labor form WH-347.
- C. The Contractor and any tier Subcontractor shall keep an accurate record showing the name and actual hours worked each day of the week, for each worker on the Project. [Cal. Lab. Code §1812]
- D. Copies of payroll records shall be available for inspection at the Contractor's principal office. [Cal. Lab. Code 1776(b)(1)-(2) and 29 CFR § 3.4(b)]. The location of the records shall be provided to Metro promptly, upon demand. [Cal. Lab. Code §1776(g)]
- E. Contractor and any tier Subcontractor shall preserve their weekly payroll records for a period of not less three (3) years [29 CFR §3.4(b)], from the date of completion of the Contract and must conform to Cal. Lab. Code requirements relative to the preservation of records.

#### 4.2 WEEKLY SUBMISSION OF CERTIFIED PAYROLL RECORDS

- A. The Contractor and any tier Subcontractor shall submit weekly, at no cost to AUTHORITY a certified copy of all payroll records via DEOD's online monitoring system.. Payrolls shall be submitted weekly after the first week of work on the job site and submitted weekly thereafter. The payroll documents are to be submitted in accordance with the Cal. Lab. Code §1776(d) and, in the case of Federally-assisted contracts, 29 CFR §3.3(b) and 29 CFR §5.5(a)(3). Contractors employing apprentices or trainees under an approved program shall include annotation on the first weekly certified payrolls submitted to Metro, that their employment, is pursuant to an approved program, and shall identify the program. The Labor Compliance Document Submittal Schedule is attached to the Manual in Appendix E provides the timeframe for submittal.
- B. The copy of the payrolls submitted to Metro shall be certified by a statement, signed with an electronic signature by the Contractor's designated payroll agent (see next paragraph), attesting that the payrolls are correct and complete and that the wage rates contained therein are not less than those set by the applicable prevailing wage determination incorporated into this Contract. [Cal. Lab. Code §1776(b)]
- C. Prior to commencing work on the job site the Contractor and any tier Subcontractor shall submit to the DEOD a completed Certificate Appointing Payroll Officer form (See Appendix E) designating the person who will certify the Contractor's payroll. This form must be uploaded to DEOD's online monitoring system.
- D. Following a review by the DEOD for compliance with State of California and Federal labor laws, the payroll copy shall be retained by Metro.
- E. The Contractor hereby acknowledges the foregoing language as a written request for such records (including those of Project Subcontractors) and waives any right to further notice of that request. The Contractor shall be responsible for the submission of certified copies of payrolls of all Subcontractors
- F. Payroll reports pertaining to owner-operators must be submitted weekly to the DEOD.
- G. Contractors affected by concrete delivery requirements, must submit, via Metro's online monitoring system, certified payroll and well as all other required labor compliance documents, as requested by Metro. The minimum documents required set by California Assembly Bill 219 do not exempt concrete delivery drivers from other prevailing wage requirements set by DEOD. [CLC §1720.9]

#### 4.3 FORFEITURE FOR FAILURE TO SUBMIT REQUIRED PAYROLLS

As required by Cal. Lab. Code §1776 (h) the Contractor shall be subject to penalties of up to one hundred dollars (\$100) per day, per worker, for failing to comply strictly with requests by Metro for adequate payroll records. Metro shall withhold the amount of penalties from Contractor payments for violation of Cal. Lab. Code §1776.

#### 4.4 RETENTION FOR FAILURE TO SUBMIT SATISFACTORY PAYROLLS

If, on or before the tenth (10<sup>th</sup>) of the month, the Contractor has not submitted satisfactory payrolls to the DEOD for all work performed during the monthly period ending on or before the first (1<sup>st</sup>) of the month, Metro, on the recommendation of the DEOD will retain from the next monthly estimate an amount equal to ten percent (10%) of the estimated value of work performed during the month except that such retention shall not exceed ten thousand dollars (\$10,000) nor be less than one thousand dollars (\$1,000). This section does not modify the Contractor's obligation to submit payroll records on a weekly basis.

Retention for failure to submit satisfactory payrolls shall be in addition to all other retention provided for this Contract. The retention for failure to submit satisfactory payrolls for any monthly period will be released for the first payment scheduled to be made following the date that satisfactory payrolls for that monthly period are submitted to the DEOD.

### 5.0 USE OF APPRENTICES UPON PUBLIC WORKS

#### 5.1 GENERAL REQUIREMENTS

The Contractor and any tier Subcontractor, shall comply with the requirements of the apprenticeship provisions of the Cal. Lab. Code, including, but not limited to §1777.5, and in the case of Federally-assisted contractors, the provisions of the Code of Federal Regulations, including, but not limited to §5.5(a)(4). The Contractor is responsible for compliance with this section for all apprenticeable occupations. [Cal. Lab. Code §1777.5(n)]

All contractors on public works projects valued at \$30,000.00 or more are obligated to utilize apprentices, regardless of subcontract value. [Cal. Lab. Code 177.5]

#### 5.2 SUMMARY OF PROVISIONS GOVERNING EMPLOYMENT OF APPRENTICES

- A. Only apprentices approved by the Chief of California Division of Apprenticeship Standards (DAS) are eligible to be employed at the apprentice wage rate on public works. [Cal. Lab. Code §1777.5(c)]

- B. On Federally-assisted contracts, apprentices will be permitted to work at less than the predetermined rate for work they perform when they are employed and individually registered in a bonafide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the bureau, or if a person 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. [29 CFR §5.5(a)(4)]
- C. Contractor and any tier Subcontractor shall employ apprentices in the ratio set forth by the labor code, or the ratio established under a recognized properly registered program that the contractor participates in, for any work under the Contract performed by workers in an apprenticeable craft or trade [Cal. Lab. Code §1777.5(d) and 29 CFR(a)(4)]. This ratio should not be less than one hour of apprentice work for every five hours of journeyperson work on the Project. [Cal. Lab. Code §1777.5(g)]
- D. The contractor and any tier Subcontractor shall submit contract award information to an applicable apprenticeship program, including estimate of journeyperson hours, number of apprentices proposed to be employees, and dates of apprentice utilization. Within 60 days after concluding work, each contractor shall submit to AUTHORITY and apprenticeship program a verified statement of the journeyperson and apprentice hours performed on Project. [Cal. Lab. Code §1777.5(e)]. The applicable apprenticeship program(s) shall also be forwarded this information.
- E. For Federally-assisted contracts, the Contractor and any tier Subcontractor will additionally be required to furnish Metro or a representative of the DOL-WHD written evidence of the registration of its program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyperson hourly rates), for the area of construction prior to using any apprentices on the Contract Work. [29 CFR §5.5(a)(4)]
- F. The Contractor and any tier Subcontractor shall contribute to the California Apprenticeship Council in accordance with that specified by the DIR in the prevailing wage determination. [Cal. Lab. Code §1777.5(m)(1)]

Contractors that are signatory to unions must submit training funds via trust fund payments and provide proof of payment to DEOD via Metro's online monitoring system.

- G. The Contractor shall continually monitor a Subcontractor's use of apprentices required to be employed on the public works project, including, but not limited to periodic reviews of the certified payroll of Subcontractor [Cal. Lab. Code 1777.7(d)(2)]. Upon becoming aware of a failure of the Subcontractor to employ the required number of apprentices, the

Contractor shall take corrective action, such as retaining funds due Subcontractor, until failure is corrected. [Cal. Lab. Code §1777.7(d)(3)]

- H. Prior to making final payment to the Subcontractor, the Contractor shall obtain a declaration signed under the penalty of perjury from the Subcontractor that the Subcontractor has employed the required number of apprentices on the public works project. [Cal. Lab. Code §1777.7(d)(4)]
- I. Metro is required to withhold penalties upon determination of non-compliance with the apprenticeship provisions of Cal. Lab. Code §1777.5. [Cal. Lab. Code §1777.7(a)(1)]

## **6.0 USE OF TRAINEES UPON PUBLIC WORKS**

### **6.1 GENERAL REQUIREMENTS**

- A. For Federally-assisted contracts, the Contractor and any tier Subcontractor shall comply with all requirements of the trainee provisions of the Code of Federal Regulations, including, but not limited to §5.5(a)(4).
- B. For Federally-assisted contracts, except as provided in 29 CFR §5.15, 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, Bureau of Apprenticeship and Training. [29 CFR §5.5(a)(4)]
- C. The ratio of trainees to journeypersons shall not be greater than that permitted under the plan approved by the Bureau of Apprenticeship and Training.
- D. The Contractor and any tier Subcontractor will be required to furnish Metro or a representative the DOL-WHD written evidence of the certification of this program, the registration of the trainees and the ratio and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training 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.

## **7.0 WORKING HOURS / OVERTIME COMPENSATION UPON PUBLIC WORKS**

### **7.1 GENERAL REQUIREMENT**

- A. Eight (8) hours shall constitute a legal day's work. [Cal. Lab. Code §1810]



- B. The Contractor and any tier Subcontractor shall not employ a worker more than eight (8) hours in a calendar day or forty (40) hours in a calendar week except upon compensation of at least one and one-half (1 ½) times the basic rate of pay for all hours works in excess of eight (8) hours per day and forty (40) per week. [Cal. Lab. Code §1811 and §1815, and 29 CFR§5.5(a)(10)(iii)(b) and §5.8]
- C. The prevailing wage determination(s) deemed applicable to the Contract may require greater rates for overtime, holiday and weekend work that must be paid by the Contractor and any tier Subcontractor.

## 7.2 FORFEITURE FOR NONCOMPLIANCE

- A. The Contractor shall forfeit to the DIR not more than twenty-five dollars (\$25) per day, for each worker who is employed in excess of eight (8) hours per day or forty (40) hours per week without appropriate compensation paid [ Cal. Lab. Code §1813]. Metro may withhold penalties and forfeitures from payments dues to the Contractor for non-compliance. [Cal. Lab. Code §1727(a)]
- B. For Federally-assisted contracts, Contractor and any tier Subcontractor shall be liable to any affected employee for work performed over forty (40) hours per week where that worker is not compensated at one and one-half (1 ½) times the basic hourly prevailing wage rate. Additionally, 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 employed in violation of the requirements set forth in this Section, in the sum of ten dollars (\$10) for each calendar day on which such employee was required or permitted to work in excess of forty (40) hours without payment of the overtime wages required in this Section. [29 CFR §5.5(a)(10)(iii)(b)(2)]
- C. For Federally-assisted contracts, Metro may withhold, from any monies payable on account of work performed by the Contractor or Subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or is Subcontractor for unpaid wages and liquidated damages as specified in this Section. [29 CFR §5.5(a)(10)(iii)(b)(3)]

## 8.0 NON-DISCRIMINATION UPON PUBLIC WORKS

Contractor and any tier Subcontractor shall not discriminate in the employment of persons upon public works on the grounds of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical

condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, (or any basis listed in subdivision a of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code). [Cal. Lab. Code §1735]

Contractor and any tier Subcontractor shall not refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of race, religious creed, color, national origin, national origin, ancestry, sex or age. [Cal. Lab. Code §1777.6]

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

## **9.0 REPORTING REQUIREMENTS – LABOR COMPLIANCE FORMS**

The Contractor and any tier Subcontractors shall be required to submit labor compliance reports throughout the life of the contract. Copies of the required forms are available on Metro's online monitoring system and included in Appendix E of this Manual.

## **10.0 LABOR COMPLIANCE CLOSE OUT**

### **A. FINAL CERTIFICATE**

Upon completion of the Contract, the Contractor shall submit to Metro and to the DEOD, with its voucher for the final payment for any work performed under the Contract, a certificate concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the project. A copy of the required forms is available on Metro's online monitoring system and in Appendix E of this Manual.

## **11.0 CONTRACT ENFORCEMENT**

### **11.1 LABOR COMPLIANCE MONITORING**

Ultimate authority for Labor Compliance enforcement is vested in the Metro's DEOD. Enforcement activities performed by the DEOD will be consistent with all applicable Federal and State of California requirements, including Cal. Lab. Code §1771.6. In addition to any other remedies Metro may have at law or under the contract, Metro may suspend or terminate a Contract, or, subject to a Board approved debarment process, debar a Contractor or Subcontractor

from future Contracts with Metro, for breach of the Labor Compliance requirements set for herein.

## 11.2 ENFORCEMENT POWER OF DESIGNEE

The DEOD or its named Representative(s) will perform the following functions:

- A. Participate in a pre-construction conference to present Labor Compliance requirements under the contract.
- B. Receive and process all required documents via DEOD's online monitoring system from Contractor and Subcontractor(s).
- C. Review and, if appropriate, audit payroll reports.
- D. Request the withholding of contract payments when labor compliance violations have been identified. The withholding amounts requested will be equal to the amount of identified prevailing wage underpayment and applicable penalties. Upon notification by the DEOD of a breach of the Labor Compliance requirements set forth in this Manual, Metro shall impose forfeitures.
- E. Issue appropriate notices when Contractor or any tier Subcontractor is in violation of the requirements of this Manual.
- F. Conduct investigations in coordination with outside enforcement agencies, when appropriate.
- G. Conduct any necessary hearings on Labor Compliance complaints.
- H. Request a Contractor or Subcontractor's debarment or dismissal for willful, flagrant, or repeated violations.
- I. Represent Metro as co-chairperson of the Joint Management /Labor Oversight Committee.
- J. Interview employees of Contractors and Subcontractors.

## 11.3 WITHHOLDING PAYMENTS FOR LABOR COMPLIANCE VIOLATIONS

In the event of repeated violations by a Contractor or any tier Subcontractor, Metro may, in addition to other remedies, take the following action:

- A. On the recommendation of the DEOD, Metro shall withhold any payment due the Contractor at five hundred dollars (\$500) per day, for breach by the Contractor for any Subcontractor of the following Provisions for the

contract's Labor Compliance Requirements. The amount represents AUTHORITY damages for breach by failure to:

1. Pay general prevailing wage rates and/or fringe benefits;
  2. Make payments to a health and welfare fund, pension fund, apprentice fund, vacation fund, or any other such fund for the benefit of employees;
  3. Make payments to an industry promotion fund to which the employer has agreed to make payments;
  4. Submit certified payroll records and related documents;
  5. Pay overtime compensation;
  6. Provide access to payroll records or;
  7. Employ only duly licensed construction Contractors or Subcontractors
- B. Metro shall withhold the sums set forth in paragraph A above after notice and an opportunity to be heard is afforded the Contractor, and the DEOD thereafter makes a determination that the Contractor is in violation of the Labor Compliance requirements of the Contract.

## 12.0 FEDERALLY ASSISTED CONTRACT PROVISIONS & RELATED MATTERS

For Federally-assisted contracts in excess of \$2,000, the following provisions of 29 CFR §5.5 shall apply:

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 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 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) 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.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

( 7) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

( 2) The classification is utilized in the area by the construction industry; and

( 3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the 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, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) 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.

(iv) 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.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) 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 same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the 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, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the 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 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 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.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) 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:

( 7) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

( 2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll

period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the 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.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) 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 owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees*—(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 a 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 subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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.

(ii) *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 that 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.

(iii) *Equal employment opportunity*. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *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.

(6) *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 (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *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.

(8) *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.

(9) *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.

(10) *Certification of eligibility*. (i) 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 firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job

## 13.0 INDEMNIFICATION

- A. The Contractor shall indemnify, hold harmless and defend Metro, Labor Compliance, the Construction Manager (CM), their officers, employees, agents, Contractors, and Subcontractors, individually, to the maximum extent allowed by law, from and against all liability, claims, losses, actions and expenses (including employees of the parties to be indemnified) or for damage to or loss of use of property (including property of Metro) arising out of or resulting from the acts or omissions to act of the Contractor, its Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable in the performance of the work, unless caused solely by the negligence of willful misconduct of or defects in design furnished by the parties to be indemnified.
- B. Claims against the parties to be indemnified, by any employee of the Contractor, its Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall not limit the Contractor's indemnification obligation, set forth above, in any way, by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or its Subcontractors under workers'

compensation acts, disability benefit acts or other employee benefit acts or insurance.

#### **14.0 INSURANCE**

The insurance requirements for this Contract are specified in the Construction Insurance Specifications. A copy of the Construction Insurance Specifications is incorporated herein by this reference.

#### **15.0 PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications, and other materials relating to the Contract are subject to the provisions of the California Public Records Act (Metro's use and disclosure of its records are governed by this Act).
- B. The Contractor shall identify any specific information or design details that it considers proprietary. The Contractor shall clearly and prominently mark each and every page or sheet of such materials with "PROPRIETARY", as it determines to be appropriate.

#### **16.0 INTEREST**

Notwithstanding any other provision of this Contract that may be interpreted to the contrary, interest on damages shall not exceed those provided for under §3287 of the California Civil Code.

#### **17.0 ON-LINE SUBMITTAL OF PAYROLLS AND RELATED RECORDS**

Metro may require that Contractors and any tier subcontractors submit payrolls and related records via an on-line reporting system. Contractors shall comply with this requirement on any contract, as requested by Metro.

#### **18.0 PROJECT LABOR AGREEMENT / CONSTRUCTION CAREERS POLICY**

Contractors and any tier Subcontractors are advised that Metro's Project Labor Agreement (PLA) and Construction Careers Policy (CCP), approved by Metro's Board on January 26, 2012 and any subsequently approved PLA/CCP amendments, will apply on contracts deemed applicable by Metro. Certain requirements for the PLA overlap with prevailing wage requirements. Contractors and any tier Subcontractor on PLA covered projects will comply with all prevailing wage, PLA and CCP requirements on such contracts.



## 19.0 COMPLIANCE MONITORING UNIT

This section can be removed as the (6/20/2014) Public Works Reforms (SB 854) repeals the use of this DIR Unit.

The Department of Industrial Relations Contractor Registration Database replaces the Compliance Monitoring Unit requirements. For more information, please see section 1.2 of this Manual.

## APPENDIX A

CALIFORNIA LABOR CODE 1720 - 1861

PUBLIC WORKS AND PUBLIC AGENCIES

**CALIFORNIA LABOR CODE  
DIVISION 2, PART 7  
PUBLIC WORKS AND PUBLIC AGENCIES**

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**ARTICLE 1. Scope and Operation [1720 - 1743]**  
*(Article 1 enacted by Stats. 1937, Ch. 90.)*

**1720.**

(a) As used in this chapter, “public works” means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, “installation” includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. “Public work” does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder’s charter or not.

(4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

(6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(7) (A) Infrastructure project grants from the California Advanced Services Fund pursuant to Section 281 of the Public Utilities Code.

(B) For purposes of this paragraph, the Public Utilities Commission is not the awarding body or the body awarding the contract, as defined in Section 1722.

(8) Tree removal work done in the execution of a project under paragraph (1).

(b) For purposes of this section, “paid for in whole or in part out of public funds” means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter unless the projects are built pursuant to an agreement with a state agency, a redevelopment agency, a successor agency to a redevelopment agency when acting in that capacity, or a local public housing authority.

(2) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory

approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

(5) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

(A) The project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the home buyers.

(B) The project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars (\$25,000).

(C) Assistance is provided to a household as either mortgage assistance, downpayment

assistance, or for the rehabilitation of a single-family home.

(D) The project consists of new construction, expansion, or rehabilitation work associated with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased. Total project cost includes the value of donated labor, materials, and architectural and engineering services.

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

(d) Notwithstanding any provision of this section to the contrary, the following projects are not, solely by reason of this section, subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142(d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6

(commencing with Section 50199.4) of Part 1 of Division 31 of the Health and Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

(e) Notwithstanding paragraph (1) of subdivision (a), construction, alteration, demolition, installation, or repair work on the electric transmission system located in California constitutes a public works project for the purposes of this chapter.

(f) If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in subdivision (d) do not apply to that project.

(g) For purposes of this section, references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended, and include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

(h) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

*(Amended by Stats. 2018, Ch. 92, Sec. 160. (SB 1289) Effective January 1, 2019.)*

## **1720.2.**

For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, “public works” also means any construction work done under private contract when all of the following conditions exist:

(a) The construction contract is between private persons.

(b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of

the property is leased to the state or a political subdivision for its use.

(c) Either of the following conditions exist:

(1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.

(2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work.

*(Amended by Stats. 1980, Ch. 962.)*

## **1720.3.**

(a) For the limited purposes of Article 2 (commencing with Section 1770), “public works” also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.

(b) For purposes of this section, the “hauling of refuse” includes, but is not limited to, hauling soil, sand, gravel, rocks, concrete, asphalt, excavation materials, and construction debris. The “hauling of refuse” shall not include the hauling of recyclable metals such as copper, steel, and aluminum that have been separated from other materials at the jobsite prior to transportation and that are to be sold at fair market value to a bona fide purchaser.

*(Amended by Stats. 2011, Ch. 676, Sec. 1. (AB 514) Effective January 1, 2012.)*

## **1720.4.**

This chapter shall not apply to any of the following work:

(a) Any work performed by a volunteer. For purposes of this section, “volunteer” means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501 (c) (3) of the Internal Revenue Code

as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

(1) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

(2) An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

(3) An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (A) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (B) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that receives payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

(b) Any work performed by a volunteer coordinator. For purposes of this section, "volunteer coordinator" means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

(c) Any work performed by the California Conservation Corps or by Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

(d) This section shall remain in effect only until January 1, 2024, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2024, deletes or extends that date.

*(Amended by Stats. 2015, Ch. 53, Sec. 1. (AB 327) Effective January 1, 2016. Repealed as of January 1, 2024, by its own provisions.)*

#### **1720.5.**

This chapter shall not apply to graffiti abatement work performed pursuant to a contract between the City of Los Angeles and a nonprofit community-based organization if the work is performed by any of the following:

(a) A volunteer within the meaning of Section 1720.4.

(b) A volunteer coordinator within the meaning of Section 1720.4.

(c) An individual performing community service ordered by a court as a condition of probation.

(d) An individual enrolled in a bona fide preapprenticeship training program, as described in subdivision (e) of Section 14230 of the Unemployment Insurance Code, that meets all of the following criteria:

(1) The program was established pursuant to an agreement entered into on or before March 1, 2019, between the City of Los Angeles and a building trades apprenticeship program approved by the Division of Apprenticeship Standards.

(2) The program follows the multicraft core curriculum implemented by the State Department of Education for its pilot project with the California Partnership Academies and by the California Workforce Development Board and local boards.

(3) The program enrolls preapprentices for no longer than one year.

(4) The program provides pathways for continued employment after the preapprenticeship program is completed.

(e) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

*(Added by Stats. 2018, Ch. 200, Sec. 1. (SB 913) Effective January 1, 2019. Repealed as of January 1, 2024, by its own provisions.)*

#### **1720.6.**

For the limited purposes of Article 2 (commencing with Section 1770) of this

chapter, “public work” also means any construction, alteration, demolition, installation, or repair work done under private contract when the following conditions exist:

(a) The work is performed in connection with the construction or maintenance of renewable energy generating capacity or energy efficiency improvements.

(b) The work is performed on the property of the state or a political subdivision of the state.

(c) Either of the following conditions exists:

(1) More than 50 percent of the energy generated is purchased or will be purchased by the state or a political subdivision of the state.

(2) The energy efficiency improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or a political subdivision of the state.

*(Added by Stats. 2011, Ch. 698, Sec. 1. (SB 136) Effective January 1, 2012.)*

#### **1720.7.**

For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, “public works” also means any construction, alteration, demolition, installation, or repair work done under private contract on a project for a general acute care hospital, except on a project for a rural general acute care hospital with a maximum of 76 beds, when the project is paid for, in whole or in part, with the proceeds of conduit revenue bonds, as defined in Section 5870 of the Government Code, issued on or after January 1, 2016, by a public agency. For purposes of this section, “general acute care hospital” and “rural general acute care hospital” have the same meaning as each term is defined in subdivision (a) of Section 1250 of the Health and Safety Code.

*(Added by Stats. 2015, Ch. 745, Sec. 1. (AB 852) Effective January 1, 2016.)*

#### **1720.9.**

(a) For the limited purposes of Article 2 (commencing with Section 1770), “public works” also means the hauling and delivery of

ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.

(b) For purposes of this section, “ready-mixed concrete” means concrete that is manufactured in a factory or a batching plant, according to a set recipe, and then delivered in a liquefied state by mixer truck for immediate incorporation into a project.

(c) For purposes of this section, the “hauling and delivery of ready-mixed concrete to carry out a public works contract” means the job duties for a ready mixer driver that are used by the director in determining wage rates pursuant to Section 1773, and includes receiving the concrete at the factory or batching plant and the return trip to the factory or batching plant.

(d) For purposes of this section, the applicable prevailing wage rate shall be the current prevailing wage, as determined by the director, for the geographic area in which the factory or batching plant is located.

(e) The entity hauling or delivering ready-mixed concrete to carry out a public works contract shall enter into a written subcontract agreement with the party that engaged the entity to supply the ready-mixed concrete. The written agreement shall require compliance with the requirements of this chapter. The entity hauling or delivering ready-mixed concrete shall be considered a subcontractor solely for the purposes of this chapter. Nothing in this section shall cause any entity to be treated as a contractor or subcontractor for any purpose other than the application of this chapter.

(f) The entity hauling or delivering ready-mixed concrete to carry out a public works contract shall submit a certified copy of the payroll records required by subdivision (a) of Section 1776 to the party that engaged the entity and to the general contractor within five working days after the employee has been paid, accompanied by a written time record that shall be certified by each driver for the performance of job duties in subdivision (c).

(g) This section shall not apply to public works contracts that are advertised for bid or awarded prior to July 1, 2016.

*(Amended by Stats. 2016, Ch. 31, Sec. 184. (SB 836) Effective June 27, 2016.)*

#### **1721.**

“Political subdivision” includes any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts.

*(Amended by Stats. 1985, Ch. 239, Sec. 1.)*

#### **1722.**

“Awarding body” or “body awarding the contract” means department, board, authority, officer or agent awarding a contract for public work.

*(Enacted by Stats. 1937, Ch. 90.)*

#### **1722.1.**

For the purposes of this chapter, “contractor” and “subcontractor” include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works pursuant to this article and Article 2 (commencing with Section 1770).

*(Amended by Stats. 1982, Ch. 454, Sec. 132.)*

#### **1723.**

“Worker” includes laborer, worker, or mechanic.

*(Amended by Stats. 2000, Ch. 954, Sec. 2. Effective January 1, 2001. Operative July 1, 2001, by Sec. 21 of Ch. 954.)*

#### **1724.**

“Locality in which public work is performed” means the county in which the public work is done in cases in which the contract is awarded by the State, and means the limits of the

political subdivision on whose behalf the contract is awarded in other cases.

*(Enacted by Stats. 1937, Ch. 90.)*

#### **1725.5.**

A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers’ compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced



by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision

(e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of

subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-

five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

*(Amended by Stats. 2017, Ch. 28, Sec. 15. (SB 96) Effective June 27, 2017.)*

#### **1726.**

(a) The body awarding the contract for public work shall take cognizance of violations of this chapter committed in the course of the execution of the contract, and shall promptly report any suspected violations to the Labor Commissioner.

(b) If the awarding body determines as a result of its own investigation that there has been a violation of this chapter and withholds contract payments, the procedures in Section 1771.6 shall be followed.

(c) A contractor may bring an action in a court of competent jurisdiction to recover from an awarding body the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties required to be paid under this chapter, and costs and attorney's fees related to this action, if either of the following is true:

(1) The awarding body previously affirmatively represented to the contractor in writing, in the call for bids, or otherwise, that the work to be covered by the bid or contract was not a "public work," as defined in this chapter.

(2) The awarding body received actual written notice from the Department of Industrial Relations that the work to be covered by the bid or contract is a "public work," as defined in this chapter, and failed to disclose that information to the contractor before the bid opening or awarding of the contract.

*(Amended by Stats. 2003, Ch. 804, Sec. 1. Effective January 1, 2004.)*

#### **1727.**

(a) Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a civil wage and penalty assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

(b) If the awarding body has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. These amounts shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

*(Amended by Stats. 2000, Ch. 954, Sec. 4. Effective January 1, 2001. Operative July 1, 2001, by Sec. 21 of Ch. 954.)*

#### **1728.**

In cases of contracts with assessment or improvement districts where full payment is made in the form of a single warrant, or other evidence of full payment, after completion and acceptance of the work, the awarding body shall accept from the contractor in cash a sum equal to, and in lieu of, any amount required to be withheld, retained, or forfeited under the provisions of this section, and said awarding body shall then release the final warrant or payment in full.

*(Enacted by Stats. 1937, Ch. 90.)*

#### **1729.**

It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the

terms of this chapter, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.  
*(Enacted by Stats. 1937, Ch. 90.)*

#### **1730.**

The Director of Industrial Relations shall post a list of every California code section and the language of those sections that relate to the prevailing rate of per diem wage requirements for workers employed on a public work project on the Internet Web site of the Department of Industrial Relations on or before June 1, 2013, and shall update that list each February 1 thereafter.

*(Added by Stats. 2012, Ch. 280, Sec. 1. (SB 1370) Effective January 1, 2013.)*

#### **1734.**

Any court collecting any fines or penalties under the criminal provisions of this chapter or any of the labor laws pertaining to public works shall as soon as practicable after the receipt thereof deposit same with the county treasurer of the county in which such court is situated. Amounts so deposited shall be paid at least once a month by warrant of the county auditor drawn upon requisition of the judge or clerk of said court, to the State Treasurer for deposit in the General Fund.

*(Amended by Stats. 1953, Ch. 523.)*

#### **1735.**

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

*(Amended by Stats. 2004, Ch. 788, Sec. 14. Effective January 1, 2005.)*

#### **1736.**

During any investigation conducted under this part, the Division of Labor Standards Enforcement shall keep confidential the name of any employee who reports a violation of this chapter and any other information that may identify the employee.

*(Added by Stats. 1999, Ch. 302, Sec. 1. Effective January 1, 2000.)*

#### **1740.**

Notwithstanding any other provision of this chapter or any other law of this State, except limitations imposed by the Constitution, the legislative body of a political subdivision which has received or is to receive a loan or grant of funds from the Federal Government or a federal department or agency for public works of that political subdivision, may provide in its call for bids in connection with such public works that all bid specifications and contracts and other procedures in connection with bids or contracts shall be subject to modification to comply with revisions in federal minimum wage schedules without the necessity of republication or duplication of other formal statutory requirements.

*(Added by Stats. 1957, Ch. 1992.)*

#### **1741.**

(a) If the Labor Commissioner or his or her designee determines after an investigation that there has been a violation of this chapter, the Labor Commissioner shall with reasonable promptness issue a civil wage and penalty assessment to the contractor or subcontractor, or both. The assessment shall be in writing, shall describe the nature of the violation and the amount of wages, penalties, and forfeitures due, and shall include the basis for the assessment. The assessment shall be served not later than 18 months after the filing of a valid notice of completion in the office of the

county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last. Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body. The assessment shall advise the contractor and subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

(b) Interest shall accrue on all due and unpaid wages at the rate described in subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue from the date that the wages were due and payable, as provided in Part 7 (commencing with Section 1720) of Division 2, until the wages are paid.

(c) (1) The Labor Commissioner shall maintain a public list of the names of each contractor and subcontractor who has been found to have committed a willful violation of Section 1775 or to whom a final order, which is no longer subject to judicial review, has been issued.

(2) The list shall include the date of each assessment, the amount of wages and penalties assessed, and the amount collected.

(3) The list shall be updated at least quarterly, and the contractor's or subcontractor's name shall remain on that list until the assessment is satisfied, or for a period of three years beginning from the date of the issuance of the assessment, whichever is later.

*(Amended by Stats. 2013, Ch. 792, Sec. 1. (AB 1336) Effective January 1, 2014.)*

#### **1741.1.**

(a) The period for service of assessments shall be tolled for the period of time required by the Director of Industrial Relations to determine whether a project is a public work, including a determination on administrative appeal, if applicable, pursuant to subdivisions (b) and (c) of Section 1773.5. The period for service of assessments shall also be tolled for the period of time that a contractor or subcontractor fails to provide in a timely manner certified payroll records pursuant to a request from the Labor Commissioner or a joint labor-management committee under Section 1776, or an approved labor compliance program under Section 1771.5 or 1771.7.

(b) (1) The body awarding the contract for a public work shall furnish, within 10 days after receipt of a written request from the Labor Commissioner, a copy of the valid notice of completion for the public work filed in the office of the county recorder, or a document evidencing the awarding body's acceptance of the public work on a particular date, whichever occurs later, by first-class mail addressed to the office of the Labor Commissioner that is listed on the written request. If, at the time of receipt of the Labor Commissioner's written request, a valid notice of completion has not been filed by the awarding body in the office of the county recorder and there is no document evidencing the awarding body's acceptance of the public work on a particular date, the awarding body shall so notify the office of the Labor Commissioner that is listed on the written request. Thereafter, the awarding body shall furnish copies of the applicable document within 10 days after filing a valid notice of completion with the county recorder's office, or within 10 days of the awarding body's acceptance of the public work on a particular date.

(2) If the awarding body fails to timely furnish the Labor Commissioner with the documents identified in paragraph (1), the period for service of assessments under Section 1741 shall be tolled until the Labor Commissioner's actual receipt of the valid notice of completion for the public work or a document evidencing the awarding body's acceptance of the public work on a particular date.

(c) The tolling provisions in this section shall also apply to the period of time for commencing an action brought by a joint labor-management committee pursuant to Section 1771.2.

*(Amended by Stats. 2015, Ch. 303, Sec. 377. (AB 731) Effective January 1, 2016.)*

## **1742.**

(a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing. Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to

Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time. The director shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

*(Amended (as amended by Stats. 2006, Ch. 828, Sec. 1) by Stats. 2008, Ch. 402, Sec. 1. Effective January 1, 2009.)*

#### 1742.1.

(a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) Notwithstanding subdivision (a), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the department to hold in escrow pending administrative and judicial review. The department shall release the funds in escrow, plus any interest earned, to the persons and entities that are found to be entitled to those funds, within 30 days following either of the specified events occurring:

(1) The conclusion of all administrative and judicial review.

(2) The department receives written notice from the Labor Commissioner or his or her designee of a settlement or other final disposition of an assessment issued pursuant to Section 1741 or from the authorized

representative of the awarding body of a settlement or other final disposition of a notice issued pursuant to Section 1771.6.

(c) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

*(Amended by Stats. 2017, Ch. 28, Sec. 16. (SB 96) Effective June 27, 2017.)*

#### 1743.

(a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor

before pursuing the claim against the contractor.

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

*(Added by Stats. 2000, Ch. 954, Sec. 14. Effective January 1, 2001. Operative July 1, 2001, by Sec. 21 of Ch. 954.)*

ARTICLE 1.5. Right of Action [1750- 1750.]  
( Article 1.5 added by Stats. 1991, Ch. 906, Sec. 1. )

1750. (a) (1) The second lowest bidder, and any person, firm, association, trust, partnership, labor organization, corporation, or other legal entity which has, prior to the letting of the bids on the public works project in question, entered into a contract with the second lowest bidder, that suffers damage as a proximate result of a competitive bid for a public works project, as defined in subdivision (b), not being accepted due to the successful bidder's violation, as evidenced by the conviction of the successful bidder therefor, of any provision of Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code, may bring an action for damages in the appropriate state court against the violating person or legal entity.

(2) There shall be a rebuttable presumption that a successful bidder who has been convicted of a violation of any provision of

Division 4 (commencing with Section 3200) of this code or of the Unemployment Insurance Code, or of both, was awarded the bid because that successful bidder was able to lower the bid due to this violation or these violations occurring on the contract for public work awarded by the public agency.

(b) For purposes of this article:

(1) "Public works project" means the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement, or renovation of a public building or structure.

(2) "Second lowest bidder" means the second lowest qualified bidder deemed responsive by the public agency awarding the contract for public work.

(3) The "second lowest bidder" and the "successful bidder" may include any person, firm, association, corporation, or other legal entity.

(c) In an action brought pursuant to this section, the court may award costs and reasonable attorney's fees, in an amount to be determined in the court's discretion, to the prevailing party.

(d) For purposes of an action brought pursuant to this section, employee status shall be determined pursuant to Division 4 (commencing with Section 3200) with respect to alleged violations of that division, pursuant to the Unemployment Insurance Code with respect to alleged violations of that code, and pursuant to Section 2750.5 with respect to alleged violations of either Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code.

(e) The right of action established pursuant to this article shall not be construed to diminish rights of action established pursuant to Section 19102 of, and Article 1.8 (commencing with Section 20104.70) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code.

(f) A second lowest bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of the Labor Code or of the Unemployment Insurance Code, or both, within one year prior to filing the bid for public work, and who has failed to take affirmative steps to correct that

violation or those violations, is prohibited from taking any action authorized by this section.  
(Added by Stats. 1991, Ch. 906, Sec. 1.)

ARTICLE 2. Wages [1770 - 1784] ( Article 2 enacted by Stats. 1937, Ch. 90. )

1770. The Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's determination in the matter shall be final except as provided in Section 1773.4. Nothing in this article, however, shall prohibit the payment of more than the general prevailing rate of wages to any worker employed on public work. This chapter does not permit any overtime work in violation of Article 3.

(Amended by Stats. 2017, Ch. 28, Sec. 17. (SB 96) Effective June 27, 2017.)

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

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

(Amended by Stats. 1981, Ch. 449, Sec. 1.)

1771.1. (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is

authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.



(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h) (1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to

indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j) (1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

(Amended by Stats. 2018, Ch. 455, Sec. 2. (SB 877) Effective September 17, 2018.)

1771.2. (a) A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article, or that fails to provide payroll records as required by Section 1776. This action shall be commenced not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.

(b) (1) In an action brought pursuant to this section, the court shall award restitution to an employee for unpaid wages, plus interest, under Section 3289 of the Civil Code from the date that the wages became due and payable, and liquidated damages equal to the amount of unpaid wages owed, and may impose civil penalties, only against an employer that failed to pay the prevailing wage to its employees, in accordance with Section 1775, injunctive relief, or any other appropriate form of equitable relief. The court shall follow the same standards and have the same discretion in setting the amount of penalties as are provided by subdivision (a) of Section 1775. The court shall award a prevailing joint labor-management committee its reasonable attorney's fees and costs incurred in maintaining the action, including expert witness fees.

(2) An action pursuant to this section shall not be based on the employer's misclassification of the craft of a worker in its certified payroll records.

(3) Liquidated damages shall be awarded only if the complaint alleges with specificity the wages due and unpaid to the individual workers, including how that amount was calculated, and the defendant fails to pay the wages, deposit that amount with the court to be held in escrow, or provide proof to the court of an adequate surety bond to cover the wages, within 60 days of service of the complaint. Liquidated damages shall be awarded only on the wages found to be due and unpaid.

Additionally, if the defendant demonstrates to the satisfaction of the court that the defendant had substantial grounds for contesting that a portion of the allegedly unpaid wages were owed, the court may exercise its discretion to waive the payment of the liquidated damages with respect to that portion of the unpaid wages.

(4) This subdivision does not limit any other available remedies for a violation of this chapter.

(Amended by Stats. 2018, Ch. 682, Sec. 1. (AB 3231) Effective January 1, 2019.)

1771.3. (a) The State Public Works Enforcement Fund is hereby created as a special fund in the State Treasury to be available upon appropriation of the Legislature. All registration fees collected pursuant to Section 1725.5 and any other moneys as are designated by statute or order shall be deposited in the fund for the purposes specified in subdivision (b).

(b) Moneys in the State Public Works Enforcement Fund shall be used only for the following purposes:

(1) The reasonable costs of administering the registration of contractors and subcontractors to perform public work pursuant to Section 1725.5.

(2) The costs and obligations associated with the administration and enforcement of the requirements of this chapter by the Department of Industrial Relations.

(3) The monitoring and enforcement of any requirement of this code by the Labor Commissioner on a public works project or in connection with the performance of public work as defined pursuant to this chapter.

(c) The annual contractor registration renewal fee specified in subdivision (a) of Section 1725.5, and any adjusted application or renewal fee, shall be set in amounts that are sufficient to support the annual appropriation approved by the Legislature for the State Public Works Enforcement Fund and not result in a fund balance greater than 25 percent of the appropriation. Any year-end balance in the fund greater than 25 percent of the appropriation shall be applied as a credit when

determining any fee adjustments for the subsequent fiscal year.

(d) To provide adequate cashflow for the purposes specified in subdivision (b), the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, may approve a short-term loan each fiscal year from the Labor Enforcement and Compliance Fund to the State Public Works Enforcement Fund.

(1) The maximum amount of the annual loan allowable may be up to, but shall not exceed 50 percent of the appropriation authority of the State Public Works Enforcement Fund in the same year in which the loan was made.

(2) For the purposes of this section, a "short-term loan" is a transfer that is made subject to both of the following conditions:

(A) Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the annual Budget Act for the subsequent fiscal year.

(B) Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

(Amended by Stats. 2017, Ch. 28, Sec. 19. (SB 96) Effective June 27, 2017.)

1771.4. (a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is

performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.

(Amended by Stats. 2017, Ch. 28, Sec. 20. (SB 96) Effective June 27, 2017.)

1771.5. (a) Notwithstanding Section 1771, an awarding body may choose not to require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance

work, if the awarding body has elected to initiate and has been approved by the Director of Industrial Relations to enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(7) The awarding body shall comply with any other prevailing wage monitoring and enforcement activities that are required to be conducted by labor compliance programs by the Department of Industrial Relations.

(c) For purposes of this chapter, "labor compliance program" means a labor compliance program that is approved, as specified in state regulations, by the Director of Industrial Relations.

(d) For purposes of this chapter, the Director of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

(Amended by Stats. 2014, Ch. 28, Sec. 67. (SB 854) Effective June 20, 2014.)

1771.6. (a) Any awarding body that enforces this chapter in accordance with Section 1726 or

1771.5 shall provide notice of the withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.

(b) The withholding of contract payments in accordance with Section 1726 or 1771.5 shall be reviewable under Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner under this chapter. If review is requested, the Labor Commissioner may intervene to represent the awarding body.

(c) Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the awarding body shall not disburse any contract payments withheld.

(d) From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(e) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the awarding body that has enforced this chapter pursuant to Section 1771.5.

(Repealed and added by Stats. 2000, Ch. 954, Sec. 16. Effective January 1, 2001. Operative July 1, 2001, by Sec. 21 of Ch. 954.)

1771.7. (a) (1) For contracts specified in subdivision (f), an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education

Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(2) If an awarding body described in paragraph (1) chooses to contract with a third party to initiate and enforce a labor compliance program for a project described in paragraph (1), that third party shall not review the payroll records of its own employees or the employees of its subcontractors, and the awarding body or an independent third party shall review these payroll records for purposes of the labor compliance program.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the "awarding body" is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the payroll records shall be reviewed on at least

a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Because the reasonable costs directly related to monitoring and enforcing compliance with the prevailing wage requirements are necessary oversight activities, integral to the cost of construction of the public works projects, notwithstanding Section 17070.63 of the Education Code, the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code for the costs of a new construction or

modernization project shall include the state's share of the reasonable and directly related costs of the labor compliance program used to monitor and enforce compliance with prevailing wage requirements.

(f) This section shall only apply to contracts awarded prior to January 1, 2012.

(Amended by Stats. 2014, Ch. 28, Sec. 68. (SB 854) Effective June 20, 2014.)

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

(Amended by Stats. 1992, Ch. 1342, Sec. 7. Effective January 1, 1993.)

1773. The body awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations. The holidays upon which those rates shall be paid need not be specified by the awarding body, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

In determining the rates, the Director of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where the rates do not constitute the rates actually prevailing in the locality, the director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification, or type of work involved. The rate fixed for each craft, classification, or type

of work shall be not less than the prevailing rate paid in the craft, classification, or type of work.

If the director determines that the rate of prevailing wage for any craft, classification, or type of worker is the rate established by a collective bargaining agreement, the director may adopt that rate by reference as provided for in the collective bargaining agreement and that determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.

(Amended by Stats. 1999, Ch. 30, Sec. 1. Effective January 1, 2000.)

1773.1. (a) Per diem wages, as the term is used in this chapter or in any other statute applicable to public works, includes employer payments for the following:

- (1) Health and welfare.
- (2) Pension.
- (3) Vacation.
- (4) Travel.
- (5) Subsistence.
- (6) Apprenticeship or other training programs authorized by Section 3093, to the extent that the cost of training is reasonably related to the amount of the contributions.
- (7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.
- (8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.
- (9) Other purposes similar to those specified in paragraphs (1) to (5), inclusive; or other purposes similar to those specified in paragraphs (6) to (8), inclusive, if the payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, credit shall not be granted for benefits required to be provided by other state or federal law, for payments made to monitor and enforce laws related to public works if those payments are not made to a program or committee established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), or for payments for industry advancement and collective bargaining agreement administrative fees if those payments are not made pursuant to a collective bargaining agreement to which the employer is obligated. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination if all of the following conditions are met:

(1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.

(2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.

(3) The employer payment contribution is irrevocable unless made in error.

(d) An employer may take credit for an employer payment specified in subdivision (b), even if contributions are not made, or costs are not paid, during the same pay period for which credit is taken, if the employer regularly makes

the contributions, or regularly pays the costs, for the plan, fund, or program on no less than a quarterly basis.

(e) The credit for employer payments shall be computed on an annualized basis when the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, unless one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

(2) The higher rate of payments is required by a project labor agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(f) (1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever they are filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

(2) When a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

(3) The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

(Amended by Stats. 2016, Ch. 231, Sec. 1. (SB 954) Effective January 1, 2017.)

1773.2. The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract.

In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may, in the call for bids, bid specifications, and contract, include a statement that copies of the prevailing rate of per diem wages are on file at its principal office, which shall be made available to any interested party on request. The awarding body shall also cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site.

(Amended by Stats. 1992, Ch. 1342, Sec. 8. Effective January 1, 1993.)

1773.3. (a) (1) An awarding body shall provide notice to the Department of Industrial Relations of any public works contract subject to the requirements of this chapter, within 30 days of the award, but in no event later than the first day in which a contractor has workers employed upon the public work.

(2) Notwithstanding paragraph (1) and subject to the discretion of the Labor Commissioner, an awarding body shall provide notice to the Department of Industrial Relations of any public works contract awarded pursuant to Section 10122, 20113, 20654, or 22050 of the Public Contract Code that is subject to the requirements of this chapter within 30 days after the award of the contract, but in no event later than the last day in which a contractor has workers employed upon the public work.

(3) The notice shall be transmitted electronically in a format specified by the department and shall include the name and registration number issued by the Department of Industrial Relations pursuant to Section 1725.5 of the contractor, the name and registration number issued by the Department of Industrial Relations pursuant to Section 1725.5 of any subcontractor listed on the successful bid, the bid and contract award



dates, the contract amount, the estimated start and completion dates, jobsite location, and any additional information the department specifies that aids in the administration and enforcement of this chapter.

(b) In lieu of responding to any specific request for contract award information, the department may make the information provided by awarding bodies pursuant to this section available for public review on its Internet Web site.

(c) (1) An awarding body that fails to provide the notice required by subdivision (a) or that enters into a contract with or permits an unregistered contractor or subcontractor to engage in the performance of any public work in violation of the requirements of Section 1771.1, shall, in addition to any other sanction or penalty authorized by law, be subject to a civil penalty of one hundred dollars (\$100) for each day in violation of either requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000) for each project.

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(d) An awarding body shall withhold final payment due to the contractor until at least 30 days after all of the required information in paragraph (2) of subdivision (a) has been submitted, including, but not limited to, providing a complete list of all subcontractors. If an awarding body makes a final payment to a contractor after that time and an unregistered contractor or subcontractor is found to have worked on the project, the awarding body shall be subject to a civil penalty assessed by the Labor Commissioner of one hundred dollars (\$100) for each full calendar day of noncompliance, for a period of up to 100 days, for each unregistered contractor or subcontractor.

(e) The Labor Commissioner may issue a citation for civil penalties to the awarding body

pursuant to subdivisions (c) and (d). The citation shall be served pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail.

(f) The procedure for the processing and appeal of a citation or civil penalty issued by the Labor Commissioner pursuant to this section shall be the same as that prescribed in Section 1023. For these purposes, "person" as used in Section 1023 shall include an awarding body.

(g) Whenever the Labor Commissioner determines that an awarding body has willfully violated the requirements of this section or chapter with respect to two or more public works contracts or projects in any 12-month period, the awarding body shall be ineligible to receive state funding or financial assistance for any construction project undertaken by or on behalf of the awarding body for one year, as defined by subdivision (d) of Section 1782. The debarment procedures adopted by the Labor Commissioner pursuant to Section 1777.1 shall apply to any determination made under this subdivision.

(h) A contractor or subcontractor shall not be liable for any penalties assessed against an awarding body pursuant to this section. An awarding body may not require a contractor or subcontractor to indemnify or otherwise be liable for any penalties assessed against an awarding body pursuant to this section.

(i) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(j) This section shall apply only if the public works contract is for a project of greater than twenty-five thousand dollars (\$25,000) when the project is for construction, alteration, demolition, installation, or repair work or if the public works contract is for a project of greater than fifteen thousand dollars (\$15,000) when the project is for maintenance work.

(Amended by Stats. 2018, Ch. 455, Sec. 3. (SB 877) Effective September 17, 2018.)

1773.4. Any prospective bidder or his representative, any representative of any craft, classification or type of workman involved, or

the awarding body may, within 20 days after commencement of advertising of the call for bids by the awarding body, file with the Director of Industrial Relations a verified petition to review the determination of any such rate or rates upon the ground that they have not been determined in accordance with the provision of Section 1773 of this code. Within two days thereafter, a copy of such petition shall be filed with the awarding body. The petition shall set forth the facts upon which it is based. The Director of Industrial Relations or his authorized representative shall, upon notice to the petitioner, the awarding body and such other persons as he deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications or types of work involved, institute an investigation or hold a hearing. Within 20 days after the filing of such petition, or within such longer period as agreed upon by the director, the awarding body, and all the interested parties, he shall make a determination and transmit the same in writing to the awarding body and to the interested parties.

Such determination shall be final and shall be the determination of the awarding body. Upon receipt by it of the notice of the filing of such petition the body awarding the contract or authorizing the public work shall extend the closing date for the submission of bids or the starting of work until five days after the determination of the general prevailing rates of per diem wages pursuant to this section.

Upon the filing of any such petition, notice thereof shall be set forth in the next and all subsequent publications by the awarding body of the call for bids. No other notice need be given to bidders by the awarding body by publication or otherwise. The determination of the director shall be included in the contract.

(Amended by Stats. 1969, Ch. 301.)

1773.5. (a) The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

(b) When a request is made to the director for a determination of whether a specific project or

type of work awarded or undertaken by a political subdivision is a public work, he or she shall make that determination within 60 days receipt of the last notice of support or opposition from any interested party relating to that project or type of work that was not unreasonably delayed, as determined by the director. If the director deems that the complexity of the request requires additional time to make that determination, the director may have up to an additional 60 days if he or she certifies in writing to the requestor, and any interested party, the reasons for the extension. If the requestor is not a political subdivision, the requester shall, within 15 days of the request, serve a copy of the request upon the political subdivision, in which event the political subdivision shall, within 30 days of its receipt, advise the director of its position regarding the request. For projects or types of work that are otherwise private development projects receiving public funds, as specified in subdivision (b) of Section 1720, the director shall determine whether a specific project or type of work is a public work within 120 days of receipt of the last notice of support or opposition relating to that project or type of work from any interested party that was not unreasonably delayed, as determined by the director.

(c) If an administrative appeal of the director's determination is made, it shall be made within 30 days of the date of the determination. The director shall issue a determination on the administrative appeal within 120 days after receipt of the last notice of support or opposition relating to that appeal from any interested party that was not unreasonably delayed, as determined by the director. The director may have up to an additional 60 days if he or she certifies in writing to the party requesting the appeal the reason for the extension.

(d) The director shall have quasi-legislative authority to determine coverage of projects or types of work under the prevailing wage laws of this chapter. A final determination on any administrative appeal is subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure. These determinations, and any determinations relating to the general

prevailing rate of per diem wages and the general prevailing rate for holiday, shift rate, and overtime work, shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). (Amended by Stats. 2013, Ch. 780, Sec. 3. (SB 377) Effective January 1, 2014.)

1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he or she shall make such change available to the awarding body and his or her determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published. (Amended by Stats. 2017, Ch. 28, Sec. 22. (SB 96) Effective June 27, 2017.)

1773.7. The provisions of Section 11250 of the Government Code shall not be applicable to Sections 1773, 1773.4, and 1773.6. (Repealed and added by Stats. 1976, Ch. 281.)

1773.8. An increased employer payment contribution that results in a lower taxable wage shall not be considered a violation of the applicable prevailing wage determination so long as all of the following conditions are met:

- (a) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.
- (b) The increased employer payment and hourly straight time and overtime wage combined are no less than the general prevailing rate of per diem wages.
- (c) The employer payment contribution is irrevocable unless made in error.

(Added by Stats. 2012, Ch. 827, Sec. 2. (AB 2677) Effective January 1, 2013.)

1773.9. (a) The Director of Industrial Relations shall use the methodology set forth in subdivision (b) to determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed.

(b) The general prevailing rate of per diem wages includes all of the following:

(1) The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other data such as wage survey data.

(2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1).

(3) The rate for holiday and overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, the rate for holidays and overtime work, if any, included with the prevailing basic hourly rate of pay shall be prevailing.

(c) (1) If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that the collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted, the director shall incorporate those changes into the determination. Predetermined changes that are rescinded prior to their effective date shall not be enforced.

(2) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but has not published, at the time of the effective date of the predetermined change, the allocation of

the predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1, a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change to either the basic hourly wage or other employer payments included in per diem wages for up to 60 days following the director's publication of the specific allocation of the predetermined change.

(3) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but the allocation of that predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1 is subsequently altered by the parties to a collective bargaining agreement described in paragraph (1), a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change in accordance with either the originally published allocation or the allocation as altered in the collective bargaining agreement.

(Amended by Stats. 2007, Ch. 482, Sec. 2. Effective January 1, 2008.)

1773.11. (a) Notwithstanding any other provision of law and except as otherwise provided by this section, if the state or a political subdivision thereof agrees by contract with a private entity that the private entity's employees receive, in performing that contract, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, the director shall, upon a request by the state or the political subdivision, do both of the following:

(1) Determine, as otherwise provided by law, the wage rates for each craft, classification, or type of worker that are needed to execute the contract.

(2) Provide these wage rates to the state or political subdivision that requests them.

(b) This section does not apply to a contract for a public work, as defined in this chapter.

(c) The director shall determine and provide the wage rates described in this section in the order in which the requests for these wage rates were received and regardless of the calendar year in which they were received. If there are more than 20 pending requests in a calendar year, the director shall respond only to the first 20 requests in the order in which they were received. If the director determines that funding is available in any calendar year to determine and provide these wage rates in response to more than 20 requests, the director shall respond to these requests in a manner consistent with this subdivision.

(Added by Stats. 2003, Ch. 343, Sec. 1. Effective January 1, 2004.)

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

(Enacted by Stats. 1937, Ch. 90.)

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

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

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

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

(B) (i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion

thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

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

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

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the

subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

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

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

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

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

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

(Amended by Stats. 2011, Ch. 677, Sec. 1. (AB 551) Effective January 1, 2012.)

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in

connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

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

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

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

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

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

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

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the

same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

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

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to

prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

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

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

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

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

(Amended by Stats. 2014, Ch. 28, Sec. 71. (SB 854) Effective June 20, 2014.)

1777. Any officer, agent, or representative of the State or of any political subdivision who wilfully violates any provision of this article, and any contractor, or subcontractor, or agent

or representative thereof, doing public work who neglects to comply with any provision of section 1776 is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

1777.1. (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(c) Whenever a contractor or subcontractor performing a public works project has failed to provide a timely response to a request by the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records pursuant to Section 1776, the Labor Commissioner shall notify the contractor or subcontractor that, in addition to any other penalties provided by law, the contractor or subcontractor will be subject to debarment under this section if the certified payroll records are not produced within 30 days after receipt of the written notice. If the commissioner finds that the contractor or subcontractor has failed to comply with

Section 1776 by that deadline, unless the commissioner finds that the failure to comply was due to circumstances outside the contractor's or subcontractor's control, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year and not more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(d) (1) In the event a contractor or subcontractor is determined by the Labor Commissioner to have knowingly committed a serious violation of any provision of Section 1777.5, the Labor Commissioner may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or to be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(2) The Labor Commissioner shall consider, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating Section 1777.5, all of the following circumstances:

(A) Whether the violation was intentional.

(B) Whether the party has committed other violations of Section 1777.5.

(C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(e) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately

fails or deliberately refuses to comply with its provisions.

(f) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars (\$5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(g) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(h) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the



debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

(i) For the purposes of this section, the term "entity" is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(j) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

(Amended by Stats. 2014, Ch. 297, Sec. 1. (AB 2744) Effective January 1, 2015.)

1777.5. (a) (1) This chapter does not prevent the employment upon public works of properly registered apprentices who are active participants in an approved apprenticeship program.

(2) For purposes of this chapter, "apprenticeship program" means a program under the jurisdiction of the California Apprenticeship Council established pursuant to Section 3070.

(b) (1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the

apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

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

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

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an

apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body, if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

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

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. However, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

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

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

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

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in

this section when it finds that any one of the following conditions is met:

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

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

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

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

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

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

(2) (A) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial

Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The grant funds shall be distributed as follows:

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

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

(iii) All training contributions not distributed under clauses (i) and (ii) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship and preapprenticeship standards and requirements under this code.

(B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records that document the expenditure of grant funds and to make all records available to the Department of Industrial Relations so that the Department of Industrial Relations is able to verify that grant funds were used solely for training apprentices. For purposes of this subparagraph, adequate records include, but are not limited to, invoices, receipts, and canceled checks that account for the expenditure of grant funds. This subparagraph shall not be deemed to require an apprenticeship program to provide the Department of Industrial Relations with more documentation than is necessary to verify the appropriate expenditure of grant funds made pursuant to this subdivision.

(C) The Department of Industrial Relations shall verify that grants made pursuant to this subdivision are used solely to fund training apprentices. If an apprenticeship program is unable to demonstrate how grant funds are expended or if an apprenticeship program is

found to be using grant funds for purposes other than training apprentices, then the apprenticeship program shall not be eligible to receive any future grant pursuant to this subdivision and the Department of Industrial Relations may initiate the process to rescind the registration of the apprenticeship program.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

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

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

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

(Amended by Stats. 2018, Ch. 704, Sec. 17. (AB 235) Effective September 22, 2018.)

1777.6. An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

(Amended by Stats. 2004, Ch. 788, Sec. 15. Effective January 1, 2005.)

1777.7. (a) (1) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor knowingly violated Section 1777.5, the contractor and any subcontractor responsible for the violation shall forfeit, as a civil penalty to the state or political subdivision on whose behalf the contract is made or awarded, not more than one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation within a three-year period, if the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance.

(2) In lieu of the penalty provided for in this subdivision, the Labor Commissioner may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d) of Section 1777.5, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) The Labor Commissioner shall consider, in setting the amount of a monetary penalty, all of the following circumstances:

(1) Whether the violation was intentional.

(2) Whether the party has committed other violations of Section 1777.5.

(3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(4) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(5) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(c) (1) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions

of Section 1741, upon determination of penalties assessed under subdivisions (a) and (b). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(2) For purposes of this section, a determination issued pursuant to subdivision (a) or (b) includes a determination that has been approved by the Labor Commissioner and issued by an awarding body that has been authorized to assist the director in the enforcement of Section 1777.5 pursuant to subdivision (p) of that section. The Labor Commissioner may intervene in any proceeding for review of a determination issued by an awarding body. If the involvement of the Labor Commissioner in a labor compliance program enforcement action is limited to a review of the determination and the matter is resolved without litigation by or against the Labor Commissioner or the department, the awarding body shall enforce any applicable penalties, as specified in this section, and shall deposit any penalties and forfeitures collected in the General Fund.

(d) The determination of the Labor Commissioner as to the amount of the penalty imposed under subdivisions (a) and (b) shall be reviewable only for an abuse of discretion.

(e) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

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

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due to the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(f) 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 a complaint that a subcontractor on that public works project knowingly violated Section 1777.5.

(g) The interpretation of Section 1777.5 and the substantive requirements of this section applicable to contractors or subcontractors shall be in accordance with the regulations of the California Apprenticeship Council.

(h) The Director of Industrial Relations may adopt regulations to establish guidelines for the imposition of monetary penalties.

(Repealed and added by Stats. 2014, Ch. 297, Sec. 3. (AB 2744) Effective January 1, 2015.)

1778. Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives, or conspires with another to take or receive, for his or her own use or the use of any other person any portion of the wages of any worker or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

(Amended by Stats. 2017, Ch. 28, Sec. 23. (SB 96) Effective June 27, 2017.)

1779. Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

1780. Any person acting on behalf of the State or any political subdivision, or any contractor or subcontractor or agent or representative thereof, doing any public work who places any order for the employment of a worker on public work where the filling of the order for employment involves the charging of a fee, or the receiving of a valuable consideration from any applicant for employment is guilty of a misdemeanor.

(Amended by Stats. 2017, Ch. 28, Sec. 24. (SB 96) Effective June 27, 2017.)

1781. (a) (1) Notwithstanding any other provision of law, a contractor may, subject to paragraphs (2) and (3), bring an action in a court of competent jurisdiction to recover from the body awarding a contract for a public work or otherwise undertaking any public work any increased costs incurred by the contractor as a result of any decision by the body, the Department of Industrial Relations, or a court that classifies, after the time at which the body accepts the contractor's bid or awards the contractor a contract in circumstances where no bid is solicited, the work covered by the bid or contract as a "public work," as defined in this chapter, to which Section 1771 applies, if that body, before the bid opening or awarding of the contract, failed to identify as a "public work," as defined in this chapter, in the bid specification or in the contract documents that portion of the work that the decision classifies as a "public work."

(2) The body awarding a contract for a public work or otherwise undertaking any public work is not liable for increased costs in an action

described in paragraph (1) if all of the following conditions are met:

(A) The contractor did not directly submit a bid to, or directly contract with, that body.

(B) The body stated in the contract, agreement, ordinance, or other written arrangement by which it undertook the public work that the work described in paragraph (1) was a "public work," as defined in this chapter, to which Section 1771 applies, and obligated the party with whom the body makes its written arrangement to cause the work described in paragraph (1) to be performed as a "public work."

(C) The body fulfilled all of its duties, if any, under the Civil Code or any other provision of law pertaining to the body providing and maintaining bonds to secure the payment of contractors, including the payment of wages to workers performing the work described in paragraph (1).

(3) If a contractor did not directly submit a bid to, or directly contract with a body awarding a contract for, or otherwise undertaking a public work, the liability of that body in an action commenced by the contractor under subdivision (a) is limited to that portion of a judgment, obtained by that contractor against the body that solicited the contractor's bid or awarded the contract to the contractor, that the contractor is unable to satisfy. For purposes of this paragraph, a contractor may not be deemed to be unable to satisfy any portion of a judgment unless, in addition to other collection measures, the contractor has made a good faith attempt to collect that portion of the judgment against a surety bond, guarantee, or some other form of assurance.

(b) When construction has not commenced at the time a final decision by the Department of Industrial Relations or a court classifies all or part of the work covered by the bid or contract as a "public work," as defined in this chapter, the body that solicited the bid or awarded the contract shall rebid the "public work" covered by the contract as a "public work," any bid that was submitted and any contract that was executed for this work are null and void, and the contractor may not be compensated for any nonconstruction work already performed unless the body soliciting the bid or awarding

the contract has agreed to compensate the contractor for this work.

(c) For purposes of this section:

(1) "Awarding body" does not include the Department of General Services, the Department of Transportation, or the Department of Water Resources.

(2) "Increased costs" includes, but is not limited to:

(A) Labor cost increases required to be paid to workers who perform or performed work on the "public work" as a result of the events described in subdivision (a).

(B) Penalties for a violation of this article for which the contractor is liable, and which violation is the result of the events described in subdivision (a).

(Added by Stats. 2003, Ch. 804, Sec. 2. Effective January 1, 2004.)

1782. (a) A charter city shall not receive or use state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with the provisions of this article on any public works contract.

(b) A charter city shall not receive or use state funding or financial assistance for a construction project if the city has awarded, within the prior two years, a public works contract without requiring the contractor to comply with all of the provisions of this article. This subdivision shall not apply if the charter city's failure to include the prevailing wage or apprenticeship requirement in a particular contract was inadvertent and contrary to a city charter provision or ordinance that otherwise requires compliance with this article.

(c) A charter city is not disqualified by subdivision (a) from receiving or using state funding or financial assistance for its construction projects if the charter city has a local prevailing wage ordinance for all its public works contracts that includes requirements that in all respects are equal to or greater than the requirements imposed by the provisions of this article and that do not authorize a contractor to not comply with this article.

(d) For purposes of this section, the following shall apply:

(1) A public works contract does not include contracts for projects of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or projects of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work.

(2) A charter city includes any agency of a charter city and any entity controlled by a charter city whose contracts would be subject to this article.

(3) A "construction project" means a project that involves the award of a public works contract.

(4) State funding or financial assistance includes direct state funding, state loans and loan guarantees, state tax credits, and any other type of state financial support for a construction project. State funding or financial assistance does not include revenues that charter cities are entitled to receive without conditions under the California Constitution.

(e) The Director of Industrial Relations shall maintain a list of charter cities that may receive and use state funding or financial assistance for their construction projects.

(f) (1) This section does not restrict a charter city from receiving or using state funding or financial assistance that was awarded to the city prior to January 1, 2015, or from receiving or using state funding or financial assistance to complete a contract that was awarded prior to January 1, 2015.

(2) A charter city is not disqualified by subdivision (b) from receiving or using state funding or financial assistance for its construction projects based on the city's failure to require a contractor to comply with this article in performing a contract the city advertised for bid or awarded prior to January 1, 2015.

(Added by Stats. 2013, Ch. 794, Sec. 2. (SB 7) Effective January 1, 2014.)

1784. (a) Notwithstanding any other law, a contractor may bring an action in a court of competent jurisdiction to recover from the hiring party that the contractor directly contracts with, any increased costs attributable solely to the provisions of this chapter, including, but not limited to, the difference

between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties or other sums required to be paid under this chapter, and costs and attorney's fees for the action incurred by the contractor as a result of any decision by the Department of Industrial Relations, the Labor and Workforce Development Agency, or a court that classifies, after the time at which the hiring party accepts the contractor's bid, awards the contractor a contract under circumstances when no bid is solicited, or otherwise allows construction by the contractor to proceed, the work covered by the project, or any portion thereof, as a "public work," as defined in this chapter, except to the extent that either of the following is true:

(1) The owner or developer or its agent expressly advised the contractor that the work to be covered by the contract would be a "public work," as defined in this chapter, or is otherwise subject to the payment of prevailing wages.

(2) The hiring party expressly advised the contractor that the work subject to the contract would be a "public work," as defined in this chapter, or is otherwise subject to the payment of prevailing wages.

(b) (1) To be entitled to the recovery of increased costs described in subdivision (a), the contractor shall notify the hiring party and the owner or developer within 30 days after receipt of the notice of a decision by the Department of Industrial Relations or the Labor and Workforce Development Agency, or the initiation of any action in a court alleging, that the work covered by the project, or any portion thereof, is a "public work," as defined in this chapter.

(2) The notice provided pursuant to this subdivision shall set forth the legal name, address, and telephone number of the contractor, and the name, address, and telephone number of the contractor's representative, if any, and shall be given by registered or certified mail, express mail, or overnight delivery by an express service carrier.

(c) A contractor is not required to list any prevailing wages or apprenticeship standard violations on a prequalification questionnaire that are the direct result of the failure of the

owner or developer or its agent, or a hiring party, to notify the contractor that the project, or any portion thereof, was a "public work," as defined in this chapter.

(d) This section does not apply to private residential projects built on private property unless the project is built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(e) This section does not apply if the conduct of the contractor caused the project to be a "public work," as defined in this chapter, or if the contractor has actual knowledge that the work is a "public work," as defined in this chapter.

(f) A contractor may seek recovery pursuant to this section only from a hiring party with whom the contractor has a direct contract.

(g) For purposes of this section, "contractor" means a person or entity licensed by the Contractors' State Licensing Board that has a direct contract with the hiring party to provide services on private property or for the benefit of a private owner or developer.

(h) For purposes of this section, "hiring party" means the party that has a direct contract for services provided by the contractor who is seeking recovery pursuant to subdivision (a) on a private works project that was subsequently determined to be a public work by the Department of Industrial Relations or the Labor and Workforce Development Agency, or by the initiation of any action in a court alleging that the work covered by the project, or any portion thereof, was a public work.

(Added by Stats. 2014, Ch. 161, Sec. 1. (AB 1939) Effective January 1, 2015.)

### ARTICLE 3. Working Hours [1810 - 1815] ( Article 3 enacted by Stats. 1937, Ch. 90. )

1810. Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part



of all contracts to which the State or any municipal corporation therein is a party.  
(Enacted by Stats. 1937, Ch. 90.)

1811. The time of service of any worker employed upon public work is limited and restricted to eight hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

(Amended by Stats. 2017, Ch. 28, Sec. 25. (SB 96) Effective June 27, 2017.)

1812. Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

(Amended by Stats. 1988, Ch. 160, Sec. 123.)

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

(Amended (as added by Stats. 1997, Ch. 757, Sec. 6) by Stats. 2002, Ch. 28, Sec. 3. Effective January 1, 2003.)

1814. Any officer, agent, or representative of the State or any political subdivision who violates any provision of this article and any contractor or subcontractor or agent or

representative thereof doing public work who neglects to comply with any provision of Section 1812 is guilty of a misdemeanor.

(Added by renumbering Section 1816 by Stats. 1961, Ch. 238.)

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

(Amended by Stats. 1963, Ch. 964.)

ARTICLE 5. Securing Workers' Compensation [1860 - 1861] ( Heading of Article 5 amended by Stats. 1979, Ch. 373. )

1860. The awarding body shall cause to be inserted in every public works contract a clause providing that, in accordance with the provisions of Section 3700, every contractor will be required to secure the payment of compensation to his or her employees.

(Amended by Stats. 2017, Ch. 28, Sec. 26. (SB 96) Effective June 27, 2017.)

1861. Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(Amended by Stats. 1979, Ch. 373.)

APPENDIX B

CALIFORNIA CODE OF REGULATIONS 16000 - 16404

DEPARTMENT OF INDUSTRIAL RELATIONS

PUBLIC WORKS

## CHAPTER 8, OFFICE OF THE DIRECTOR

### SUBCHAPTER 3, PAYMENT OF PREVAILING WAGES UPON PUBLIC WORKS

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#### § 16000. Definitions.

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The following terms are defined for general use in these regulations within Group 3, Payment of Prevailing Wages Upon Public Works and Group 4, Awarding Body Labor Compliance Programs:

**Area of Determination.** The area of determining the prevailing wage is the "locality" and/or the "nearest labor market area" as determined by the Director. In determining the area, the mobility of each craft, classification and type of work will be considered.

**Awarding body.** Any state or local government agency, department, board, commission, bureau, district, office, authority, political subdivision, regional district officer, employee, or agent awarding/letting a contract/purchase order for public works.

**Bid.** Any proposal submitted to an awarding body in competitive bidding for the construction, alteration, demolition, repair, maintenance, or improvement of any structure, building, road, property, or other improvement of any kind.

**Certified.** The affirmation of a person with the authority to so affirm, under the penalty of perjury that the records are originals or are full, true and correct copies of the original and depict truly, fully and correctly the craft or type of work performed, hours and days worked, and the amounts by category listed, disbursed by way of cash, check, or in whatever form or manner to each person by job classification and/or skill pursuant to a public works contract.

**Chief of DAS.** Chief of Division of Apprenticeship Standards or a duly authorized representative.

**Chief of DLSE/Labor Commissioner.** Chief of the Division of Labor Standards Enforcement or a duly authorized representative.

**Chief of DLSR.** Chief of the Division of Labor Statistics and Research or a duly authorized representative.

**Coverage.** This means being subject to the requirements of Part 7, Chapter 1 of the Labor Code as a "public work." This includes all formal coverage determinations issued by the Director of Industrial Relations.

**DAS.** Division of Apprenticeship Standards.

**Date of Notice or Call for Bids.** The date the first notice inviting bids was published in a newspaper of general circulation or promulgated in a legally sufficient manner which results in a contract being awarded with or without competitive bidding. This may also be referred to as the Bid Advertisement Date.

**Days.** Unless otherwise specified means calendar days.

**DLSE.** The Division of Labor Standards Enforcement.

**DLSR.** The Division of Labor Statistics and Research.

**Director.** The Director of the Department of Industrial Relations or his/her duly authorized representative.

**Duly Authorized Representative.** An employee of the Department of Industrial Relations.

**Effective Date.** The date upon which the determinations of the Director go into effect. This date is ten days after the issue date of the determination.

**Employer Payments.** Includes:

(1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, or retirees;

(2) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees, their families and dependents or to retirees pursuant to an enforceable commitment or agreement to carry out a financially responsible plan or program which was communicated in writing to the workers affected; and

(3) The rate of contribution irrevocably made by the contractor or subcontractor for apprenticeship or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

**Expiration Date.** The date upon which the determinations of the Director are subject to change.

**General Prevailing Rate of Per Diem Wages.**

Includes:

(1) The prevailing basic straight-time hourly rate of pay; and

(2) The prevailing rate for holiday and overtime work; and

(3) The prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees which are of the types enumerated below:

(A) medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;

(B) retirement plan benefits;  
 (C) vacations and holidays with pay, or cash payments in lieu thereof;  
 (D) compensation for injuries or illnesses resulting from occupational activity;  
 (E) life, accidental death and dismemberment, and disability or sickness and accident insurance;  
 (F) supplemental unemployment benefits;  
 (G) thrift, security savings, supplemental trust, and beneficial trust funds otherwise designated, provided all of the money except that used for reasonable administrative expenses is returned to the employees;  
 (H) occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;  
 (I) See definition of "Employer Payments," (3).  
 (J) other bonafide benefits for employees, their families and dependents, or retirees as the Director may determine; and  
 (4) travel time and subsistence pay as provided for in Labor Code Section 1773.8.  
 (b) The term "general prevailing rate of per diem wages" does not include any employer payments for:

- (1) Job related expenses other than travel time and subsistence pay;
- (2) Contract administration, operation of hiring halls, grievance processing, or similar purposes except for those amounts specifically earmarked and actually used for administration of those types of employee or retiree benefit plans enumerated above;
- (3) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;
- (4) Industry or trade promotion;
- (5) Political contributions or activities;
- (6) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the contractor or subcontractor is required by Federal, State, or local law to provide such benefit; or
- (7) Such other payments as the Director may determine to exclude.

Helper. Any subjourneyman classification traditionally used to assist a journeyman. Under no circumstance may the Helper classification be used to replace statutorily required Apprentices.

Identify or Give Notice of Identity. This means to state the name, job title, address and current telephone number of a person or entity.

Interested Party. When used with reference to a particular prevailing wage determination made by the Director, includes:

(1) Any contractor or subcontractor, or any organization, association, or other representative of any contractor or subcontractor likely to bid on or to perform a contract for public work which is subject to the particular prevailing wage determinations, and/or

(2) Any worker in the particular craft, classification, or type of work, who may be employed on a public work project subject to the particular prevailing wage determination, or any labor organization or other representative of such a person, including the recognized collective bargaining representative for the particular craft, classification, or type of work; and/or

(3) Any awarding body or association or other representative of awarding bodies concerned with the administration of a public works contract or proposed contract, which is subject to the particular prevailing wage determination.

Interim Determination. Those determinations of the Director issued between the quarterly updates.  
 Issue Date-Issuance. The date upon which copies of the determination of the Director are deposited in the mail.

LCP. A labor compliance program initiated and enforced by an awarding body in accordance with these regulations.

Locality. See Labor Code Section 1724.

Maintenance. Includes:

(1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.  
 Exception:1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.  
 Exception:2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

(3) Landscape maintenance. See Public Contract Code Section 21002.

Exception: Landscape maintenance work by "sheltered workshops" is excluded.

Mistake, Inadvertence, or Neglect. Mistake, inadvertence, or neglect in failing to pay the correct

general rate of per diem wages means the lack of knowledge that any reasonable person would also be expected to have under the same or similar circumstances.

**Nearest labor market Area.** The nearest geographical area from which workers of the crafts, classifications, and types to be used in the performance and execution of the public work can be drawn for employment upon such public work.

**Payroll Records.** All time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

**Person.** Any individual [or legal entity, including a] partnership, corporation, association, or any local, state, regional, national or international organization, public or private, or any awarding body, or any agent or officer thereof, authorized to act for or on behalf of any of the foregoing.

**Political Subdivision.** See Labor Code Section 1721.

**Predetermined Changes.** Definite changes to the basic hourly wage rate, overtime, holiday pay rates, and employer payments which are known and enumerated in the applicable collective bargaining agreement at the time of the bid advertisement date and which are referenced in the general prevailing rate of per diem wages as defined in Section 16000 of these regulations. Contractors are obligated to pay up to the amount that was predetermined if these changes are modified prior to their effective date. Predetermined changes which are rescinded prior to their effective date shall not be enforced.

**Prevailing Rate.** Includes:

(1) The basic hourly rate being paid to a majority of workers engaged in the particular craft, classification or type of work within the locality and in the nearest labor market area, if a majority of such workers is paid at a single rate; if there is no single rate being paid to a majority, then the single rate (modal rate) being paid to the greater number of workers is prevailing. If there is no modal rate, then an alternate rate will be established by considering the appropriate collective bargaining agreements, Federal rates or other data such as wage survey data, including the nearest labor market area, or expanded survey as provided in Article 4 of these regulations;

(2) Other employer payments as defined in Section 16000 of these regulations and as included as part of the total hourly wage rate, from which the prevailing basic hourly wage rate was derived. In the

event the total hourly wage rate does not include any employer payments, then the Director may establish a prevailing employer payment rate by the same procedure outlined in subsection (1) above.

(3) The rate for holiday or overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, holidays and overtime (if any) included with the prevailing basic hourly rate of pay shall be prevailing.

**Public Entity.** For the purpose of processing requests for inspection of payroll records or furnishing certified copies thereof, "public entity" includes: the body awarding the contracts; the Division of Apprenticeship Standards (DAS), or the Division of Labor Standards Enforcement (DLSE).

**Public Funds.** Includes state, local and/or federal monies.

**Note:** Public funds do not include money loaned to a private entity where work is to be performed under private contract, and where no portion of the work is supervised, owned, utilized, or managed by an awarding body.

**Public Works.** See Sections 1720, 1720.2, 1720.3, and 1771 of the Labor Code.

**Service upon a Contractor or Subcontractor.** This is the process defined in Title 8, California Code of Regulations, (CCR) Section 16801(a)(2)(A).

**Serve upon the Labor Commissioner.** Delivery of all documents including legal process to the Headquarters of the Labor Commissioner.

**Sheltered workshop.** A nonprofit organization licensed by the Chief of DLSE employing mentally and/or physically handicapped workers.

**Wage Survey.** An investigation conducted pursuant to Labor Code Sections 1773 and/or 1773.4 to determine the general prevailing rate of per diem wages for the crafts/classifications in the county(ies) for which the survey questionnaire was designed.

**Willful.** See Labor Code Section 1777.1(d).

**Worker.** See Labor Code Sections 1723 and 1772.

**Note:** Authority cited: Section 1773.5, Labor Code.

**Reference:** Sections 1191.5, 1720, 1720.2, 1720.3, 1721, 1722, 1722.1, 1723, 1724, 1770, 1771, 1772, 1773.5, 1776, 2750.5, 3071 and 3093, Labor Code; and Section 21002, Public Contract Code.

#### HISTORY

1. Repealer of group 3 (articles 1-3, sections 16000-16004, 16100-16101 and 16200-16205) and new group 3 (articles 1-4, sections 16000-16013, 16100-16109, 16200-16206 and 16300-16305) filed 1-3-77 as an emergency; effective upon filing (Register 77, No 2). For prior history, see Register 56, No. 8.

2. New group 3 (sections 16000-16014, 16100-16109, 16200-16207.9) filed 2-8-78; effective thirtieth day thereafter (Register 78, No. 6).

3. Renumbering and amendment of former sections 16000-16006 and 16008-16019 to section 16000; renumbering and amendment of former section 16100 to section 16002; renumbering and amendment of former section 16101 to section 16203; renumbering and amendment of former sections 16102-16105 to section 16200; renumbering and amendment of former section 16106 to section 16206; renumbering and amendment of former sections 16107(a), (b) and (c) to sections 16201, 16202 and 16205; renumbering and amendment of former section 16108 to section 16204; renumbering and amendment of former section 16200 to section 16300; renumbering and amendment of former sections 16007, 16201, 16202, 16204 and 16206 to section 16302; renumbering and amendment of former section 16207 to section 16303; renumbering and amendment of former sections 16207.2 and 16207.3 to section 16304; renumbering and amendment of former section 16207.5 to section 16100; renumbering and amendment of former section 16207.7 to section 16301; renumbering and amendment of former sections 16207.10-16207.14 to section 16400; renumbering and amendment of former sections 16207.15 and 16207.16 to section 16401; renumbering and amendment of former section 16207.17 to section 16402; renumbering and amendment of former section 16207.18 to section 16403; renumbering and amendment of former section 16207.19 to section 16500; repealer of former sections 16100.1, 16109, 16203, 16205, 16207.1, 16207.4, 16207.6 and 16207.8; and new sections 16001, 16101 and 16102 filed 2-11-86; effective thirtieth day thereafter (Register 86, No. 7). For prior history, see Registers 82, No. 51; 80, No. 6; 79, No. 19; 72, No. 23 and 72, No. 13.

4. Amendment filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

5. Repealer of definition of "Predetermined Changes" filed 12-27-96; operative 1-26-97 (Register 96, No. 52).

6. Amendment of definition of "Prevailing Rate" filed 12-27-96; operative 1-26-97 (Register 96, No. 52).

7. Change without regulatory effect restoring definition of "Predetermined Changes" and repealing amendments to definition of "Prevailing Rate" filed 2-19-99 (Register 99, No. 8). Pursuant to Sacramento Superior Court Order Issued 6-4-97 in Case 97CS 00471 the amendments filed 12-27-96

and effective 1-27-97 were invalidated and the prior regulations were reinstated.

§16001. Public Works Subject to Prevailing Wage Law.

(a) General Coverage. State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771.

(1) Any interested party enumerated in Section 16000 of these regulations may file with the Director of Industrial Relations or the Director's duly authorized representative, as set forth in Section 16301 of these regulations, a request to determine coverage under the prevailing wage laws regarding either a specific project or type of work to be performed which that interested party believes may be subject to or excluded from coverage as public works under the Labor Code. If such a request is filed by any party other than the awarding body, a copy of the request must be served upon the awarding body, in accordance with the filing procedures set forth in Section 16302(d) of these regulations, when it is filed with the Director.

(2) Within 15 days of receipt of a copy of the request for a coverage determination, the awarding body shall forward to the Director or his/her duly authorized representative as provided for in Section 16301 of these regulations, any documents, arguments, or authorities it wishes to have considered in the coverage determination process.

(3) All parties to the coverage determination request shall have a continuing duty to provide the Director or his/her duly authorized representative as provided for in Section 16301 of these regulations, with relevant documents in their possession or control, until a determination is made. Where any party or parties' agent has a document in their possession, but refuses to release a copy, the Department shall consider that the documents, if released, would contain information adverse to the withholding party's position and may close the record and render a decision on the basis of that inference and the information received.

(b) Federally Funded or Assisted Projects. The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort.

(c) Field Surveying Projects. Field survey work traditionally covered by collective bargaining agreements is subject to prevailing wage rates when it is integral to the specific public works project in the design, preconstruction, or construction phase.

(d) Residential Projects. Residential projects consisting of single family homes and apartments up to and including four stories are subject to payment of prevailing wages when paid for in whole or in part out of public funds, including federally-funded or assisted residential projects controlled or carried out by an awarding body.

Note: Such projects may require a special determination by the Director which should be requested by the awarding body at least 45 days before the commencement of advertising of the call for bids by the awarding body.

(e) Commercial Projects. All non-residential construction projects including new work, additions, alterations, reconstruction and repairs. Includes residential projects over four stories.

(f) Maintenance. Public works contracts for maintenance are subject to prevailing wage rate payment as set forth in Section 1771 of the Labor Code.

Note: See Article 1 for definition of term "maintenance."

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1720, 1720.2, 1720.3, 1720.4 and 1771, Labor Code.

#### HISTORY

1. Amendment of subsection (a) and NOTE and adoption of subsections (a)(1)-(3) and (e) and relettering former subsection (e) to (f) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

2. Amendment of subsection (b) and (d) and Note filed 12-27-96; operative 1-26-97 (Register 96, No. 52).

3. Change without regulatory effect repealing amendments to subsections (b) and (d) and Note filed 2-19-99 (Register 99, No. 8). Pursuant to Sacra

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The determinations of the Director will cover those crafts, classifications or types of workers employed in public works as set forth in Sections 1720, 1720.2, 1720.3, and 1771 of the Labor Code.

NOTE: Authority cited: Sections 1723 and 1773.5, Labor Code. Reference: Sections 1720, 1720.2, 1720.3 and 1771, Labor Code.

#### **§16002.5. Appeal of Public Work Coverage Determination.**

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(a) Those interested parties enumerated in Section 16000 of these regulations may appeal to the Director of Industrial Relations or the Director's duly authorized representative as set forth in Section 16301 of these regulations a determination of coverage under the public works laws (Labor Code Section 1720 et seq.) regarding either a specific project or type of work under Section 16001(a) of these regulations. Such notice of appeal must be served within 30 days of the issuance of the coverage determination. The party appealing the determination must, in accordance with the filing procedures set forth in Section 16302(d) of these regulations, give written notification to the awarding body and any other identifiable parties.

(b) The notice of appeal shall state the full factual and legal grounds upon which the determination is appealed, and whether a hearing is desired. The decision to hold a hearing is within the Director's sole discretion. The Director may appoint a hearing officer to conduct the hearing and propose a decision on the appeal. The Director shall make the final decision on the appeal.

(c) The authority of the Director to determine coverage of projects under the prevailing wage laws is quasi-legislative, and a final determination on any appeal is subject to judicial review pursuant to the Code of Civil Procedure, Section 1085.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1720, 1720.2, 1720.3, 1720.4 and 1771, Labor Code.

#### HISTORY

#### **§16002. Coverage of Worker.**

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

### **§16003. Requests for Approval of Volunteer Labor.**

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#### **NOTE**

Authority cited: Sections 54 and 1773.5, Labor Code. Reference: Section 1720.4, Labor Code.

#### **HISTORY**

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

2. Change without regulatory effect repealing section filed 4-19-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 16).

### **§16100. Duties, Responsibilities and Rights.**

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The parties listed in this section must comply with the provisions of the Labor Code applicable to the payment of prevailing wages on public works contracts.

(a) Department and Division Authority in Prevailing Wage Issues. The Director shall establish and coordinate the administration of the State's prevailing wage law, including the determination of coverage issues. The lead agency for the determination of prevailing wage rates shall be the Division of Labor Statistics and Research. The lead agency for the enforcement of the payment of prevailing wages is the Division of Labor Standards Enforcement. The lead agency for the coordination on apprenticeship is the Division of Apprenticeship Standards. This section shall not be construed to preclude any filing requirements with DLSR of appropriate agreements or petitions regarding determinations or any other documents, papers, books, etc. otherwise required by the law or these regulations.

(b) The Awarding Body shall:

(1) Obtain the prevailing wage rate from the Director in accordance with Labor Code Sections 1771 and 1773.

(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.

(A) The posting requirement is applicable for each job site.

EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.

(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.

(3) Notify DAS. See Labor Code Section 1773.3.

(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:

NOTE: Requirement information may be disseminated at a preacceptance of bid conference or in a call for bids or at an award of bid conference.

The public works requirements are:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) worker's compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on the public works project, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of these regulations.

(E) and other requirements imposed by law.

(5) Withhold monies. See Labor Code Section 1727.

(6) Ensure that public works projects are not split or separated into smaller work orders or projects



for the purpose of evading the applicable provisions of Labor Code Section 1771.

(7) Deny the right to bid on public work contracts to contractors or subcontractors who have violated public work laws, as set forth in Labor Code Section 1777.7.

(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

EXCEPTION: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of these regulations.

(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

(c) Contractor-subcontractor.

The contractor and subcontractor shall:

(1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of these regulations, and as set forth in Labor Code Sections 1771 and 1774;

(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;

(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;

(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director as set forth in Section 16200 (a) (3) of these regulations; and

(7) Comply with Section 16101 of these regulations regarding discrimination.

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5.

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813.

(10) Comply with other requirements imposed by law.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1720, 1720.2, 1720.3, 1726, 1727, 1728, 1729, 1770, 1771, 1773, 1773.2, 1773.3, 1773.4, 1773.5, 1774, 1775, 1776, 1777.5, 1777.7, 1778, 1779, 1810, 1811, 1812, 1813, 1815, 1860 and 1861, Labor Code.

#### HISTORY

1. Amendment of subsection (b)(2)(B) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

#### §16101. Discrimination.

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See Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1735, 1777.5, 1777.6 and 3077.5, Labor Code.

#### §16102. Interested Party.

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An interested party, as defined in Section 16000 of these regulations, may be a source of wage data information, as provided in Section 16200(e) of these regulations.

NOTE: Authority cited: Section 1773.5, Labor Code.  
Reference: Section 1773.4, Labor Code.

**§16200. General. Basis for Determining Prevailing Wage Rate.**

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The Director shall follow those procedures specified in Sections 1773 and 1777.5 of the Labor Code and in these regulations when making a prevailing wage determination.

**(a) Collective Bargaining Agreements or Wage Surveys.**

**(1) Filing of collective bargaining agreements.**

(A) To enable the Director to ascertain and consider the applicable wage rates established by collective bargaining agreements when making prevailing wage determinations, the representatives of any crafts, classifications, or types of workers needed to execute any public works contracts shall file with the Department of Industrial Relations fully executed copies of all their collective bargaining agreements, including any and all addenda which modify the agreements, within 10 days of their execution and shall be considered as the basis for a prevailing wage determination whenever on file 30 days before the call for bids on a project.

(B) Copies of collective bargaining agreements filed with the Department of Industrial Relations pursuant to Sections 1773.1 and 1773.8 of the Labor Code, and Section 16200(a)(1)(A) of these regulations shall be addressed to: Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142.

(C) Collective bargaining agreements filed with the Division of Labor Statistics and Research must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury, and which:

1. certifies that the agreement filed is fully executed and in effect, unless it is a signed original agreement or photocopy thereof, or a printed copy of a fully executed agreement showing the names of the signatory parties, except in the case of a printed agreement the Director may require certification;

2. names or otherwise identifies all California

counties within the jurisdiction of the local union or unions signatory to the agreement;

3. names and provides the address of the signatory employer association or, if there be no signatory employer association, provides the names and addresses of all contractors signatory to the agreement, unless such information is contained in the agreement;

4. provides the number of workers currently employed under the terms of the agreement and, if practicable, the number of workers in each county within the jurisdiction of the signatory local union or unions;

5. provides any other information not contained in the agreement that the Director may need to give proper consideration to applicable wage rates established by collective bargaining.

(D) Copies of collective bargaining agreements which are not bona fide shall not be deemed filed. The party filing a contract may be asked to substantiate the assertion that such collective bargaining agreement is bona fide.

(2) Criteria for using collective bargaining agreement wage rates as basis of prevailing wage determinations. Before accepting the collective bargaining agreement wage rate for the applicable craft and locality, DLSR shall take the following factors into consideration:

(A) The geographical area(s) specified in the agreement;

(B) The number of workers covered by the agreement;

(C) If signatory parties to the agreement have workers in the geographical area(s);

(D) If work has been performed in the geographical area(s) specified in the agreement in the past 12 months;

(E) The wage rates determined by the federal government as set forth in Section 16200(b).

**(3) Adoption of Collective Bargaining Agreements.**

(A) If the Director determines pursuant to Section 1773 of the Labor Code that the rate established by a collective bargaining agreement is the general prevailing rate of per diem wages for each craft,

classification or type of worker and the Director adopts such rate by referral, the Director will publish such rate. Only those rates and employer payments specifically enumerated in the definition of "general prevailing rate of per diem wages" in Section 16000 shall be included in the rate adopted.

(B) When such rate is adopted, and in the case where the collective bargaining agreement contains definite and predetermined changes during its term which will affect the rate adopted, the Director shall incorporate such changes in the determination.

Note: A statement must be filed with the Director for any adjustments made to a contract which are not contained in the agreement currently on file with DLSR.

(C) When such rate is adopted, and in the case where the collective bargaining agreement contains changes during its term which will affect the rate adopted, which are not definite or predetermined, the changes shall not be adopted. The prior determination will remain in effect until a new determination is issued. Any interested party may request that the Director make a new determination when contract changes become definite and determined by filing a statement as set forth in Section 16200(a)(1). The statement must summarize the amounts and effective dates of any cost-of-living adjustments, allocations of interim wage increases to wages and employer payments, and other relevant changes which will affect the rate adopted by the Director. The statement must be signed by an officer or agent of the bargaining representative and certified, under penalty of perjury, as true and correct to the best of his or her knowledge and belief.

(D) When such agreement is adopted as the basis of the prevailing wage determination, all wage classifications may be considered.

(E) Holidays. Holidays specifically named in the collective bargaining agreement or determined by wage surveys shall be included in the wage determination. Overtime pay may be required as provided in Section 16200(a)(3)(F) of these regulations.

(F) Overtime. Overtime will be paid as indicated in the wage determination.

Exception 1: If a workweek other than Monday through Friday is a fixed business practice or is

required by the awarding body, no overtime payment is required for the first eight hours on Saturday or Sunday.

Exception 2: If the collective bargaining agreement provides for Saturday and Sunday work at straight-time, no overtime payment is required for the first eight hours on Saturday or Sunday.

Exception 3: If the awarding body determines that work cannot be performed during normal business hours or work is necessary at off hours to avoid danger to life or property, no overtime is required for the first eight hours in any one calendar day, and 40 hours during any one calendar week.

Exception 4: No overtime payment is required for less than 40 hours in a standard work week or for less than eight hours in a calendar workday unless specified in the collective bargaining agreement used as the basis for the prevailing wage determination.

(G) Wage rates, training contributions and apprenticeship contributions. Apprenticeship rates shall be determined by the Director of Industrial Relations using apprentice wage standards set forth in the collective bargaining agreement and/or approved by the California Apprenticeship Council. A contractor or subcontractor on a public works contract must pay training fund contributions or apprenticeship contributions in one of the following manners:

1. into the appropriate craft apprenticeship program in the area of the site of the public work; or
2. (if the trust fund is unable to accept such contributions) an equivalent amount shall be paid to the California Apprenticeship Council (CAC) administered by DAS.
3. If neither of the above will accept the funds, cash pay shall be as provided for in Section 16200(a)(3)(I) of these regulations.

(H) Rates for helpers. Rates for helpers will be published when the information available to the Director indicates that a practice of using such a subclassification prevails in a particular area, such as contained in a collective bargaining agreement, and within the parameters of the applicable collective bargaining agreement. In the absence of such determination, the helper classification may not be used as a substitute for a journeyman or apprentice. This section does not exempt the

contractor from the 1-5 apprentice-journeyman ratio requirements set forth in Labor Code Section 1777.5.

(I) Credit Available For Actual Payment of Fringe Benefit Costs up to the Prevailing Amount. The contractor obligated to pay the full prevailing rate of per diem wages may take credit for amounts up to the total of all fringe benefit amounts listed as prevailing in the appropriate wage determination. This credit may be taken only as to amounts which are actual payments under Employer Payments Section 16000(1)-(3). In the event the total of Employer Payments by a contractor for the fringe benefits listed as prevailing is less than the aggregate amount set out as prevailing in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken nor shall any credit decrease the amount of direct payment of hourly wages of those amounts found to be prevailing for straight time or overtime wages.

(b) Federal Rates. In reviewing rates predetermined for federal public works, the Director will consider those rates published pursuant to the Davis-Bacon Act.

(c) Data collection shall be in accordance with Labor Code Section 1773.

(d) Wage rate factors.

Note: Wage surveys are conducted by DLSR.

(1) The following factors shall be considered:

(A) Type of work to be performed;

(B) Classification(s) of worker(s) needed;

(C) Geographical area of project;

(D) Nearest labor market area;

(E) If work has been performed in the geographical area in the past 12 months.

(F) Mobility of craft, classification, or type of worker needed for project;

(G) Number of workers in craft or job classification;

(H) Normal industry practice in selection of craft

and classification of worker;

(I) Size (dollar amount) of project;

(J) Degree of project's remoteness from survey area.

(2) Time period used in determining prevailing wage by survey. The time period reference for establishing the prevailing wage in the area of determination shall be the 12-month period prior to the request for a wage determination unless another time period is necessary. In such cases, the Director shall establish the appropriate time period.

(e) Other information. Pursuant to Section 1773 of the Labor Code, the Director may also obtain and consider other data from interested parties, and shall give consideration to data submitted by any interested party, concerning rates actually paid on public or private projects under construction or recently completed in the locality and in the nearest labor market area. Such data may be obtained by holding a hearing, instituting an investigation, or by such other means as the Director determines will best serve the purposes of the law. Information submitted by interested parties for the Director's consideration shall include, but not be limited to the following for each project:

(1) the name, address, job title, and telephone number of the interested party submitting the information and the basis for qualification as an interested party under Section 16102;

(2) the basic hourly wage rate, overtime and holiday pay rates, and employer payments as enumerated in Section 16000 of these regulations for each classification in question as effective for the last payroll period, or most recent payroll period, for which payments based on such rates were actually made;

(3) the number of workers employed on the project in each classification in question during the payroll period for which data is submitted;

(4) the location of the project;

(5) the name and address of the contractor or subcontractor making the payments, and of all other contractors or subcontractors on the project;

(6) the type of construction (e.g. residential, commercial building, etc.);

- (7) the approximate cost of construction;
- (8) the beginning date and completion date, or estimated completion date of the project;
- (9) the source of data (e.g. "payroll records");
- (10) the method of selection of the projects for which data is submitted, when data is not submitted for all projects recently completed or in progress in the locality or in the nearest labor market area.

NOTE: Authority cited: Sections 1773 and 1773.5, Labor Code. Reference: Sections 1770, 1771, 1773, 1773.1, 1773.5, 1773.8, 1777.5, 1810 and 1815, Labor Code.

#### HISTORY

1. Order of Repeal of subsection (a)(3)(E) filed 8-24-88 by OAL pursuant to Government Code section 11340.15 (Register 88, No. 35).
2. Amendment of subsections (a)(1), (a)(3) and (b) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).
3. Repealer of subsection (a)(3)(B), subsection relettering, and amendment of newly designated subsections (a)(3)(B), (a)(3)(D), and (a)(3)(F)(3) filed 12-27-96; operative 1-26-97 (Register 96, No. 52).
4. Amendment of subsection (b) filed 12-27-96; operative 1-26-97 (Register 96, No. 52).
5. Change without regulatory effect repealing 12-27-96 amendments filed 2-19-99 (Register 99, No. 8). Pursuant to Sacramento Superior Court Order Issued 6-4-97 in Case 97CS 00471 the amendments filed 12-27-96 and effective 1-27-97 were invalidated and the prior regulations were reinstated.

#### **§16201. General Area Determinations.**

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When the Director determines that the general prevailing rate of per diem wages for a particular craft, classification, or type of worker is uniform throughout an area, the Director shall issue a determination enumerated county by county, but

covering the entire area. Such determinations will ordinarily be made for an entire county or group of counties and shall constitute the Director's determination for all localities in which public work is performed within that county or counties except as the geographic application of the determination may be specifically limited by the determination itself.

NOTE: General determinations are usually issued on a quarterly basis. However, the Director may issue an interim wage determination following the procedures set forth in Section 1773 of the Labor Code, and in these regulations. See Section 16000 as to issue date, and Section 16204 as to effective date of determination. The general determination usually applies where a collective bargaining agreement has been filed and adopted as the prevailing wage rate.

NOTE: Authority cited: Sections 1773.5 and 1773.6, Labor Code. Reference: Section 1773, Labor Code.

#### **§16202. Special Determinations.**

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(a) Awarding body request. The awarding body shall request the Director to make a determination for a particular craft, classification or type of worker not covered by a general determination. Any such request shall be submitted at least 45 days prior to the bid advertisement date.

(b) Department of Industrial Relations initiated determination. Where an awarding body does not specify the prevailing wage rate as set forth in Labor Code Section 1773.2, any interested party (as defined in Section 16000 of these regulations) may petition the Director as set forth in Labor Code Section 1773.4 and Section 16302 of these regulations. The Labor Commissioner may, prior to the letting of the bid, request such a determination of the Director.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1770, 1773 and 1773.4, Labor Code.

#### **§16203. Format.**

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(a) All determinations made by the Director of the general prevailing rate of per diem wages for a particular craft, classification, or type of worker will separately specify each of the following components:

(1) The prevailing basic straight-time hourly wage rate.

(2) The following statement when applicable: "In accordance with Labor Code Section 1773, holidays upon which the prevailing hourly wage rate for holiday work shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workers employed on the project, which is on file with the Director of Industrial Relations."

(3) The prevailing employer payments for benefits included in the general prevailing rate of per diem wages pursuant to Section 1773.1 of the Labor Code and enumerated in Section 16000 of these regulations.

(4) The following statement when applicable. "The contractor shall make travel and subsistence payments to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of Industrial Relations in accordance with Labor Code Section 1773.8."

(b) Where the prevailing employer payment for any benefit is expressed in a formula or method of payment other than an hourly rate the Director may convert the rate to an hourly rate whenever such action would facilitate the administration of the law.

(c) The applicability of the apprentice rate of per diem wages shall be indicated and furnished upon request.

(d) The dates between which the applicable rate shall be paid for work performed in those periods shall be indicated.

(e) As a supplement to each determination the Director shall make available to any awarding body upon request, a list of all holidays recognized and the provision for travel and subsistence payments, taken from the applicable collective bargaining agreement.

NOTE: Authority cited: Section 1773.5, Labor Code.  
Reference: Section 1773.5, Labor Code.

#### **§16204. Effective Dates of Determination and of Rates Within Determination.**

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(a) Effective Date of Determination.

(1) All determinations issued will be effective ten (10) days after issuance, provided that requests for copies, reprints or reissuance of prior determinations shall not affect the original effective date unless a new effective date is reflected upon the determination (see subdivision (3) below). Any call for bids put out on or after the effective date of the determination must reflect that determination unless the Director determines that subdivision (4) of this section is applicable, after notification and request by an awarding body.

(2) Determinations issued by the Director will show an issue date and will ordinarily show an expiration date.

(3) All determinations will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the Director.

(4) Determinations modified, corrected, rescinded or superseded on the basis of information contained in copies of collective bargaining agreements filed with the Department shall not be effective as to any project in which a call for bids takes place less than 30 days after the filing of the agreement.

Note: See Section 1773.1 of the Labor Code.

(5) It shall be the responsibility of the awarding body to ensure that the correct determination is used.

(b) Modification of Effective Date of Determination by Asterisks. Meaning of single and double asterisks. Prevailing wage determinations with a single asterisk (\*) after the expiration date which are in effect on the date of advertisement for bids remain in effect for the life of the project. Prevailing wage determinations with double asterisks (\*\*) after the expiration date indicate that the basic hourly wage rate, overtime and holiday pay rates, and employer payments to be paid for work performed after this date have been predetermined.

If work is to extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. The contractor should contact the Prevailing Wage Unit, DLSR, or the awarding body to obtain predetermined wage changes. All determinations that do not have double asterisks (\*\*) after the expiration date remain in effect for the life of the project.

NOTE: Authority cited: Section 1773.5, Labor Code.  
Reference: Sections 1770, 1773 and 1773.1, Labor Code.

#### HISTORY

1. Amendment of subsections (a)(3) and (b) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).
2. Amendment of subsection (a)(3), repealer and new subsection (b) and amendment of Note filed 12-27-96; operative 1-26-97 (Register 96, No. 52).
3. Change without regulatory effect repealing 12-27-96 amendments to section and Note filed 2-19-99 (Register 99, No. 8). Pursuant to Sacramento Superior Court Order Issued 6-4-97 in Case 97CS 00471 the amendments filed 12-27-96 and effective 1-27-97 were invalidated and the prior regulations were reinstated.

#### §16205. Procedures for Obtaining Prevailing Wage Determinations.

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An awarding body may request to be put on a mailing list for all area wage determinations for a specific county or counties or may request that a special or general prevailing wage determination be furnished when needed, by writing to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142. All requests for special prevailing wage determinations must be confirmed in writing and must specify the location where the public work is to be performed, including the county and the particular crafts, classifications, or types of workers for which a determination is needed.

NOTE: Authority cited: Section 1773.5, Labor Code.  
Reference: Sections 1770 and 1773, Labor Code.

#### HISTORY

1. Amendment filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

#### §16206. Corrections.

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Upon his or her own initiative or at the request of any interested party, the Director shall correct any error in a published determination that is the result of clerical error, such as a typographical error or a transposition of letters or digits, by issuing a corrected determination or a modification of the determination. The Director may correct any error issued in a determination by reissuing such determination.

NOTE: Authority cited: Section 1773.5, Labor Code.  
Reference: Sections 1770 and 1773, Labor Code.

#### §16300. Delegation of Authority.

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(a) The Chief of DLSR is the authorized representative of the Director for the purpose of:

(1) Receiving collective bargaining agreements and other documents and papers pertaining to making prevailing wage determinations under Part 7, Chapter 1, Article 2 of the Labor Code and these regulations;

(2) Gathering information needed to make prevailing wage determinations under Part 7, Chapter 1, Article 2 of the Labor Code and these regulations, and may for that purpose institute investigations, conduct hearings, or employ such other means as shall best serve the purpose of the law;

(3) Issuing prevailing wage determinations under Part 7, Chapter 1, Article 2 of the Labor Code and these regulations; and

(4) Responding to petitions regarding determinations.

(b) The Director reserves the right to make all final determinations.

NOTE: Authority cited: Section 1773.5, Labor Code.  
Reference: Sections 1770, 1771, 1772, 1773 et seq.,

1774, 1775, 1776, 1777, 1777.5 et seq., 1778, 1779 and 1780, Labor Code.

#### **§16301. Referral of Prevailing Wage Issues to Director's Office.**

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Any new or unresolved issue other than of a routine nature as to coverage of or amount of the prevailing wage raised by an awarding body or other interested party may be referred to the Chief of DLSR as the Director's duly authorized representative for final determination, including appeals of any determination relating either to coverage or to the rate of the prevailing wage rate, subject only to Section 16300(b) of these regulations.

NOTE: Authority cited: Section 1773.5, Labor Code.  
Reference: Section 1773.4, Labor Code.

#### **§16302. Petition to Review Prevailing Wage Determinations.**

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Those interested parties enumerated in Section 1773.4 of the Labor Code, and defined in Section 16000 of these regulations, may file with the Director or the Chief of DLSR, within 20 days after commencement of advertising of a call for bids by any awarding body, a petition to review a determination of any rate or rates made by the Director, pursuant to Section 1773 of the Labor Code, which is specified in or referred to in the call for bids.

(a) Manner of Filing. Every petition filed pursuant to Section 1773.4 of the Labor Code shall be filed with the Director by mail to the Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, or may be filed in person at 455 Golden Gate Avenue, 5th Floor, San Francisco, CA 94102.

(b) Filing. Where any paper, letter, petition, or document is required or permitted to be filed pursuant to these regulations or pursuant to the prevailing wage provisions of the Labor Code, it shall be deemed filed with any person, awarding body or division upon actual delivery to and receipt by such person, awarding body, or division.

(c) Content of Petition. Every petition filed pursuant to Section 1773.4 of the Labor Code shall contain and separately state the following:

(1) The name, address, telephone number and job title of:

(A) the person filing the petition;

(B) the person verifying the petition, if different from the person filing;

(C) if applicable, petitioner's attorney or authorized representative.

(2) Whether the petitioner is an awarding body, a prospective bidder, or the representative of one or more crafts, classifications or types of workers involved in the public works contract;

(3) The nature of petitioner's business, if a prospective bidder, and a designation of each craft, classification, or type of worker represented, or types of workers involved in the public works project.

(4) (A) the official name of the awarding body;

(B) the date on which the call for bids was first published;

(C) the name and location of the newspaper in which such publication was made. An accurate copy of the call for bids as published shall be attached to the petition.

(5) If petitioner is an awarding body which is a department, board, authority or political subdivision other than a county, city and county, city, township, or regional district, the awarding body shall describe the parent or principal organization of which it is a part, and shall specify the statutory authority for undertaking public works.

(6) If the petitioner is a prospective bidder, then the parent or subsidiary corporations or associations related to such craft, classification or type of work, if any, shall be specified.

(7) The manner in which the wage rate determined by the Director fails to comply with the provisions of Labor Code Section 1773.



(A) Every petition asserting that the applicable prevailing rate for one or more crafts, classifications or types of workers needed to execute a contract is different from that ascertained by the Director shall set forth the rate the petitioner claims to be correct for each disputed rate, together with specific reference to particular facts providing the basis for such claim.

1. Whenever such facts relate to a particular employer of such crafts, classifications, or types of workers, the facts stated must identify the employer by name and address and give the number of workers involved.

2. Whenever such facts relate to an applicable collective bargaining agreement which the petitioner alleges was not considered by the Director pursuant to Section 1773 of the Labor Code, a copy of the agreement, if not already filed with the Director, should be filed concurrently with the petition in the manner provided in Section 16200(a)(1) of these regulations.

3. Whenever such facts relate to rates actually paid on public or private projects under construction or recently completed in the locality and in the nearest labor market area, the facts stated should include all of the items of information enumerated in Section 16200(e) of these regulations.

(B) Every petition asserting that the Director has failed to ascertain and consider all applicable rates required to be considered by it shall specifically state in the petition which rates have not been considered by the Director.

(C) Where rates ascertained by the Director are the same as the applicable rates established by the collective bargaining agreement and rates of pay determined for federal public works within the locality and the nearest labor market area where the public work is performed, the petition shall specifically describe the manner and extent to which such rates do not constitute the rates actually prevailing in the locality where the public work is to be performed, and shall set forth and fully identify the existence of any rates asserted by petitioner to be prevailing in the locality and relied upon in support of the petition.

(d) Filing Copy With Awarding Body. If the petitioner is not an awarding body, the petitioner may concurrently with the filing of the original petition, or otherwise shall within two days

thereafter, excluding Saturdays, Sundays and holidays, file a copy of the petition with the awarding body and not later than five days, excluding Saturdays, Sundays and holidays, after the filing of the original petition, the petitioner shall file with the Chief of DLSR an affidavit of the filing with the awarding body. The Director may waive this requirement upon receipt of written confirmation, including a copy of such notification by the petitioner.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1773, 1773.1, 1773.4, 1773.5, 1773.8 and 1776, Labor Code.

## HISTORY

1. Amendment of subsection (a) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

### §16303. Quasi-Legislative Nature of Authority.

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(a) The authority of the Director to establish the prevailing wage for any craft, classification, or type of worker is quasi-legislative. The Director has the discretion to establish these prevailing wages in a quasi-legislative manner which may include an investigation, hearing, or other action. Any hearing under this process is quasi-legislative and is subject to review pursuant to the Code of Civil Procedure Section 1085.

(b) The Director may in his or her discretion initiate an investigation or hold a hearing or take such other action as is reasonably necessary which would best effectuate the purposes of the law and of these regulations, except as such action may be expressly prohibited by law.

NOTE: Authority cited: Section 1773.5, Labor Code; and Winzler & Kelly (1981) 121 C.A. 3d 120; Western Assn. of Engineers & Land Surveyors v. DIR, Judicial Council Coord. Proceeding No. 449, Sac. Superior Court No. 285433. Reference: Sections 1770, 1773 and 1773.4, Labor Code; and Section 1085, Code of Civil Procedure.

### §16304. Hearings.

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When a hearing is held, including a petition to review under Labor Code Section 1773.4, it shall be in accordance with the following procedures:

(a) Hearing Procedures.

(1) A time and place of the hearing shall be fixed.

(2) All interested parties made known to the Director shall be notified by registered or certified mail, return receipt requested, of the time and place of the hearing except that, in the event of numerous interested parties or in the event that mailing notices by registered or certified mail could cause an undue delay adverse to the interest of the parties or a timely hearing, the Director may send certified or registered notices to the petitioner and other directly interested parties that have been made known to the Director and mail notices to the other parties, and publish such notices in newspapers.

(3) Notification of the time and place of the hearing shall be at least one week in advance.

(4) The interested parties shall be given an opportunity to present evidence and oral or written arguments in support of their positions. The hearing officer may fairly allocate time for such witnesses' testimony in the interest of introducing relevant evidence. Cross examination will be permitted at the discretion of the hearing officer.

(5) The hearing need not be conducted according to technical rules relating to evidence and witnesses.

(6) All witnesses testifying before the hearing officer shall testify under oath.

(7) A full transcript of the hearing shall be recorded.

(b) Hearing Officer. The Director may appoint a hearing officer(s). The appointed hearing officer(s) shall conduct the hearing and submit to the Director the entire record of the hearing together with written recommendations. Either the appointed hearing officer(s) or the Director may request documentation subsequent to the hearing to complete the record, and shall send copies of such additional information to the petitioner, awarding body or other designated interested party or parties.

(c) Subject Matter. The subject matter of a hearing may be initiated by a petition to review, as set forth in Labor Code Section 1773.4.

(d) Decision. The decision of the Director shall reflect a summary of the evidence, findings, or matters of fact and/or law.

The decision shall be sent to all parties no later than 20 days after the hearing, except earlier or later as special circumstances warrant. The decision of the Director shall be final, for the purposes of judicial review, except that the Director upon his or her initiative only, may consider and take whatever action is appropriate or necessary to facilitate a decision on reconsideration. Notice of reconsideration shall be given to all parties in the same manner as the notice of hearings as specified in Sections 16304(a)(2) and (a)(3) above and the decision upon reconsideration shall be as specified in subdivisions (a)(2) and (a)(3) of this section.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1773.4 and 1773.5, Labor Code.

#### **§16400. Request for Payroll Records.**

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(a) Requests may be made by any person for certified copies of payroll records. Requests shall be made to any of the following:

(1) the body awarding the contract, or

(2) any office of the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards.

(b) Requests for certified copies of payroll records pursuant to Section 1776 of the Labor Code may be made by any person. However, any such request shall be in writing and contain at least the following information:

(1) The body awarding the contract;

(2) The contract number and/or description;

(3) The particular job location if more than one;

(4) The name of the contractor;

(5) The regular business address, if known.

NOTE: Requests for records of more than one contractor or subcontractor must list the information regarding that contractor individually, even if all requests pertain to the same particular public works project. Blanket requests covering an entire public works project will not be accepted; unless contractor and subcontractor responsibilities regarding the project are not clearly defined.

(c) Acknowledgment of Request. The public entity receiving a request for payroll records shall acknowledge receipt of such, and indicate the cost of providing the payroll records based on an estimate by the contractor, subcontractor or public entity. The acknowledgment of the receipt of said request for payroll records may be accomplished by the public entity's furnishing a copy of its written correspondence requesting certified copies of the payroll records sent to the specific contractor pursuant to Section 16400(d) below, to the person who requested said records.

(d) Request to Contractor. The request for copies of payroll records by the requesting public entity shall be in any form and/or method which will assure and evidence receipt thereof. The request shall include the following:

(1) Specify the records to be provided and the form upon which the information is to be provided;

(2) Conspicuous notice of the following:

(A) that the person certifying the copies of the payroll records is, if not the contractor, considered as an agent acting on behalf of the contractor; and

(B) that failure to provide certified copies of the records to the requesting public entity within 10 working days of the receipt of the request will subject the contractor to a penalty of twenty-five (\$25.00) dollars per calendar day or portion thereof for each worker until strict compliance is effectuated;

(3) Cost of preparation as provided in Section 16402; and

(4) Provide for inspection.

(e) Inspection of Payroll Records. Inspection of the original payroll records at the office of the

contractor(s) pursuant to subdivision (b) of Section 1776 of the Labor Code shall be limited to the public entities upon reasonable written or oral notice.

NOTE: Authority cited: Sections 54, 1773.5 and 1776, Labor Code. Reference: Sections 1773.5 and 1776, Labor Code.

#### §16401. Reporting of Payroll Requests.

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(a) Reporting Format. The format for reporting of payroll records requested pursuant to Labor Code Section 1776 shall be on a form provided by the public entity. Copies of the forms may be procured at any office of the Division of Labor Standards Enforcement (DLSE) throughout the state and/or:

Division of Labor Statistics & Research P.O. Box 420603 San Francisco, CA 94101

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Acceptance of any other format shall be conditioned upon the requirement that the alternate format contain all of the information required pursuant to Labor Code Section 1776. If, however, the contractor does not comply with the provisions of Labor Code Section 1776, the Labor Commissioner may require the use of DIR's suggested format, "Public Works Payroll Reporting Form" (Form A-1-131).

(b) Words of Certification. The form of certification shall be as follows: I, \_\_\_\_\_ (Name-print) the undersigned, am \_\_\_\_\_ (position in business) with the authority to act for and on behalf of \_\_\_\_\_, (name of business and/or contractor) certify under penalty of perjury that the records or copies thereof submitted and consisting of \_\_\_\_\_ (description, no. of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

A public entity may require a more strict and/or more extensive form of certification.

NOTE: Authority cited: Sections 54 and 1773.5, Labor Code. Reference: Section 1776, Labor Code.

#### §16402. Cost.

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The cost of preparation to each contractor, subcontractor, or public entity when the request was made shall be provided in advance by the person seeking the payroll record. Such cost shall be \$1 for the first page of the payroll record and 25 cents for each page thereafter, plus \$10 to the contractor or subcontractor for handling costs. Payment in the form of cash, check or certified money order shall be made prior to release of the documents to cover the actual costs of preparation.

NOTE: Authority cited: Section 1776, Labor Code. Reference: Section 1776(h), Labor Code.

#### §16403. Privacy Considerations.

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(a) Records received from the employing contractor shall be kept on file in the office or entity that processed the request for at least 6 months following completion and acceptance of the project. Thereafter, they may be destroyed unless administrative, judicial or other pending litigation, including arbitration, mediation or other methods of dispute resolution, are in process. Copies on file shall not be obliterated in the manner prescribed in subdivision (b) below;

(b) copies provided to the public upon written request shall be marked, obliterated or provided in such a manner that the name, address and Social Security number, and other private information pertaining to each employee cannot be identified. All other information including identification of the contractor shall not be obliterated;

(c) the public entity may affirm or deny that a person(s) was or is employed on a public works contract (by a specific contractor) when asked, so long as the entity requires such information of an identifying nature which will reasonably preclude release of private or confidential information.

NOTE: Authority cited: Sections 54, 1773.5 and 1776, Labor Code. Reference: Section 1776, Labor Code.

#### §16404. Use of Electronic Reporting Forms.

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The certified payroll records required by Labor Code Section 1776 may be maintained and submitted electronically subject to all of the following conditions:

(a) The reports must contain all of the information required by Labor Code Section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of Industrial Relations' suggested "Public Works Payroll Reporting Form" (Form A-1-131);

(b) The reports shall be in a format and use software that is readily accessible and available to contractors, awarding bodies, Labor Compliance Programs, and the Department of Industrial Relations;

(c) Reports submitted to an awarding body, a Labor Compliance Program, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;

(d) The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to Labor Code Section 1776(e), whether the records are provided electronically or as hard copies; and

(e) No contractor or subcontractor shall be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

Note: Authority cited: Sections 54, 55, 1773.5 and 1776, Labor Code. Reference: Section 1776, Labor Code.

#### HISTORY

1. New section filed 12-22-2008; operative 1-21-2009 (Register 2008, No.52).

## APPENDIX C

CODE OF FEDERAL REGULATIONS, TITLE 29 PART 5

PUBLIC WORKS REQUIREMENTS

IMPLEMENTING REGULATIONS

## Title 29: Labor

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### **PART 5 — Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)**

AUTHORITY: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.*; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 *et seq.*; and the laws listed in 5.1(a) of this part; Secretary's Order 01-2008; and Employment Standards Order No. 2001-01.

SOURCE: 48 FR 19541, Apr. 29, 1983, unless otherwise noted.

#### **Subpart A—Davis-Bacon and Related Acts Provisions and Procedures**

SOURCE: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart A appear at 61 FR 19984, May 3, 1996.

#### **§ 5.1 Purpose and scope.**

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).

2. Copeland Act (40 U.S.C. 276c).

3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).

4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).

13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).

16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2)).

thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592j).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). NOTE. Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).



60. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

## § 5.2 Definitions.

(a) The term *Secretary* includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term *Federal agency* means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term *Agency Head* means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term *Contracting Officer* means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term *labor standards* as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in parts 1 and 3 of this subtitle and this part.

(g) The term *United States or the District of Columbia* means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term *contract* means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms *building* or *work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a *building* or *work* within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms *construction*, *prosecution*, *completion*, or *repair* mean the following:

(1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (l) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation—

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv) (A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor

or a construction subcontractor is not "construction, prosecution, completion, or repair" (see *Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.)*, 932 F.2d 985 (D.C. Cir. 1991)).

(k) The term *public building or public work* includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term *site of the work* is defined as follows:

(1) *The site of the work* is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, *provided* that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the *site of the work*, *provided* they are dedicated exclusively, or nearly so, to performance of the contract or project, *and provided* they are adjacent or virtually adjacent to the *site of the work* as defined in paragraph (l)(1) of this section;

(3) Not included in the *site of the work* are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph (l)(1) of this section, are not included in the *site of the work*. Such permanent, previously established facilities are not part of the *site of the work*, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term *laborer or mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer or mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(n) The terms *apprentice*, *trainee*, and *helper* are defined as follows:

(1) *Apprentice* means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training,

Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the 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 Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) *Trainee* means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to *apprentices* and *trainees* employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of "helper" will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A "helper" classification will be added to wage determinations pursuant to § 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term *wages* means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term *wage determination* includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55 FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69693, Nov. 20, 2000; 65 FR 80278, Dec. 20, 2000]

#### §§ 5.3-5.4 [Reserved]

#### § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 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 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) 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.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

( 7) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

( 2) The classification is utilized in the area by the construction industry; and

( 3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the 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, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) 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.

(iv) 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.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) 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 same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the 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, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the 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 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 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.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security

numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) 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:

( 7) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

( 2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

( 3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the 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.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized

representatives of the (write the name of the agency) 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 owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees —*

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, 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 Office of Apprenticeship Training, Employer and Labor Services 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 a 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 journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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.

(ii) *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.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *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.

(6) *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 (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *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.

(8) *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.

(9) *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.

(10) *Certification of eligibility.* (i) 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 firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

| Paragraph     | OMB Control Number |
|---------------|--------------------|
| (a)(1)(ii)(B) | 1215-0140          |
| (a)(1)(ii)(C) | 1215-0140          |
| (a)(1)(iv)    | 1215-0140          |
| (a)(3)(i)     | 1215-0140,         |
|               | 1215-0017          |
| (a)(3)(ii)(A) | 1215-0149          |
| (c)           | 1215-0140,         |
|               | 1215-0017          |

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

EFFECTIVE DATE NOTE: At 58 FR 58955, Nov. 5, 1993, § 5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

## § 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to § 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain

compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total \$1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

### § 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than \$1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

#### **§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.**

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages 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 any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of \$500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefore. The order shall be the final decision of the Department of Labor, unless a petition for review is filed

pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is \$500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 51 FR 13496, Apr. 21, 1986]

#### **§ 5.9 Suspension of funds.**

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

#### **§ 5.10 Restitution, criminal action.**

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

#### **§ 5.11 Disputes concerning payment of wages.**



(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefore, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or

subcontractor(s) shall file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

#### **§ 5.12 Debarment proceedings.**

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a

request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefore, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 CFR part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the

statutes listed in § 5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefore, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No

particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrative Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR part 6.

(5) *Referral to the Administrative Review Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR part 7.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

### **§ 5.13 Rulings and interpretations.**

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

### **§ 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.**

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

### **§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.**

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of

Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The “basic rate of pay” under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the “regular rate” under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the “basic rate” under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance sub delegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling \$500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than  $1\frac{1}{2}$  times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than \$300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or

subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1215-0140 and 1215-0017. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1215-0017)

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 61 FR 40716, Aug. 5, 1996]

#### **§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.**

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

#### **§ 5.17 Withdrawal of approval of a training program.**

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

## **Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act**

SOURCE: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

### **§ 5.20 Scope and significance of this subpart.**

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in § 5.12.

### **§ 5.21 [Reserved]**

### **§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.**

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in § 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of § 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms “wages”, “scale of wages”, “wage rates”, “minimum wages” and “prevailing wages”, as used in the Davis-Bacon Act.

### **§ 5.23 The statutory provisions.**

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages” shall include—

- (1) The basic hourly rate of pay; and
- (2) The amount of—

(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits \* \* \*.

### **§ 5.24 The basic hourly rate of pay.**

“The basic hourly rate of pay” is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

### **§ 5.25 Rate of contribution or cost for fringe benefits.**

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See § 5.5(a)(1)(i) and (iii).

### **§ 5.26 “\* \* \* contribution irrevocably made \* \* \* to a trustee or to a third person”.**

Under the fringe benefits provisions (section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The “third person” must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of

sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

#### § 5.27 “\* \* \* fund, plan, or program”.

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase “fund, plan, or program” is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

#### § 5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words “reasonably anticipated” are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be “bona fide” and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by § 5.5(a)(1)(iv).

#### § 5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term “other bona fide fringe benefits” is the so-called “open end” provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6.)

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be “bona fide” (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is “bona fide” in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional

plans without requesting the approval of the Secretary of Labor under § 5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are “bona fide” in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under § 5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

### § 5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

| Classes      | Basic hourly rates | Fringe benefits payments |          |           |                        |        |
|--------------|--------------------|--------------------------|----------|-----------|------------------------|--------|
|              |                    | Health and welfare       | Pensions | Vacations | Apprenticeship program | Others |
| Laborers     | \$3.25             |                          |          |           |                        |        |
| Carpenters   | 4.00               | \$0.15                   |          |           |                        |        |
| Painters     | 3.90               | .15                      | \$0.10   | \$0.20    |                        |        |
| Electricians | 4.85               | .10                      | .15      |           |                        |        |
| Plumbers     | 4.95               | .15                      | .20      |           | \$0.05                 |        |
| Ironworkers  | 4.60               |                          |          | .10       |                        |        |

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

### § 5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for “bona fide” fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of § 5.30, the obligations for “painters” will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for “bona fide” fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for “painters” in the illustration in paragraph (c) of § 5.30 will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributions of not less than a total of 45 cents an hour for “bona fide” fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for “painters” in the illustration in paragraph (c) of § 5.30, by paying directly to the painters a straight time hourly rate of not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for “painters” may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be \$4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be \$3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

### § 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase "contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics

\$3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of \$3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying \$3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of \$3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be \$3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the \$3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying \$3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as \$1 an hour. In this example the regular or basic hourly rate would continue to be \$3 an hour. See S. Rep. No. 963, p. 7.

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## APPENDIX D

### DAVIS-BACON AND RELATED ACTS

## The Davis-Bacon Act, as Amended

WH Publication 1246

(Revised April 2009)

**PUBLIC LAW 107-217-AUG. 21, 2002 [as amended <sup>1</sup>]**

### AN ACT

To revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, "Public Buildings, Property, and Works".

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. TITLE 40, UNITED STATES CODE.

Certain general and permanent laws of the United States, related to public buildings, property, and works, are revised, codified, and enacted as title 40, United States Code, "Public Buildings, Property, and Works", as follows:

#### TITLE 40-PUBLIC BUILDINGS, PROPERTY, AND WORKS

\* \* \* \* \*

#### SUBTITLE II-PUBLIC BUILDINGS AND WORKS

#### PART A-GENERAL

\* \* \* \* \*

#### CHAPTER 31 - GENERAL

\* \* \* \* \*

#### SUBCHAPTER IV - WAGE RATE REQUIREMENTS

### Sec. 3141. Definitions

In this subchapter, the following definitions apply:

- (1) Federal government.- The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).<sup>2</sup>
- (2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include-
  - (A) the basic hourly rate of pay; and
  - (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-
    - (i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and
    - (ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

### Sec. 3142. Rate of wages for laborers and mechanics

- (a) Application.- The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.
- (b) Based on Prevailing Wage.- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.

- (c) Stipulations Required in Contract.- Every contract based upon the specifications referred to in subsection (a) must contain stipulations that-
  - (1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;
  - (2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and
  - (3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.
- (d) Discharge of Obligation.- The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141 (2) (B) (i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141 (2) (B) (ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141 (2) (B) of this title.
- (e) Overtime Pay.- In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141 (2) (A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141 (2) (B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141 (2) (B) of this title but not actually paid.

**Sec. 3143. Termination of work on failure to pay agreed wages**

Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.

**Sec. 3144. Authority of Comptroller General to pay wages and list contractors violating contracts**

- (a) Payment of Wages.-
  - (1) In general.- The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.
  - (2) Right of action.- If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.
- (b) List of Contractors Violating Contracts.-
  - (1) In general.- The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

- (2) Restriction on awarding contracts.- No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

\* \* \* \* \*

**Sec. 3146. Effect on other federal laws**

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

**Sec. 3147. Suspension of this subchapter during a national emergency**

The President may suspend the provisions of this subchapter during a national emergency.

**Sec. 3148. Application of this subchapter to certain contracts**

This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.

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1. Pub. L. 109-284 Sec. 6(11), (12), and (13) made three minor technical corrections in Secs 3141(1), and 3142(d) and (e). (Sept. 27, 2006, 120 Stat.1213.)

2. The Davis-Bacon Act, referred to in par. (1), is act of Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which was classified generally to sections 276a to 276a-5 of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as sections 3141-3144, 3146, and 3147 of this title by Pub. L. 107-217, Secs. 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

APPENDIX E

METRO DOCUMENTS

***Please note, these documents are included for reference only. The most recent documents are available for download on Metro's online monitoring system.***

***Documents not included in this Appendix are available for creation through Metro's online monitoring system.***

**Los Angeles County Metropolitan Transportation Authority Labor Compliance Document Submittal Schedule**

**Please upload all compliance documents to LCP Tracker**

| Document Name                                                                      | Applicable Entity                                                        | Applicable Contractors   | Frequency                            | Due Date to Metro                                                                  | Notes                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|--------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Public Works Contract Award Information Form (DAS 140)                             | All contractors using apprenticeable trades                              | Both Union and Non-Union | One Time Document                    | Within ten (10) days of the date of execution of the Prime Contract or subcontract | MUST BE UPLOADED BEFORE START OF WORK ON PROJECT. Original(s) to be submitted to appropriate Apprenticeship Committee(s) and a copy, with proof of transmittal uploaded to LCP Tracker<br>**Only exception are non-apprenticeable trades  |
| Request to Dispatch Apprentice Form 142 (DAS 142)                                  | All Contractors using apprenticeable trades - Non Union Contractors Only | Non-Union                | One Time Document                    | Within ten (10) days of the date of execution of the Prime Contract or subcontract | MUST BE UPLOADED BEFORE START OF WORK ON PROJECT. Original (s) to be submitted to appropriate Apprenticeship Committee(s) and a copy, with proof of transmittal uploaded to LCP Tracker<br>**Only exception are non-apprenticeable trades |
| Letter to the Union (LTU)                                                          | All Union Contractors                                                    | Union                    | One Time Document                    | Within ten (10) days of the date of execution of the Prime Contract or subcontract | MUST BE UPLOADED BEFORE START OF WORK ON PROJECT. Original(s) to be submitted to appropriate Union and a copy uploaded LCP Tracker                                                                                                        |
| Subcontractor Agreement                                                            | All subcontractors on Federally Funded contracts                         | Both Union and Non-Union | One Time Document                    | Within ten (10) days of the date of execution of the Prime Contract or subcontract | MUST BE UPLOADED BEFORE START OF WORK ON PROJECT. Portion of the subcontractor agreement containing the 29 CFR 5.5 requirements should be uploaded to LCPtracker.<br>**For Federally Funded contracts only                                |
| Fringe Benefit Statement (FBS)                                                     | All Contractors                                                          | Both Union and Non-Union | One Time Document / Update as Needed | With first Certified Payroll and updated as information changes.                   | PLEASE UPLOAD TO LCPtracker. In the event fringe benefits are paid in cash to workers, the contractor should upload the FBS statement indicating so.                                                                                      |
| Certificate Appointing Employee/Officer to Supervise Employee Payments (HC-1001)   | All Contractors                                                          | Both Union and Non-Union | One Time Document / Update as Needed | Within ten (10) days of the date of execution of the Prime Contract or subcontract | PLEASE UPLOAD ORIGINALS TO LCPtracker. This form should be reuploaded if and when a new Payroll Officer is appointed.                                                                                                                     |
| Certificate Concerning Labor Standards and Prevailing Wage Requirements (Form 144) | All Contractors                                                          | Both Union and Non-Union | One Time Document                    | Within ten (10) days of the date of execution of the Prime Contract or subcontract | PLEASE UPLOAD TO LCPtracker.                                                                                                                                                                                                              |

Los Angeles County Metropolitan Transportation Authority Labor Compliance Document Submittal Schedule

Please upload all compliance documents to LCP Tracker

| Document Name                                                        | Applicable Entity                                 | Applicable Contractors   | Frequency         | Due Date to Metro                                                                                                                                              | Notes                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------|---------------------------------------------------|--------------------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affidavit of Compliance with California Prevailing Wage Law          | All Contractors                                   | Both Union and Non-Union | One Time Document | Within sixty (60) days after concluding work on the contract.                                                                                                  | <b>PLEASE UPLOAD TO</b> LCPtracker Each contractor and subcontractor is obligated by LC code 1777.5(e) to submit the ratios of apprentice and journeyman hours for each classification used to the appropriate apprenticeship committees within sixty (60) days after concluding work on the contract. |
| Certified Payroll Report (CPR) and Statement of Non-Performance (NP) | All Contractors                                   | Both Union and Non-Union | Weekly Submittal  | Federally funded contracts: Within seven (7) days of the end of the payroll period. State Funded: Within ten (10) days of <b>the end of the payroll</b> period | To be entered <b>in LCP Tracker</b> . If no work was performed that period, please submit a <b>statement of Non-Performance</b>                                                                                                                                                                        |
| Statement of Compliance (SOC)                                        | All Contractors                                   | Both Union and Non-Union | Weekly Submittal  | Within seven (7) to ten (10) days of the end of the payroll period                                                                                             | Automatically generated by LCP Tracker when CPR/NP are uploaded                                                                                                                                                                                                                                        |
| Owner Operator Listing                                               | Owner Operators Only                              | Both Union and Non-Union | Weekly Submittal  | Within ten (10) days of the end of the payroll period                                                                                                          | <b>PLEASE UPLOAD TO</b> LCPtracker. All Owner Operators are to be reported on this form. If no work is to be performed, please upload a Statement of Non-Performance                                                                                                                                   |
| CAC Training Fund Contributions (CAC)                                | <b>All Contractors Non Union Contractors Only</b> | Non-Union                | Monthly Submittal | Within fifteen (15) days of the end of the reporting month                                                                                                     | <b>PLEASE UPLOAD A COPY OF THE ACCOMPANYING CHECK WITH A COPY OF THE CAC.</b> All training contributions on behalf of employees to the California Apprenticeship Council shall be uploaded on this form.                                                                                               |
| Employer's Monthly Report to Trustees                                | All Contractors • Union Contractors Only          | Union                    | Monthly Submittal | Within fifteen (15) days of the end of the reporting month                                                                                                     | PLEASE UPLOAD A COPY OF <b>THE ACCOMPANYING CHECK WITH A COPY OF EACH TRUST FUND REPORT</b> . Letters of Good Standing are not acceptable.                                                                                                                                                             |

**Los Angeles County Metropolitan Transportation Authority Labor Compliance Document Submittal Schedule**  
**Please upload all compliance documents to LCP Tracker**

| Document Name                                             | Applicable Entity                                     | Applicable Contractors   | Frequency           | Due Date to Metro                                          | Notes                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------|-------------------------------------------------------|--------------------------|---------------------|------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Monthly Employment Utilization Report (MEUR)              | All Contractors                                       | Both Union and Non-Union | Monthly Submittal   | Within fifteen (15) days of the end of the reporting month | <b>PLEASE UPLOAD TO</b> LCPtracker. The Prime Contractor shall upload a signed report for its aggregate Project work force. Each subcontractor shall separately upload a report to its aggregate Project work force. See How-To guide on how to generate MEURs with LCPtracker                                                |
| List of Contractors and Subcontractors Working on Project | Any contractor acting as a prime (has subcontractors) | Both Union and Non-Union | Monthly Submittal   | Within five (5) days of the end of the reporting month     | <b>PLEASE UPLOAD TO</b> LCPtracker All Information on the form is required                                                                                                                                                                                                                                                    |
| Authorization for Payroll Deduction                       | All Contractors                                       | Both Union and Non-Union | As Needed Submittal | With the first Certified Payroll they appear on            | All non-standard deductions in payroll must be accounted for. Copies of court orders, tax liens, etc. will be accepted as proof. If Prime or subcontractor has no record on file showing employee's authorization for deduction, Metro form with original signature must be submitted.<br><b>PLEASE UPLOAD TO LCPtracker.</b> |
| Apprentice Certification                                  | All Contractors                                       | Both Union and Non-Union | As Needed Submittal | With the first Certified Payroll they appear on            | Copies of apprentice certification for all utilized apprentices shall be <b>UPLOADED TO</b> LCPtracker with the first payroll they appear on. All apprentices shall be certified by the State of California. For Federally-Funded contracts, Bureau of Apprentice Training certificated must be submitted every 90 days       |
| Superintendents' Daily Log                                | Prime                                                 | Both Union and Non-Union | As Needed Submittal | When requested                                             | Superintendents' Daily Log shall be maintained and be <b>UPLOADED</b> upon request.                                                                                                                                                                                                                                           |



## PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not **approved to train, you** must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/databasesidaslpwaddrstarLasp> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

|                                                                           |                                             |
|---------------------------------------------------------------------------|---------------------------------------------|
| NAME OF YOUR COMPANY                                                      | CONTRACTORS STATE LICENSE NO                |
| MAILING ADDRESS- NUMBER & STREET, CRY, ZIP CODE                           | AREA CODE & TELEPHONE NO.                   |
| NAME & ADDRESS OF PUBLIC WORKS PROJECT                                    | DATE YOUR CONTRACT EXECUTED                 |
|                                                                           | DATE OF EXPECTED OR ACTUAL START OF PROJECT |
| NAME & ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT                          | ESTIMATED NUMBER OF JOURNEYMEN HOURS        |
|                                                                           | OCCUPATION OF APPRENTICE                    |
| THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S)) | ESTIMATED NUMBER OF APPRENTICE HOURS        |
|                                                                           | APPROXIMATE DATES TO BE EMPLOYED            |
|                                                                           |                                             |

***This is not a request for dispatch of apprentices.***

*Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations*

### Check One Of The Boxes Below

1. ☐ We are already approved to train apprentices by the \_\_\_\_\_  
Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee
  
2. ☒ We will comply with the standards of \_\_\_\_\_  
Apprenticeship Committee for the duration of this job only. Enter name of the Committee
  
3. ☒ We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature

Date

Typed Name

Title

State of California - Department of Industrial Relations DIVISION  
OF APPRENTICESHIP STANDARDS

## **Explanation to box 1- 3 on form DAS 140**

---

- Box 1 is for contractors who are already approved to train by an apprenticeship program (signatory/member).
- Box 2 indicates that a contractor is willing to comply with a program's Standards for the current project only. This generally means that the fringe benefits and the training funds will be paid to that Committee's Trust Fund. It also allows a contractor to take advantage of a more generous maximum ratio than the CAC Standards, but does not affect the minimum ratio of 1 apprentice hour for every 5 journeyman hours.
- Box 3 means that a contractor will be governed by the regulations of the California Apprenticeship Council. Generally this means that the minimum and maximum ratio for apprentices is the same —1 apprentice hour for every 5 journeyman hours per each craft, totaled at the end of the project. It also means the Training Fund Contribution is usually paid to the California Apprenticeship Council.



# REQUEST FOR DISPATCH OF AN APPRENTICE - DAS 142 FORM

DO NOT SEND THIS FORM TO DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/databases/das/pwaddrstart.asp> for information about programs in your area and trade. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. Except for projects with less than 40 hours of journeymen work, you must request and employ apprentices in no less than 8 hour increments.

List one occupation/craft per form

|                                         |                                 |
|-----------------------------------------|---------------------------------|
| Date:                                   | Contractor Requesting Dispatch: |
| To Applicable Apprenticeship Committee: | Name:                           |
| Name:                                   | Address:                        |
| Address:                                |                                 |
|                                         |                                 |
|                                         | License No.                     |
| Tel. No. Fax No.                        | PWC Registration Number:        |
|                                         | Tel. No. Fax No.                |
|                                         |                                 |

Project Information: PWC Project Number

Contract Number

Total Contract Amount.

Sub-Contract Amount

Name of the Project:

Address:

Dispatch Request Information:

Number of Apprentice(s) Needed:

Craft or Trade:

Date Apprentice(s) to Report:

(72 hrs. notice required)

Time to Report:

Name of Person to Report to:

Address to Report to:

You may use this form to make your written request for the dispatch of an apprentice. Requests for dispatch must be in writing and submitted at least 72 hours in advance (excluding weekends and holidays) via first class mail, fax or email. Proof of submission may be required. Please take note of California Code of Regulations, Title 8, § 230.1 (a) for all applicable requirements regarding apprenticeship requests and/or visit <https://www.dir.ca.gov/das/PublicWorksForms.htm>

DAS 142 (Revised 10/18)

## **SAMPLE LETTER TO UNION REPRESENTATIVE**

Date

To  
Address  
City/State/Zip

Subject:

To Whom It May Concern:

As a contractor/subcontractor on the subject project located in \_\_\_\_\_  
we are notifying you that this project is a public works project and falls under EEO  
requirements for minority and female workforce utilization.

In accordance with those requirements, we are advising you that we are committed to  
achieving the current goals of 28.3% minority utilization and 6.9% female utilization  
for each trade on this project.

We are hereby requesting that you keep this letter on file and that you and your  
members provide all cooperation and assistance possible in helping us attain these  
goals.

Sincerely,

Company Representative

Cc: Metro Labor Compliance Representative

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
FRINGE BENEFITS STATEMENT

INSTRUCTIONS: This form is to be submitted with the first certified payroll. In order that the proper Fringe Benefit rates *can* be used for checking payrolls or applied to Force Account work which may be done on the above contract the hourly rates for fringe benefits, subsistence and/or travel allowance payment (as required by collective bargaining agreements) made for employees on the various classes of work are tabulated below.  
THIS DOCUMENT CONTAINS PERSONAL INFORMATION AND, PURSUANT TO CIVIL CODE 1796.21, IT SHALL BE KEPT CONFIDENTIAL IN ORDER TO PROTECT AGAINST UNAUTHORIZED DISCLOSURE.

|                 |               |         |
|-----------------|---------------|---------|
| Contract #:     | Project Name: | Date:   |
| Contractor Name | Prime:        | PW-DET: |

**NON UNION SUBCONTRACTORS: I CERTIFY THAT I AM A NON-UNION CONTRACTOR AND THE FBS IS NOT APPLICABLE TO THE CLASSIFICATIONS I AM UTILIZING ON THIS PROJECT ALL FRINGES WILL BE PAID DIRECTLY TO EACH EMPLOYEE AND TRAINING FUNDS WILL BE PAID MONTHLY TO THE CALIFORNIA APPRENTICESHIP COUNCIL FROM THE START OF THIS CONTRACT TO COMPLETION.**

|           |                        |              |
|-----------|------------------------|--------------|
| SIGNATURE | PRINTED NAME AND TITLE | PHONE NUMBER |
|-----------|------------------------|--------------|

|                 |                 |                            |
|-----------------|-----------------|----------------------------|
| Classification: | Effective Date: | Subsistence or Travel Pay: |
|-----------------|-----------------|----------------------------|

|                                 |                            |                            |
|---------------------------------|----------------------------|----------------------------|
| Health and Welfare<br>S         |                            | Trust Fund Paid To: (Name) |
|                                 |                            | Address:                   |
|                                 | Pension<br>S               | Trust Fund Paid To: (Name) |
|                                 |                            | Address:                   |
| Vacation/Holiday<br>S           | Trust Fund Paid To: (Name) |                            |
|                                 | Address:                   |                            |
| Training and/or Other<br>S<br>S | Trust Fund Paid To: (Name) |                            |
|                                 | Address:                   |                            |

|                 |                 |                            |
|-----------------|-----------------|----------------------------|
| Classification: | Effective Date: | Subsistence or Travel Pay: |
|-----------------|-----------------|----------------------------|

|                            |                            |                            |
|----------------------------|----------------------------|----------------------------|
| Health and Welfare<br>S    |                            | Trust Fund Paid To: (Name) |
|                            |                            | Address:                   |
|                            | Pension<br>S               | Trust Fund Paid To: (Name) |
|                            |                            | Address:                   |
| Vacation/Holiday<br>S      | Trust Fund Paid To: (Name) |                            |
|                            | Address:                   |                            |
| Training and/or Other<br>S | Trust Fund Paid To: (Name) |                            |
|                            | Address:                   |                            |

supplemental statement must be submitted during the progress of work should a change in rate of any of the classifications be made. I certify that the Fringe Benefits Payments are made to the approved plans fund or programs as listed above.

|           |                        |              |
|-----------|------------------------|--------------|
| Signature | Printed Name and Title | Phone Number |
|-----------|------------------------|--------------|

**CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO  
SUPERVISE PAYMENT OF EMPLOYEES**

Name of Contractor \_\_\_\_\_

Contract Name \_\_\_\_\_ Contract # \_\_\_\_\_

Location \_\_\_\_\_ Date \_\_\_\_\_

(I) (We) hereby certify that (I am)(We are)(the prime contractor)(a subcontractor) for

---

(Specify trade: "General Construction," "Plumbing," "Roofing," etc. and Description of Work)

in connection with construction of the above referenced Los Angeles County Metropolitan  
Transportation Authority (LACMTA) project, and that (I)(we) have

appointed \_\_\_\_\_

whose signature appears below, to supervise the payment of (my)(our) employees. (I) (We) certify  
that he/she is in a position to have knowledge of the facts set forth in the payroll documents and in  
the Statement of Compliance required by the Copeland Anti-Kickback Act, which he/she is to execute  
with (my)(our) full authority and approval until such time as (I)(We) submit to Metro a new  
certificate appointing some other person for the purposes hereinabove stated

|                             |                               |                                |
|-----------------------------|-------------------------------|--------------------------------|
|                             |                               |                                |
| <b>Appointee Signature</b>  | <b>Appointee Phone Number</b> | <b>Appointee Email Address</b> |
|                             |                               |                                |
| <b>Designator Signature</b> | <b>Designator Name</b>        | <b>Designator Phone Number</b> |

---

**NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee be changes, a new certificate must accompany the first payroll for which the new appointee executes a Statement of Compliance.**



# Metro

## LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

### CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATION

#### CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

|                                                                                                |                                                                            |
|------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| TO (Appropriate Recipient):<br><br>LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION<br>AUTHORITY | DATE:<br><br>LICENSE #:<br><br>FEDERAL ID #:<br><br>DIR Registration ID #: |
| NAME OF CONTRACTOR:                                                                            | CONTRACT AMOUNT:                                                           |
| SCOPE OF WORK:                                                                                 | PROJECT NAME AND NUMBER:<br>.....                                          |

1. The undersigned, having executed a contract with \_\_\_\_\_  
(PRIME – IF YOU ARE PRIME, ENTER SELF)

For the construction of the above identified project, acknowledges that:

- A. The Labor Standards provisions are included in the aforesaid contract;
- B. Correction of any infractions of the aforesaid conditions, including by any of his/her subcontractors and any lower tier subcontractors, is his/her responsibility.
- C. He/She is aware of the provisions of Section 1774 of the California Labor Code which requires that the State prevailing wage be paid to workmen employed in connection with the contract. He/she understands that requirements for payment of prevailing wages applies to the work he/she will perform for this project and agree to comply with such requirements. He/she further realizes that failure to comply provides for various penalties for violation of prevailing wage laws including penalties of up to \$500.00 each calendar day or portion thereof for each worker affected.

2. He/She certifies that:

- A No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such contractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. He/she agrees to obtain and forward to the aforementioned recipient within ten days after execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. He/she agrees that:

A. The legal name and the business address of the undersigned are:

---

---

B The undersigned is:

|                            |                                            |
|----------------------------|--------------------------------------------|
| 1) A single proprietorship | 3) A corporation organized In the State of |
| 2) A partnership           | 4) Other organization (Describe)           |

C The name, title, and address of the owner, partners or officers of the undersigned are:

| Name | Title | Address |
|------|-------|---------|
|      |       |         |
|      |       |         |
|      |       |         |
|      |       |         |

D The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are (if none, so state):

| Name | Address | Nature of Interest |
|------|---------|--------------------|
|      |         |                    |
|      |         |                    |
|      |         |                    |
|      |         |                    |
|      |         |                    |
|      |         |                    |
|      |         |                    |



- | <i>Name</i> | <i>Address</i> | <i>Trade Classification</i> |
|-------------|----------------|-----------------------------|
|             |                |                             |
|             |                |                             |
|             |                |                             |
|             |                |                             |
|             |                |                             |

- | Name | Scope of Work to Be Performed |
|------|-------------------------------|
|      |                               |

Form 144 Revised 08.05-2019

**AFFIDAVIT OF COMPLIANCE WITH CALIFORNIA PREVAILING WAGE LAW  
CALIFORNIA LABOR CODE SECTIONS 1720-1815**

|                 |  |                       |  |
|-----------------|--|-----------------------|--|
| Contract Number |  |                       |  |
| Contract Name   |  |                       |  |
| Contractor      |  | Prime Contractor Name |  |

**Provide the ratio information for all classification utilized on this contract.**

| Craft | Apprentice Hours | Journeyman Hours | Apprentice to Journeyman Ratio | Apprentice to Journeyman Percentage | DAS-142 was submitted to all apprenticeship training programs in the project's County-area (per CCR 230.1) while work was performed (Y/N) | Apprentice Committee(s) denied or failed to respond to request for apprentices (Y/N) |
|-------|------------------|------------------|--------------------------------|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
|       |                  |                  |                                |                                     |                                                                                                                                           |                                                                                      |
|       |                  |                  |                                |                                     |                                                                                                                                           |                                                                                      |
|       |                  |                  |                                |                                     |                                                                                                                                           |                                                                                      |
|       |                  |                  |                                |                                     |                                                                                                                                           |                                                                                      |
|       |                  |                  |                                |                                     |                                                                                                                                           |                                                                                      |
|       |                  |                  |                                |                                     |                                                                                                                                           |                                                                                      |
|       |                  |                  |                                |                                     |                                                                                                                                           |                                                                                      |
|       |                  |                  |                                |                                     |                                                                                                                                           |                                                                                      |
|       |                  |                  |                                |                                     |                                                                                                                                           |                                                                                      |

If number of utilized crafts exceeds the spaced provided above, use duplicate affidavit of compliance form to provide additional reporting information, as applicable.

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | I am familiar with the payroll practices of the Subcontractor on the Project. One of my duties and responsibilities is to ensure that Subcontractor complies with the California Prevailing Wage Law, California Labor Code sections 1720 through 1815 on the Project. I make this sworn statement pursuant to California Labor Code Sections 1775, subdivision (b)(4), and subdivision (d)(4).                                                                                                                                                     |
| 2 | I have reviewed the payroll practices and the payroll records for Subcontractor on the Project. Subcontractor has paid the specified prevailing rate of wages to each of its employees on the Project as required by the Prevailing Wage Law, and has paid any amounts due such employees under California Labor Code section 1813. Subcontractor has employed the required number of Apprentices on the Project.                                                                                                                                   |
| 3 | I have also reviewed the payroll practices of each Subcontractor's lower-tiered Subcontractors on the Project. Each of Subcontractor's lower-tiered Subcontractors has paid the specified prevailing rate of wages to its employees, has paid any amount due such employees under California Labor Code section 1813, has employed the required amount of Apprentices on the Project, and has provided Subcontractor with an affidavit that complies with California Labor Code sections 1775, subdivision (b) (4), and 1777.7, subdivision (d)(4). |
| 4 | I understand that Contractor is relying upon the truth of the contents of this sworn statement in making final payment to Subcontractor for work performed on the Project, and may suffer damages if my sworn representations were not true.                                                                                                                                                                                                                                                                                                        |
| 5 | This statement is submitted in accordance with California Labor Code section 1777.5(e).                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 6 | I, as the undersigned payroll administrator of this company, verify that the provided hours, percentages and ratios are correct. I declare under penalty of perjury that the foregoing is true and correct.                                                                                                                                                                                                                                                                                                                                         |

**Signature**

**Printed Name**

**Position**

**Date**

In accordance with CLC 1777.5(e), Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for **12** months

# Metro

## AUTHORIZATION FOR PAYROLL DEDUCTION

|                |  |       |  |
|----------------|--|-------|--|
| Contract Name: |  |       |  |
| Contract #:    |  | Date: |  |
| Contractor:    |  |       |  |

Name of Employee \_\_\_\_\_

Trade Classification of Employee. \_\_\_\_\_

Start Date of Deduction: \_\_\_\_\_

End Date of Deduction- \_\_\_\_\_

Deduction Amount \_\_\_\_\_

Frequency of Deduction \_\_\_\_\_

Description of Deduction:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature of Employee / Date Signed

## **EXHIBIT L – CONSTRUCTION SAFETY & SECURITY MANUAL REV4**

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**Metropolitan Transportation Authority**

**Metro**

**CONSTRUCTION SAFETY AND SECURITY MANUAL (CSSM)**

**REVISION 4.1: SEPTEMBER 1<sup>st</sup> 2012**

**SAFETY'S  
FIRST** 

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## POLICY STATEMENT

The safety and security requirements of this Manual reflect the determination of the Los Angeles County Metropolitan Transportation Authority (Metro) to prevent injuries to persons and or loss or damage to property and equipment during construction activities contracted by Metro. It is the stated goal of this Agency and the expected goal of consultants, contractors, vendors and or others doing business with Metro.

Metro considers no phase of construction or administration of greater importance than injury and loss prevention. Incidents resulting in personal injury to employees or the general public, damage to property and or equipment, or the theft or vandalism or property and or equipment represent needless waste and loss. It is the policy of Metro to conduct operations safely and securely, thereby preventing injuries and property damage or loss.

Contractors shall adhere to the following safety principles:

- Safety and Security are a 24/7 priority
- Safety and Security are everyone's responsibility
- Injuries and incidents are preventable
- Working safely and securely is a condition of employment
- Training is essential for good safety and security performance
- Management is accountable for safety and security

Planning for safety and security shall start with design and continue through purchasing, fabrication and construction. All practical steps shall be taken to maintain a safe and secure place of employment. The contractors shall be responsible for the prevention of incidents and injuries on any work under their direction or responsibility and shall be responsible for the thorough safety and loss control training and instruction of their employees.

The objectives of this Construction Safety and Security Manual are first, the promotion of the attitude that injuries and loss are not "part of the work" in construction. Second, that the prevention of injuries and the protection of employees and property are most important and therefore shall receive top priority, support and the participation of senior MTA Management and staff as well as that of all parties involved in construction.

---

Art Leahy  
Chief Executive Officer, LACMTA

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Date

---

K. N. Murthy  
Executive Director, Transit Project Delivery

---

Date

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Vijay Khawani  
Executive Officer, Corporate Safety

---

Date

## **REVISION HISTORY AND PURPOSE**

This document began as the Construction Safety Manual and was a part of the Metro Red Line and Green Line Construction Contracts. It grew out of the experience of the Construction Safety Team during the construction of the Long Beach Blue Line and Metro Red Line Segment One Projects.

Revision 2 retained the title Construction Safety Manual and included some of the latter lessons learned from Red Line Segment One and was used on Red Line Segments Two and Three and the Metro Green Line.

With the Publishing of Revision 3 in 2002, the title was changed to the Construction Safety & Health Manual. Revision 3 included lessons learned from Segments Two and Three of the Metro Red Line as well as the growing number of Capital Improvement Projects being undertaken by Metro.

With this Revision 4, in keeping with the changes in focus at both the federal and state levels of regulation, the document is being renamed the Construction Safety and Security Manual. It includes Lessons Learned from the Pasadena and East LA portions of the Metro Gold Line, Phase One of the Exposition Line, the I-405 Sepulveda Pass Widening Project and the continued work on various Metro Capital Improvement and Expansion Projects.

Revision 4.1 incorporated performance language and requirements regarding the Safety's First Incentive Program from the Special Provisions Section of the Contract into Sections 4 & 8 of this document as well as various minor grammatical and format updates.

The purpose of this manual is to provide prime and other contractors a starting point for complying with the administrative and documentation requirements of the Metro Construction Safety Program. It also provides the Contractor with information regarding interpretations of the requirements found in the Worksite Safety and Worksite Security Technical Specifications. The information and requirements in this Manual are considered complementary and supplemental to the requirements of the Worksite Safety Requirements and Worksite Security Requirements of the contract found in the General Requirements Division of the Technical Specifications and elsewhere. Any concern by a Contractor regarding perceived conflicting language or interpretations of the requirements of the Metro Construction Safety Program and the associated Contract Documents shall be brought to the attention of the Metro Construction Manager in writing for interpretation and clarification by the Director, Construction Safety or designee.

## **ACRONYMS AND ABBREVIATIONS**

|          |                                                                 |
|----------|-----------------------------------------------------------------|
| ANSI     | American National Standards Institute                           |
| Cal/OSHA | California Occupational Safety and Health Act                   |
| CCR      | California Code of Regulations                                  |
| CFR      | Code of Federal Regulations                                     |
| CLC      | California Labor Code                                           |
| CM       | Construction Manager                                            |
| CPR      | Cardio-Pulmonary Resuscitation                                  |
| CSO      | Construction Safety Orders (CCR Title 8)                        |
| CSSM     | Construction Safety and Security Manual                         |
| CSM      | Construction Safety Manager                                     |
| DAR      | Daily Activity Report                                           |
| DOSH     | State of California, Division of Occupational Safety and Health |
| EPA      | Environmental Protection Agency                                 |
| ESO      | Electrical Safety Order (CCR Title 8)                           |
| Fed/OSHA | Federal Occupational Safety and Health Administration           |
| GISO     | General Industrial Safety Orders (CCR Title 8)                  |
| IIPP     | Injury-Illness Prevention Program                               |
| JHA      | Job Hazard Analysis                                             |
| MTA      | Los Angeles County Metropolitan Transportation Authority        |
| LADOT    | City of Los Angeles Department of Transportation                |
| LSR      | Lead Safety Representative                                      |
| MSDS     | Material Safety Data Sheet                                      |
| NEC      | National Electric Code                                          |
| NFPA     | National Fire Protection Association                            |
| NIOSH    | National Institute of Occupational Safety and Health            |
| NTP      | Notice To Proceed                                               |
| RE       | Resident Engineer                                               |
| SCAQMD   | South Coast Air Quality Management District                     |
| SS       | Safety Specialist or Senior Safety Specialist                   |
| USA      | Underground Service Alert                                       |

## DEFINITIONS

|                                        |                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Alternate Safety Coverage Policy       | A policy for providing contract compliant safety supervisory coverage for small work crews or in the event of the absence of the regularly employed. See Section 2.4.                                                                                                                                                                                   |
| Metro or MTA                           | The Los Angeles County Metropolitan Transportation Authority (LACMTA) and/or the Metro Construction Safety Department.                                                                                                                                                                                                                                  |
| Competent Person                       | As defined in California Code of Regulations, Title Eight, Section 1504, a competent person is one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. |
| Construction Manager (Metro)           | The Metro or designated consultant team responsible for construction management of a Metro Transit project.                                                                                                                                                                                                                                             |
| Construction Safety Manager (Metro)    | A staff member of Metro Construction Safety Department assigned to a particular set of contracts or a specific construction project. Construction Safety Specialists are directly supervised by Metro Construction Safety Manager.                                                                                                                      |
| Construction Safety Department (Metro) | The Construction Safety Unit of the Corporate Safety Department.                                                                                                                                                                                                                                                                                        |
| Construction Safety Specialist (Metro) | A staff member of the Metro Construction Safety Department assigned to a particular set of contracts or a specific construction project. Safety Specialists focus on Field Reviews of Contractor Contract Compliance.                                                                                                                                   |
| Construction Safety Staff (Metro)      | The Staff of the Metro Construction Safety Department includes (at minimum) Safety Specialists, Senior Safety Specialists, Construction Safety Managers and the Director, Construction Safety.                                                                                                                                                          |
| Contract                               | Written agreement executed by Metro and the Contractor which sets forth the rights and obligations of the parties in connection with the Work, and which includes the Contract Documents as listed in the Form of Contract.                                                                                                                             |

**Director, Construction Safety**

The Director, Construction Safety leads the Construction Safety Department. The Director, Construction Safety works closely with the Executive Director, Transit Project Delivery as well as individual Project Directors, Construction Safety Staff and the Executive Officer, Corporate Safety to insure the success of the Construction Safety Program as described in this Manual and other Contract Documents.

**Falsework**

Temporary construction work on which a main work is wholly or partly built and supported until the main work is strong enough to support itself. It may be composed of composed of shoring or vertical posting, formwork for beams, slabs or other horizontal members, and lateral bracing.

**Hot work**

Any work involving a flame or producing a spark, such as the use of a torch, grinder or electric arc welder.

**Lead Safety Representative  
(Contractor)**

A full-time supervisory employee of the Contractor responsible for the implementation of the Contractor's safety and security program at the Worksite. The Lead Safety Representative shall be currently certified in first-aid and CPR by the American Red Cross or its equivalent. The Lead Safety Representative must be assigned full time to the jobsite whenever Work is in progress. The Lead Safety Representative may be assigned non-safety related tasks provided these tasks do not interfere with successful performance of the assigned safety and security responsibilities. The Lead Safety Representative shall regularly work the day shift, attend required meetings and be fully cognizant of all project-specific safety practices, processes, rules and procedures, and maintain regular contact with Metro designated Safety Personnel. This position is typically specified in Capital Improvement Project Contracts that do not require Heavy Civil Engineering or Construction.

This term is also used generically in this document to refer to the various 'Lead Safety Representative' positions defined in this section. When used generically, this term refers to the specifically defined Lead Safety Representative from the Worksite Safety Requirements Technical Specification included in this Contract.

Lead Heavy Civil Safety  
Representative  
(Contractor)

Full-time supervisory employee of the contractor responsible for the implementation of the Contractor's safety and security program. Requires at least five years of heavy civil construction safety experience, current standing as a Construction Safety and Health Technician (CHST), familiarity with occupational safety and health laws and regulations, and have current certification in first-aid and CPR by the American Red Cross or its equivalent. The Lead Heavy Civil Safety Representative must be assigned full time to the jobsite whenever Work is in progress and shall regularly work the day shift, attend required meetings and be fully cognizant of project-specific safety practices, processes, rules and procedures, and maintain regular contact with Metro Safety Staff assigned to the Project. The Lead Heavy Civil Safety Representative shall not be assigned non-safety related tasks

Lead Underground Safety  
Representative  
(Contractor)

Full-time supervisory employee of the contractor responsible for the implementation of the contractor's safety and security program. Requires at least five years of underground construction safety experience, current standing as a Construction Safety and Health Technician (CHST), familiarity with occupational safety and health laws and regulations, have current certification in first-aid and CPR by the American Red Cross or its equivalent, and have current certification by Cal/OSHA, Mining and Tunneling Division as both an Underground Safety Representative and an Underground Gas Tester. The Lead Underground Safety Representative shall regularly work the day shift, attend required meetings and be fully cognizant of all project-specific safety practices, processes, rules and procedures, and maintain regular contact with Metro designated Safety Personnel.

Near Miss

An incident having the potential to cause death, serious injury or illness, or property damage exceeding \$500.00.

Personnel Platform

Any platform or other working surface designed to be suspended from a crane while carrying personnel. These devices may be used to work from or they may be used to transport personnel from one point to another. Other names for these devices include, but are not limited to: man baskets, man cages, and work platforms.

**Project Manager (CM)(Metro)**

The construction manager's senior Metro management official responsible for the project, beginning with pre-construction activities and extending to final completion of the work. This individual may have an employment title other than Project Manager but they serve the function of a Project Manager.

**Resident Engineer (RE)(Metro)**

The field representative of Metro responsible for the completion of specific construction contracts. The Resident Engineer is responsible for directing the contractor with regard to compliance with the Contract requirements. This individual may have an employment title other than Resident Engineer but they serve the function of the Field Representative of Metro and direct the Contract's Work.

This term is used generically in this document to refer to the Project Manager, Construction Manager or Resident Engineer positions as defined in this section. Based on the size and scope of the Work, a single Metro employee may fill one, two or all three of these functions. Any Reference to the "Resident Engineer" in this manual includes the Construction Manager and Project Manager.

**Safety Representative  
(Contractor)**

A full-time supervisory employee of the Contractor responsible for assisting the Lead Safety Representative in the implementation of the Contractor's safety and security program at the Worksite. The Safety Representative shall be currently certified in first-aid and CPR by the American Red Cross or its equivalent. The Safety Representative must be assigned full time to the jobsite whenever Work is in progress and the Lead Safety Representative is absent. The Safety Representative may be assigned non-safety related tasks provided these tasks do not interfere with successful performance of the assigned safety responsibilities. This position is typically specified in Capital Improvement Project Contracts that do not require Heavy Civil or Underground Engineering or Construction.

Safety Representative  
(Contractor)(continued)

This term is also used generically in this document to refer to the various 'Safety Representative' positions defined in this section. When used generically, this term refers to the specifically defined Safety Representative from the Worksite Safety Requirements Technical Specification included in this Contract.

Heavy Civil Safety Representative  
(Contractor)

Full-time supervisory employee of the contractor responsible for assisting the Lead Heavy Civil Safety Representative in the implementation of the contractor's safety and security program. Requires at least two years of heavy construction safety experience, current standing as a Construction Safety and Health Technician (CHST), familiarity with occupational safety and health laws and regulations, and have current certification in first-aid and CPR by the American Red Cross or its equivalent.

Underground Safety Representative  
(Contractor)

Full-time supervisory employee of the contractor responsible for assisting the Lead Underground Safety Representative in the implementation of the contractor's safety and security program. The individual shall possess at least two years of underground construction safety experience, current standing as a Construction Safety and Health Technician (CHST), be familiar with occupational safety and health laws and regulations, be currently certified in first-aid and CPR by the American Red Cross or its equivalent, and be currently certified by Cal/OSHA, Mining and Tunneling Division as both a Underground Safety Representative and an Underground Gas Tester.

Scaffolding

Any temporary elevated platform and its supporting structure used for supporting workmen or materials, or both.



# **1 ADMINISTRATION AND ORGANIZATION**

## **1.1 Purpose and Scope**

The purpose of this manual is to establish a practical and effective program for the prevention of and response to incidents and injuries, and to assign specific responsibilities to contractors for program compliance.

This basic safety program has been designed to assist all contractors and their supervisors in the recognition, evaluation and control of hazardous activities or conditions within their respective areas of contract responsibility.

The minimum incident and injury prevention efforts expected from each contractor are indicated in the following sections. Activities or conditions which do not meet or exceed these minimums as determined by Metro shall be considered not in compliance with this contract. Such activities shall be corrected by the contractor immediately upon notification by Metro. Corrective actions by the contractor as determined by Metro shall be considered part of the original scope of work and shall not delay the schedule for performance of work by the contractor nor shall they be the basis for any claim of delay or to increase the cost of the Contract.

Strict compliance with the provisions of this manual as determined by Metro shall be considered part of the original scope of work and shall not delay the schedule for performance of work by the contractor nor shall they be the basis for any claim of delay or to increase the cost of the Contract.

No declaration, act, or omission of the Director, Construction Safety, Los Angeles County Metropolitan Transportation Authority (Metro), or its staff will be deemed to exempt, either wholly or in part, expressly or by implication, any contractor or the contractor's place of employment, on Metro contracts, from full compliance with the terms of any safety regulation as stated by the Federal government, the State of California, the County and or City of Los Angeles or other jurisdictions applicable to the contractor's work on Metro project.

## **1.2 Program Structure**

The development of the current Construction Safety Programs implemented by Metro's Construction Safety Unit, which is part of the Corporate Safety Department, has been decades long and began with the construction of the Long Beach Blue Line in the 1980s. The Program has evolved and grown in its sophistication in a manner parallel to that seen in the overall Occupational Safety and Health Profession during the same time frame. The philosophical foundation of this program is that safety hazards, when identified, are controlled or corrected immediately. If the hazard cannot be controlled or corrected immediately, dependent on the severity of the hazard, the work in the area is stopped until the hazard is controlled or corrected. The Program's sophistication includes the maintenance of a Lessons Learned document (part of the Department Policy & Procedure Documents) which allows for the tracking of major construction safety issues and the contractual remedies or responses to these issues.

The Program has four key components:

- \* Metro Professional Construction Safety Staff as part of the overall Project Management Team guided by the Construction Safety Policies and Procedures;
- \* Contract documents including technical specifications, compliance manuals and the General and Special Provisions;
- \* Contractor Professional Safety Staff as part of the Contractor's Project Management Team;
- \* Allied safety professionals including (but not limited to) insurance industry loss prevention professionals, Division of Occupational Safety & Health (Cal-OSHA) Consulting staff, Cal-OSHA Compliance staff, both generalist and Mining & Tunneling Unit specialists, Federal OSHA Consulting staff and other OHS resources.

#### **METRO PROFESSIONAL SAFETY STAFF/PROJECT MANAGEMENT TEAM**

The best Safety Management Plans, whether occupational, industrial, product or other, are based upon safety being a priority not only for every member of the management team, but every member of the entire team or organization. This philosophy is reflected in the various documents and organizational structure of the Metro Construction Project Management Division.

The Construction Safety staff assigned to a project undertake various compliance checking activities (including but not limited to submittal review, field observations, formal administrative and field reviews, injury & incident trending) to insure the compliance and quality of the Contractor's Construction Safety activities. Safety Specialists document their work on a daily basis using the Daily Activity Report. Safety Specialists use their Daily Activity Reports to document and describe issues or conditions that are not controlled or corrected at the time of discovery. Daily Activity Reports are reviewed by the Construction Safety Manager. Staff activities are overseen and reviewed by the Director of Construction Safety.

#### **BASELINE CONTRACT DOCUMENTS**

The Contract Documents are the core of the Construction Safety and Security requirements for this project. Each document requires the contractor to submit documentation to substantiate compliance with the requirements of each technical specification or other contract document. Each submittal is required to be resubmitted as conditions change on the project.

The core documents which proscribe the contractor's duties and responsibilities are the Worksite Safety and Worksite Security Technical Specifications. These specifications communicate to the contractor Metro's compliance requirements with regard to Worksite Safety and Security (including workers, visitors and the public). Each specification includes general compliance, submittal and specific work practice requirements.

The Construction Safety & Security Manual, (this document), describes the overall Construction Safety Program, the administrative requirements expected of the Prime Contractor and each tier of sub-contractor prosecuting a construction project for Metro and provides guidance information to insure information provided by the Contractor to fulfill Contract Safety & Security submittal requirements is consistent between the various Metro construction projects.

The Alcohol and Drug Free Workplace Program documents the activities required of the Prime and each tier of Sub-Contractor prosecuting a project for Metro. The original inclusion of this document into Metro Contracts was in response to the observed and well known issues with on the job use of intoxicants by members of the construction trades and others. This section of contract requirements (found in Section 4 of this manual) presently goes beyond the requirements found in Federal, State or Local laws or regulations regarding employees in 'safety sensitive' position to better insure a workplace free of intoxicants and to stand as an example of construction industry best practices by including all employees on the Construction Site.

On larger value Heavy Civil and Tunnel Projects a Special Provision of the Contract outlines the incentive program available to the contractor. In addition, most construction Contracts include a Special Provision which requires the levy of liquidated damages in the event the contractor violates certain Special Circumstances.

#### CONTRACTOR PROFESSIONAL SAFETY STAFF/PROJECT MANAGEMENT TEAM

The Contractor's Professional Safety Staff and Project Management Team (including management staff at each tier of supervision down to forepersons or other line supervisors) is a critical component of the overall Metro Construction Safety Program. These individuals will direct the contractor's individual workers on a daily basis and will have the greatest opportunity to modify the behavior of those with the greatest risk of injury by reinforcing positive safety behaviors, retraining or otherwise redirecting at risk or unsafe behaviors.

The Worksite Safety Requirements Technical Specification Section requires the Prime Contractor to employ a full time Lead Safety Representative who meets the contract requirements as well as additional Safety Representatives (and Underground Gas Testers) as needed to provide coverage as required in the contract and the California Code of Regulations. Depending upon the Scope of Work of the Project, the Worksite Safety Requirements will define and require a Lead Safety Representative, a Lead Heavy Civil Safety Representative, or a Lead Underground Safety Representative. For Projects working multiple shifts the Contractor may be required to utilize one or more Safety Representatives, Lead Heavy Civil Safety Representatives, or Underground Safety Representatives to support the Lead.

Heavy Civil and Underground Safety Representatives must be certificated as a Construction Health & Safety Technician. In addition, Underground Safety Representatives must be licensed by the State of California, Division of Occupational Safety & Health, Mining & Tunneling Unit as an Underground Safety Representative and an Underground Gas Tester. Individuals utilized solely as Underground Gas Testers must be licensed by the State of California, Division of Occupational Safety & Health; Mining & Tunneling Unit as an Underground Gas Tester.

The Technical Specifications also outline a variety of safety and security related duties and responsibilities for the Contractor's Project Manager and various levels of managers and/or supervisors. Compliance with these requirements leads to a proactive and forward looking management team.

## ALLIED SAFETY PROFESSIONALS

The Contractor's Project Manager may employ allied safety professionals due to insurance agreements or other obligations/sources. The larger the number of individuals available to observe and report on construction site activities, the greater the chance to modify unsafe behaviors and reinforce good safety practices. While these individuals, due to their limited amount of time on the jobsite, account for the smallest amount of observational opportunities; they may additionally observe actions or conditions that have been missed by others due to their frequency of occurrence or the distraction of other priorities.

In addition to the professionals noted above, as needed, both the Contractor's and Metro's Safety Professionals have at their disposal the resources of the U.S. Mine Safety and Health Administration (MSHA) including personnel at the MSHA Academy, the California Division of Occupational Safety and Health Consultation Office and the National Institute of Occupational Safety & Health (NIOSH).

### 1.3 Program Objectives

The overall objective of this program is to establish the concept that people not property are our most important assets.

All project safety and loss control efforts shall be directed towards the elimination of personal injuries and damage to property, and minimizing the effects of incidents on both the individuals and on the project.

Specific objectives of the program are:

- A. The elimination of worker injuries during construction activities on the Project.
- B. The prevention of any physical injury to a member of the public as a result of construction activities on the Project.
- C. The elimination of damage to equipment used to construct the Project.
- D. The prevention of any damage to the property of others as a result of construction activities on the Project.
- E. The elimination of loss of equipment or materials used to construct the Project.
- F. Increased efficiency and cost reductions.
- G. Compliance with contractual and statutory requirements.
- H. Maintenance of favorable labor and community relations.
- I. Improvement of relationships with regulatory agencies.
- J. Avoidance of penalties.

### 1.4 Program Effectiveness

The effectiveness of Metro construction safety program depends on the active participation and cooperation of personnel assigned to the project. It is the responsibility of all assigned personnel to carry out the following:

- A. Proper planning of all work to minimize the potential for and maximize the prevention of personal injury, property damages and loss of productive efforts.

- B. Establish and maintain a safety program which will provide early detection and correction of unsafe practices and conditions.
- C. Provide adequate protection of adjacent public and private properties to provide for the safety of the public.
- D. Establish and implement safety education and incentive programs that focus on the following:
  - i. Employee indoctrination.
  - ii. Safety meetings and safety communications.
  - iii. Investigation of incidents to determine cause and necessary corrective actions.
  - iv. Use of proper work procedures, personal protective equipment and mechanical guards.
  - v. Safety instruction to individual employees and group safety training program.
  - vi. Maintenance of records of injuries and losses and development of injury/loss experience summaries.
  - vii. Programs to reward employees for working safely and consistently raising the level of safety awareness on the project.

## **1.5 Administration and Organization**

### **A. ADMINISTRATION**

Metro, through this document, and other contract parts is establishing performance standards for safety during the course of the project. Oversight of these standards shall be by Metro through the Director, Construction Safety. Metro will oversee individual contractor performance for compliance with applicable federal, state, local and Metro's safety, security and environmental requirements. Metro will monitor for compliance, construction safety and security matters on the worksite; and will, through the Resident Engineer or Construction Manager, hold each contractor responsible for the safety, security, and contractual requirements. Each contractor shall be held accountable for the safe, secure and healthful performance of work by their employees and subcontractors, regardless of tier.

Each contractor is directly responsible for the implementation and administration of Metro's safety and security standards as well as Federal, State, and local regulations applicable to its own operations and those of its subcontractors regardless of tier. Each prime contractor shall have a full time on-site Lead Safety Representative or Safety Representative as indicated in the Technical Specifications Section of the Contract. Prior to commencement of work, contractor's Project Manager, Superintendent, Lead Safety Representative and other Safety Representative(s) shall attend safety indoctrination and coordination conference with Metro's Director, Construction Safety, Construction Safety Manager, and or Safety Specialist and the Construction Manager and or Resident Engineer for the Project. At this meeting, the Safety and Security Technical Specifications and other Contract Documents for the Project will be reviewed.

To assist contractors in fulfilling their responsibility, field safety reviews shall be conducted by the Metro Construction Safety Staff. Whenever an uncontrolled safety

hazard, unsafe practice or security vulnerability is observed, a supervisory representative of the contractor will be notified immediately to address the situation. A situation which cannot be controlled, corrected or otherwise addressed immediately will be tracked by Metro Construction Safety Staff until it is controlled, corrected or otherwise addressed via the DAR. As conditions warrant, work in the area of the hazard may be stopped until the hazard is properly addressed.

#### B. GENERAL DUTY STATEMENT

1. It is the duty of supervisory personnel, regardless of their employer or contracting tier, to take immediate corrective actions possible when they discover, or have reported to them, an unsafe condition or unsafe employee act on the Metro project.
2. Contractors shall comply with the California Code of Regulations Title 8; Title 29 of the Code of Federal Regulations, or the provisions of this contract whichever is most stringent in regulating the safety conditions to be maintained in the work environment as determined by Metro. The contractor recognizes that government promulgated safety regulations are *minimum standards* and that additional safeguards may be required by Metro to insure worksite safety and prevent loss.
3. Strict Compliance with the requirements of this manual, the Worksite Safety and Security Requirements Technical Specifications and other parts of the Contract related to Safety and Security, as determined by Metro shall be considered part of the original scope of work and shall not delay the schedule for performance of work by the contractor, nor serve as the basis of a request for change to increase the cost of the Work or shall it be relied upon to form the basis of any claim.
4. Documents, reports and materials required by this manual, the Worksite Safety and Security Requirements Technical Specifications or other parts of the Contract related to Safety and Security, to be completed, submitted, maintained in file or otherwise handled by the contractor shall be considered the property of Metro and shall be available at all times for review by Metro without prior notice to the contractor. Where required by law, the contractor shall maintain a copy of these records for their purposes.
5. Documented violations of the requirements of this manual the Worksite Safety and Security Requirements Technical Specifications and other parts of the Contract related to Safety and Security, may result in the levying of Special Assessments in accordance with the Special Provisions of this contract. All penalties proposed shall be determined in strict compliance with Metro Construction Safety Department Policy and Procedure Manual and the Contract Documents.

#### C. SAFETY DUTIES AND RESPONSIBILITIES

##### 1. Metro

Metro desires to ensure that each participant in Metro construction contracts observe, at minimum, the required safety and security standards in the performance of their work. The Metro's goal is the effective execution of a comprehensive occupational safety, security, and environmental program which best serves the interests of the workers involved in the construction of the

Project and those of the general public. The responsibility for implementation of and compliance with the Metro Construction Safety Program lies with the Prime Construction Contractor. Metro monitors the day-to-day management of the project's overall safety program as set forth in this Construction Safety and Security Manual. Metro is responsible for:

- a. Monitoring the effectiveness of the contractor's safety program.
- b. Requiring timely application of safety and injury prevention procedures.
- c. Reporting unsafe work conditions wherever observed to the contractor's Safety Representative or to the project manager/superintendent for immediate corrective action.
- d. Notifying the Resident Engineer (RE) and or Construction Manager (CM), electronically or in writing, of non-compliance with project safety requirements. Notification of non-compliance by contractors shall also be made to Metro Director, Construction Safety or designee.
- e. Notifying Metro's project management team of the names of contractors, subcontractors, or any individuals who continually or deliberately violate safety and security requirements or regulations and, where appropriate, initiating action to remove the contractors, subcontractors, or an individual from the Project as well as prohibiting entry on to other Metro Projects or properties.
- f. Metro Director, Construction Safety, may order the temporary or permanent removal of an individual from Project sites who continually or deliberately violate safety requirements.
- g. In the event of a safety hazard or security vulnerability requiring immediate corrective action(s), or non-compliance with a written notice of a hazard or vulnerability ; Metro Director, Construction Safety or designee may order a work stoppage until such time as the condition is corrected.
- h. Maintain a Safety Incentive Program (SIP) (when included in the Projects Contract Documents) for contractors that meet or exceed the safety goals established for the project.

## 2. Metro Director, Construction Safety

The Director, Construction Safety or designee shall perform or oversee the performance the following functions:

- a. Daily management of the Constructions Safety Units resources, including personnel, budgets and other resources as needed.
- b. Development of individual project contract documents with respect to Safety and Security sections.
- c. Oversight of construction safety activities performed by Construction Safety Staff.
- d. Final determination of compliance with contract safety requirements.

## 3. Metro Construction Safety Manager

The Metro Construction Safety Manager or designee shall perform the following functions:

- a. Daily oversight of the Contractor's management of the project's safety and security program.
- b. Review and approval of Contractor Safety or Security related Submittals required by the Contract Documents.
- c. Development of individual project specific safety plans.
- d. Oversight of construction safety activities.
- e. Determination of compliance with all contract safety requirements.
- f. Receive copies of the contractor's initial and subsequent injury reports for review and analysis to determine causes, corrective actions and actions to prevent a recurrence of the same or similar incident.
- g. Supervision and direction of Metro Construction Safety Specialists as assigned by the Director, Construction Safety.

#### 4. Metro Construction Safety Specialists

The Metro Construction Safety Specialists shall have the authority to issue stop-work orders to any contractor or subcontractor who fails, or refuses to take prompt corrective action when given notice of non-compliance with any applicable safety requirement or the identification of an uncontrolled safety hazard, unsafe act or security vulnerability.

Construction Safety Specialist shall perform the following functions:

- a. Review and comment on Contractor Safety or Security related Submittals required by the Contract Documents as directed by the Construction Safety Manager.
- b. Maintain a file of Daily Activity Reports and of any written safety notices issued to the contractor(s).
- c. Report, in writing as required by Department Policies and Procedures, through the Construction Safety Manager so that the Metro is well informed at all times.
- d. Provide technical assistance to contractors and field safety personnel, including instruction, proper reporting, recordkeeping or other safety, health or environmental procedures.
- e. Review work areas on a regular basis as determined by the Construction Safety Manager. These reviews shall be for the purposes of confirming contractor compliance and shall not be considered to be exhaustive or complete reviews of the entire worksite on any specific day. These reviews shall not relieve the contractor of the statutory and contractual obligation to identify and correct unsafe conditions or practices.
- f. Perform environmental health and safety testing or monitoring as determined by the Construction Safety Manager.
- g. Monitor the contractor's employee safety indoctrination program.
- h. Attend contractor's weekly toolbox safety meetings on a regular basis as determined by the Construction Safety Manager.
- i. Notify the Director, Construction Safety, Construction Safety Manager, Resident Engineer and or Construction Manager electronically or in writing of



unsafe conditions, actions or security vulnerabilities which cannot be immediately addressed and controlled or resolved by the Contractor. This notification shall be completed in compliance with the Construction Safety Policies and Procedures.

- j. Assist with an Metro approved safety audit program to ensure compliance with the Metro Construction Safety Program.

#### 5. Resident Engineer/Construction Manager

Metro Construction Safety, in association with the Resident Engineer/Construction Manager shall oversee the contractor's timely application of injury and incident prevention procedures for construction activities and personnel on the project including subcontractors, visitors, and suppliers of materials or equipment.

The Resident Engineer or the Construction Manager's staff shall report any unsafe working conditions or security vulnerabilities verbally, electronically or via written notice to Metro Construction Safety Staff. The condition shall also be reported to the contractor's Foreman, Safety Representative, and or the Project Manager and/or General Superintendent depending upon the severity of the condition. The contractor shall promptly correct the unsafe working conditions or security vulnerability. All verbal reports shall be included in the Daily Activity Report, Daily Inspection Report or similar daily work record.

The Resident Engineer/Construction Manager has a responsibility to notify the contractor in writing of non-compliance with any of the requirements established in this Construction Safety and Security Manual or Technical Specifications. The Resident Engineer/Construction Manager shall take the following actions:

When notified electronically or in writing of an uncontrolled safety hazard or security vulnerability which the Prime Contractor either cannot or will not immediately resolve, the Resident Engineer/Construction Manager shall notify the Prime Contractors Representative in writing of the condition and the requirement for resolution. Included in this notification will be a description of any work that has been stopped due to the condition. The Resident Engineer/Construction Manager shall require the Prime Contractor to respond within twenty-four (24) hours with a written plan to resolve the condition including a schedule for completion.

Metro Construction Safety through the Resident Engineer/Construction Manager may require the temporary or permanent removal from Project sites any individual(s) who continually or deliberately violates the safety and security requirements of the Contract. An action of this type will come in the form of a Directive from the Director, Construction Safety with the concurrence of the Executive Director, Transit Project Delivery.

#### 6. Contractor

The Construction Safety and Security Manual is a Metro contract document and contractors shall ensure that employees, visitors, subcontractors, and their suppliers/vendors, while on the worksite and in the conduct of work for Metro, comply with the requirements of this document, The California Code of Regulations Title 8, or Title 29 of the Code of Federal Regulations, whichever is

most stringent in regulating the safety conditions to be maintained in the work environment. Determination of the most stringent language or statute will be made by the Director, Construction Safety, or Construction Safety Manager. When there is a conflict in the interpretation of any standard or requirement of this document, Director, Construction Safety, Construction Safety Manager shall be responsible for the final determination of the interpretation to be accepted by all parties.

The contractor recognizes that all government promulgated safety regulations are *minimum standards*. Additional safeguards may be required by Metro or its designee to insure worksite safety and to prevent loss. The contractor is responsible for compliance with the injury prevention, safety and security requirements contained in its contract with Metro and safety and security related submittals. Compliance with the requirements of this paragraph shall be considered within the original scope of work and made without delaying the schedule for performance of work by the contractor, nor serve as the basis of a request for change to increase the cost of the Work or shall it be relied upon to form the basis of any claim.

7. Contractor's Project Manager, Superintendent and or other Supervisory Staff

As a direct representative of the Contractor at the worksite, the Contractor's supervisory and or management staff shall at a minimum:

- a. Support the Lead Safety Representative/Safety Representatives in the discharge of their duties and responsibilities.
- b. Plan and execute the work in accordance with the stated objectives of Metro Construction Safety and Security Program, as stated in 1.3 (Program Objectives).
- c. Take immediate action to correct unsafe, unhealthful or insecure work practices or conditions.
- d. Review and ensure implementation of administrative actions required to complete accurate safety records as specified by Metro construction safety program recordkeeping requirements.
- e. Attend safety meetings as directed by Metro including but not limited to the monthly 'All Hands' safety meeting.
- f. Ensure that appropriate first-aid plans and facilities are established and maintained.
- g. Ensure that subcontractors comply with local, state, Cal/OSHA, and Fed/OSHA regulations, standards, ordinances, Metro Contract requirements, the Contractor's safety program and other rules relating to the safety and security of persons and/or property.
- h. Review and distribute incident investigation reports to ensure timely submission and completeness, and that corrective actions have been completed to prevent recurrence.
- i. Assure that supervisors (both employed by the Prime and any Sub-Contractors) complete thirty (30) hours of job specific safety training before beginning contract related activities. Certification of successful completion of an accredited OSHA 500 Construction Outreach Course shall satisfy this requirement.

- j. At a minimum, instruction in the following topics shall be included in the thirty (30) hour training:
  - 1) Hazard identification and abatement
  - 2) Preparation of Job Hazard Analyses
  - 3) Communications in Safety
  - 4) Applicable Federal and State Regulations
  - 5) Injury and Incident Investigation
- k. Training certificates and other records shall be submitted to Metro for review and acceptance. Training records shall be maintained at the worksite and made available to Metro for review without prior notice.

#### 8. Contractor's Lead Safety Representative

The Contractor's Lead Safety Representative's performance will be subject to periodic evaluation by Metro Construction Safety Staff. Conclusions and recommendations of the review will be forwarded to the Resident Engineer for information or action. The contractor's Lead Safety Representative or Safety Representatives shall at a minimum:

- a. Document in writing daily safety inspections of the Worksite(s) and public areas contiguous and adjacent thereto and take *necessary* and timely corrective action(s) to eliminate unsafe acts and/or conditions and or security vulnerabilities and document outstanding safety compliance activities or behaviors.
- b. Review incident and investigation reports, to ensure timely submission, and that corrective actions have been completed to prevent recurrence.
- c. Provide foremen and other supervisory personnel with relevant safety and security material for use in conducting weekly tool box safety meetings.
- d. Review safety meeting reports to ensure adequacy of training as well as appropriateness of subject matter.
- e. Conduct incident investigations and preserve incident sites. Prepare and submit the required reports to the RE for final distribution in accordance with the manual.
- f. Develop and implement a safety and security training program for supervisors and employees as applicable to their specific jobs
- g. Develop and implement Safety Incentive Program (SIP) (if included in the Contract Documents) designed to recognize individual contractor/subcontractor employee safety efforts and contributions towards improvement of worksite safety and security.
- h. Attend the Monthly Safety Professionals and Monthly All Hands meetings as held by Metro as well as other meetings as directed by Metro or its designee.
- i. Ensure that employees receive medical treatment for occupational injuries and that a written OSHA 300 log is maintained and available for review by Metro or designee without prior notice. This Log shall be for all Work completed by the Contractor and Sub-Contractor to the benefit of this

Contract regardless of tier, function, or location. Vendors, manufacturers and other entities which do not perform Work at the Work site are excluded.

- j. Ensure that subcontractor employees at any tier comply with jobsite safety rules and regulations and contract requirements; and that the subcontractors' reports are completed in accordance with this manual and according to the requirements of the applicable regulatory agencies.
- k. When the contract involves underground operations within the scope of the Tunnel Safety Orders found in CCR Title 8, the contractor's Lead Safety Representative shall have the following added responsibilities:
  - 1) Provide for control, availability, and use of safety equipment, including employee personal protective equipment. Ensure that equipment used in tunnels or underground work areas requiring approval by the Mine Safety and Health Administration (MSHA) or other certifying agencies is properly approved or certified and that this equipment is maintained in an appropriate manner. When there is a conflict in interpretation, the Director, Construction Safety or Construction Safety Manager shall be responsible for the final interpretation.
  - 2) Ensure that timely and accurate records are kept by Certified Underground Gas Tester(s). Results of gas and ventilation tests will be recorded in the contractor's permanent log immediately following the end of each shift. These records shall contain at a minimum the location, time, tests conducted, and results of tests. These records shall be maintained at the worksite and available for review by Metro without prior notice.
- l. Shall perform or assure the performance of environmental testing on items including, but not limited to: noise, air flow, and air quality. Written records of such tests shall be kept and made available upon request. It is the Lead Safety Representative and or Safety Representative's responsibility to ensure that the contractor complies with pollution and environmental control requirements. This paragraph pertains to environmental control requirements relating to, but not limited to both tunnel construction and confined spaces.
- m. Provide copies of required contractor safety reports, as outlined by Appendix A, Summary of Construction Safety Reports.
- n. Attend scheduled meetings as detailed in this Manual and technical specifications.
- o. Shall supervise other contractor Safety Representatives, gas testers and first-aid personnel assigned to the contract.
- p. Oversee the conduct of weekly safety meetings to be attended by contractor/subcontractor and management personnel. Written records of these meetings shall be maintained at the worksite and made available to Metro upon request without prior notice.
- q. Coordinate and participate in the development of Job Hazard Analyses, ensuring quality and timely submittals. Coordinate training of work crews and line supervision affected by each JHA.

#### 9. Contractor's Safety Representative(s)

The Contractor's Safety Representative's performance will be subject to periodic evaluation by the Contractor's Lead Safety Representative as well as Metro Construction Safety Staff. Conclusions and recommendations of the review will be forwarded to the Resident Engineer for information or action. The Contractor's Safety Representative(s) shall at a minimum:

- a. Document in writing daily safety and security inspections of the Worksite(s) and public areas contiguous and adjacent thereto and take necessary and timely corrective action(s) to eliminate unsafe acts and/or conditions and document outstanding safety compliance activities or behaviors.
- b. Review safety and security meeting reports submitted by foremen to ensure adequacy of training as well as subject matter.
- c. Conduct incident investigations and preserve incident sites. Prepare and submit required reports to the Lead Safety Representative.
- d. Support the safety training program for supervisors and employees as applicable to their specific jobs and as instructed by the Lead Safety Representative.
- e. Ensure that employees receive medical treatment for occupational injuries and that a written OSHA 300 log is maintained.
- f. Ensure that all subcontractor employees at any tier comply with Worksite safety rules and regulations; and that the subcontractors' reports are completed in accordance with the requirements of this section and according to the requirements of the applicable regulatory agencies.
- g. Support the availability and use of safety equipment, including employee personal protective equipment.
- h. Shall perform environmental testing on items including, but not limited to; noise, air flow, and air quality. Written records of such tests shall be kept and made available upon request.
- i. Assist with weekly safety meetings to be attended by all contractor/subcontractor and management personnel.
- j. Coordinate and participate in the development of Job Hazard Analyses, ensuring quality and timely submittals. Coordinate training of work crews and line supervision affected by each JHA.

#### 10. Underground Gas Tester

The Contractor's Underground Gas Tester's performance will be subject to periodic evaluation by the Contractor's Lead Safety Representative as well as Metro Construction Safety Staff. Conclusions and recommendations of the review will be forwarded to the Resident Engineer for information or action. The Contractor's Underground Gas Tester(s) shall at a minimum:

1. Document in writing daily safety inspections of the Worksite(s) and public areas contiguous and adjacent thereto and take necessary and timely corrective action(s) to eliminate unsafe acts and/or conditions and document outstanding safety compliance activities or behaviors.

2. Shall perform environmental testing on items including, but not limited to; air flow and air quality as required by CCR, Title 8. At a minimum, Underground Gas Tester(s) shall have the equipment needed to test for Oxygen first, followed by Carbon Monoxide, Combustible Gases, Hydrogen Sulfide, and Nitrogen Dioxide. Written records of such tests shall be kept and made available upon request. Written records shall include printed copies of regular download of the air quality testing instrument's memory.
3. Maintain air quality and velocity testing equipment in accordance with manufacturer's instructions including unit calibration.

#### 11. Line Supervisor (Forepersons)

Forepersons and other frontline leadership are the key individuals in an effective safety and security program. Their initiative and training toward incident prevention on their daily assignments determine the degree of safety and security which exists on the job.

A foreperson's safety responsibilities include the following as a minimum:

- a. Sets a good example for his/her crew in the matter of safety and security.
- b. Inspection of the assigned job area to ensure that unsafe acts or conditions are identified and corrected. This includes the inspection of tools and or equipment utilized by the foreman's assigned crew regardless of the ownership of the tool or equipment.
- c. Ensures that safety requirements are adhered to and enforced.
- d. Provides and requires the use of proper personal protective equipment and suitable tools for the job.
- e. Ensures that orderliness and good housekeeping are maintained at all times.
- f. Sees that his/her assigned crew is properly instructed in safe work practices when assigned to their job task.
- g. Investigates incidents that affect or involve Work under his/her direct control to determine facts necessary for corrective action.
- h. Promptly completes incident reports as required.
- i. Conducts weekly toolbox safety meetings with personnel to:
  - 1) Discuss unsafe work practices and unsafe or insecure conditions, directing safe and secure alternatives.
  - 2) Review incident experiences with the crew and discuss corrective action(s).
  - 3) Encourage personnel to make safety suggestions and respond appropriately.
- j. Ensure that prompt first-aid is administered when required. Confirm that required first-aid training of crew members is current.
- k. Instruct newly hired personnel with respect to safety and security requirements and job duties.

## **2 GENERAL SAFETY & SECURITY REQUIREMENTS**

### **2.1 Purpose and Scope**

The purpose of this section is to establish minimum safety and security requirements, emergency procedures, and guidelines to protect employees, property and the general public. This section provides basic information to the Contractor on the construction safety and security expectations of Metro. Detailed requirements are also found in the Worksite Safety and Worksite Security Specifications.

### **2.2 Objectives**

To establish minimum standards for the provision of a safe and healthful workplace.

To establish minimum standards for the provision of security and loss prevention on the project properties.

To comply with regulatory safety standards as well as Metro construction safety and security standards.

To establish guidelines for required emergency procedures.

To develop administrative safety and security guidelines for worksite tours.

### **2.3 Compliance with Safety Requirements**

The contractor shall maintain on-site at least one updated copy of the following:

- A. Metro Construction Safety and Security Manual
- B. Cal/OSHA General Industry Safety Orders
- C. Cal/OSHA Construction Safety Orders
- D. Cal/OSHA Tunnel Safety Orders (When Contract Scope of work falls under the jurisdiction of these orders)
- E. Cal/OSHA Electrical Safety Orders (for both low and high voltages)
- F. Work Area Traffic Control Handbook (California MUTCD and or Watch Manual, LADOT)
- G. Flagging Handbook (U.S. Department of Transportation)
- H. California Labor Code
- I. Title 29 CFR 1910 - General Industry Safety Standards
- J. Title 29 CFR 1926 - Construction Safety Standards
- K. Title 30 CFR Chapter 1

These documents shall be considered the property of the contractor and shall be exempt from the requirements of paragraph 1.5.B.4. All items listed above shall be available for review by Metro without prior notice.

In lieu of hard copies of regulatory documents, the contractor may maintain up to date electronic copies. Electronic copies may include, but are not limited to, computer

software versions distributed on CD-ROM or access to editions of these documents which are available via the Internet, provided the contractor's safety staff is equipped with the appropriate computer equipment and Internet access to review these sources at any time. Metro shall maintain the right to test the contractor's safety personnel's knowledge and abilities with regard to accessing these electronic documents and shall retain the right to require the contractor to provide additional computer training to the contractor's safety staff or hard copies as determined by Metro shall be considered part of the original scope of work and shall not delay the schedule for performance of work by the contractor.

## **2.4 Alternate Safety Coverage Policy**

In order to insure uniform safety coverage in situations when the assigned Safety Representative cannot be on the worksite, Metro has established the following Alternate Safety Coverage Policy. This policy allows the contractor to utilize a Designated Safety Representative (DSR) to perform safety duties of the required Lead Safety Representative or Safety Representative during specific periods of absence. The contractor shall comply with all portions of this policy in order to insure the continued effectiveness of the safety program. This procedure does not replace the safety personnel requirements of the contract as specified in the Technical Specifications, but is intended only to provide a method for continued work on the project when the required personnel must be absent for short or unexpected periods of time. For work which falls under the scope of the California Tunnel Safety Orders, this policy does not relieve the Contractor from the requirements for having certain certified personnel at the worksite when workers are underground.

This policy and program provide benefit to the contractor by allowing a method to continue work during an absence of the designated and contractually required Safety Representative. *Without this policy and program, work on the worksite shall be halted when the Approved Safety Representative is not available to perform his/her contractual duties.*

### **A. GENERAL REQUIREMENTS**

1. As a supervisory employee of the Contractor, the DSR shall have the authority to direct immediate correction of unsafe or insecure conditions, and, as necessary, to stop affected work until appropriate corrective measures are completed.
2. After Notice To Proceed (NTP) the contractor shall submit for acceptance a list of candidates for DSR Coverage. This submittal shall include the names of all candidates, their qualifications (including required experience), training records, and required Cal/OSHA and CPR/First Aid certifications for review and acceptance by Metro. Only candidates whose qualifications have been submitted no less than thirty (30) days prior to the request for DSR coverage shall be eligible for consideration to provide the specified coverage. Changes in the list of candidates shall be submitted as needed by the Contractor.
3. Designated Safety Representatives shall not substitute for personnel required by the Technical Specifications of this Contract in any situation other than those specifically described below and for no longer than the time periods indicated.
4. Requests for Alternate Safety Coverage must be accompanied by current copies of certification cards for certifications required by this policy if the certifications have been renewed since their first submittal. This request shall be processed



and transmitted in the manner of any other contractor submittal in accordance with the requirements of this manual and the Contract.

5. The Request for Alternate Safety Coverage shall be submitted no less than forty-eight (48) hours prior to the commencement of the covered work. Any request submitted without this required processing time shall be rejected. Requests to cover extended (greater than one shift) sick leaves, terminations for cause and/or resignations without prior notice are exempted from this requirement.
6. The Request for Alternate Safety Coverage shall include the following information:
  - a. Clear indication of the reason for coverage.
  - b. A clear description of the location(s) of the covered work.
  - c. A clear description of the scope of the covered work.
  - d. Size of the work crew(s) to be covered.
  - e. Identification of all responsible personnel to be on duty during the specific period.
7. The RE shall provide a copy of each Request for Alternate Safety Coverage Submittal to the Metro Construction Safety Manager or designee who may, upon review, require the submittal of a job hazard analysis prior to the approval of the Request for Alternate Safety Coverage and the start of any covered work.

If required as a condition of approval of the Request for Safety Coverage, the contractor shall submit and have approved by Metro's Construction Safety Manager or designee a job hazard analysis of the work.
8. The submitted Request for Alternate Safety Coverage submittal will be approved only for individuals who have been previously submitted and approved by Metro in conformance with paragraph 2.4.A.2.
9. Should the Contractor fail to comply with the requirements of this policy for any work covered by a Request for Alternate Safety Coverage or fail to submit a Request and allow work to be performed without required safety coverage, Metro will issue a SUSPENSION OF WORK NOTICE for the work involved. The SUSPENSION OF WORK NOTICE shall remain in effect until the contractor returns to compliance with the safety coverage requirements of the Contract and this section.
10. At the discretion and direction of the Director, Construction Safety, a SUSPENSION OF WORK NOTICE may be issued for all or part of the Work being performed on the Project with regard to Alternate Safety Coverage based upon a variety of factors including but not limited to, the Contractor's prior level of cooperation, effectiveness of Contractor's Safety Program, and reason for non-compliance with the requirements of this program.

## B. REVOCATION

The contractor's utilization of this policy may be revoked by the Metro Director, Construction Safety or Construction Safety Manager at any time by notifying the RE and Contractor in writing of the revocation including the rationale for the revocation and curative measures (if any) the Contractor must undertake to again be eligible to participate in the benefits of this policy.

Upon written notification from the Metro Director, Construction Safety or Construction Safety Manager that this policy has been revoked, the Contractor shall comply with the staffing requirements found in the technical specifications when work is proceeding regardless of the type of work or the size of the crew involved in the work.

This Alternate Safety Coverage policy may be revoked for cause. Potential causal rationales include but are not limited to:

1. Poor contractor Safety Performance
  - a. Project-to-Date or successive monthly Lost Time Injury Rates in excess of the most recently published national average or the Project-to-Date Rate.
  - b. Project-to-Date or successive monthly Recordable Injury Rates in excess of the most recently published national average or the Project-to-Date Rate.
2. Documented non-compliance with the requirements of this policy.
3. Documented non-compliance with the safety and security requirements of this contract.

Revocation of this policy may be limited to a particular time period or be for the life of the contract as deemed appropriate by the Metro Director, Construction Safety or Construction Safety Manager.

#### C. QUALIFICATIONS

To be accepted by Metro, a candidate for Designated Safety Representative shall satisfy the following requirements:

1. Satisfactorily completed the OSHA 30 Hour Construction Safety Training Course "Occupational Safety and Health Standards for the Construction Industry."
2. Be a foreman, superintendent or other supervisory member of the contractor Project Management Team currently assigned to the Work.
3. When requested, demonstrate familiarity with all reporting and recordkeeping requirements for which the DSR will be responsible.
4. If the candidate has previously served as a DSR, the candidate shall have performed the duties of DSR to the satisfaction of the Metro Construction Safety Manager assigned to the Project.
5. Possess at least one year of verifiable supervisory experience in the Heavy Construction field, specifically in the scope of work of the request.

#### D. USE OF A DSR

The contractor may utilize this policy in the following situations and only in accordance with the requirements of this policy:

1. Sick, Personal or Emergency Leave
  - a. The contractor shall inform the Resident Engineer immediately upon the absence of the designated Lead Safety Representative or Safety Representative and provide a copy of the Alternate Safety Coverage Request

(Form DSR-1) indicating the qualified person who will act as DSR during the absence.

- b. If the sick, personal or emergency leave will extend more than fourteen (14) calendar days, the contractor shall provide a qualified Lead Safety Representative/Safety Representative, acceptable to Metro and meeting the requirements of the Technical Specifications of this Contract to assume the duties and responsibilities of the absent Lead Safety Representative/Safety Representative on or before the fifteenth day of absence.

## 2. Vacation Leave

- a. The contractor shall provide a copy of the Alternate Safety Coverage Request (Form DSR-1) indicating the qualified person who will act as DSR during the absence no less than one week prior to the planned absence.
- b. If the vacation will extend more than fourteen (14) calendar days, the contractor shall provide a qualified Lead Safety Representative/Safety Representative, acceptable to the authority and meeting the requirements of the Technical Specifications of this Contract to assume the duties and responsibilities of the absent Lead Safety Representative/Safety Representative on or before the fifteenth day of absence.

## 3. Lead Safety Representative/Safety Representative Termination or Resignation

- a. In the event that a contractor Lead Safety Representative/Safety Representative is either terminated or resigns, the contractor shall immediately inform the Resident Engineer and the Metro Construction Safety Manager or designee.
- b. The contractor shall assign a DSR immediately and provide the Resident Engineer and the Metro Construction Safety Manager or designee a copy of the Alternate Safety Coverage Request indicating the DSR candidate.
- c. If the substitution of a DSR extends more than fourteen (14) calendar days, the contractor shall provide a qualified Lead Safety Representative/Safety Representative, acceptable to Metro and meeting the requirements of the Technical Specifications of this Contract to assume the duties and responsibilities of the former Lead Safety Representative/Safety Representative on or before the fifteenth day of absence.

## 4. Small Work Crews

In situations where a small crew of fifteen (15) employees or less, including all supervisory and subcontractor employees, is involved in work on an extended shift, weekend work or irregular shift work; a DSR may be substituted for the personnel required by the Technical Specifications provided the following conditions are met:

- a. For Projects that involve multiple Contracts with Prime Contractors, the individual Contract's Project to Date OSHA Recordable Case Rate must not exceed the overall Project's Case Rate.
- b. For Projects that involve multiple Contracts with Prime Contractors, the individual Contract's Project to Date Time Away From Work Case Rate must not exceed the overall Project's Case Rate.

- c. For Projects that involve a single Contract with a Prime Contractor or JV, the Contractor's Project to Date OSHA Recordable Case Rate and Lost Time Case Rate must not exceed the most recently published National Rates.
  - d. The contractor shall provide a copy of the Safety Coverage Request (Form DSR-1) indicating the qualified person who will act as DSR during the work no less than four working days prior to the planned work.
5. Work Activity at Contract Completion

As the Contract nears completion and the only remaining contractor activity is limited to work by small crews on an irregular basis, acceptance of the use of a DSR for the work will be considered by the Metro Construction Safety Manager or designee based upon the detail of the particular situation.

## **2.5 Required Emergency Procedures**

### **A. EMERGENCY ACTION PLAN & REPORTING PROCEDURES**

The contractor shall have a written Emergency Action Plan & Reporting Procedure including, but not limited to, the following:

1. Injuries to employees.
2. Injuries to the general public on or adjacent to the worksite.
3. Property damage with particular emphasis on utilities.
4. Fire.
5. Natural disasters such as earthquakes.
6. Public demonstrations such as mobs, riots, etc.
7. Bombs or other destructive threats.
8. Other exposures or potential hazards that may occur at the worksite.
9. Ventilation for underground work areas.
10. Emergency procedures compatible with local police and fire department procedures.
11. Emergency procedures that ensure the contractor's most senior supervisor present takes charge of and directs the handling of the emergency.

The contractor's Lead Safety Representative/Safety Representative shall review emergency procedures monthly to ensure that contractor personnel are familiar with the proper actions to take, and that emergency telephone numbers are current. The emergency procedures shall be posted on the contractor's bulletin board. All emergency procedures shall be reviewed and accepted by Metro. Emergency fire and earthquake drills will be conducted semi-annually during the term of the contract.

After NTP and prior to the start of construction activities (including activities in support of Final Design for Design Build Contracts), the above procedures shall be submitted to Metro for review and approval in compliance with Section 1.05 of the Worksite Safety Requirements.

The Emergency Reporting Procedure and specific emergency procedures will be discussed and reviewed regularly by the contractor's supervisory personnel and at tool box safety meetings.

#### B. EMERGENCY ACTION PLAN & REPORTING PROCEDURE IMPLEMENTATION

Should an emergency occur, the contractor shall:

1. Immediately secure the area and implement the appropriate actions from the Emergency Action Plan & Reporting Procedure.
2. Notify the Resident Engineer and the Metro Construction Safety Manager or designee who will notify other Metro staff in conformance with Metro's Emergency Action Plan & Reporting Procedure.
3. Provide information regarding the emergency to authorized Metro representatives only. Questions from the press and media shall be referred to Metro's Public Affairs Department.

#### C. FIRST-AID FACILITIES

In formulating a Site Specific Emergency Action Plan, the contractor shall provide appropriate facilities and staff for the treatment of on-the-job injuries. The first-aid facility shall comply with the requirements of the CCR Title 8 in conforming to the following:

1. For larger Heavy Civil and or New Underground Construction Projects where the Contractor maintains a portable or temporary office at the worksite, the location, size, furnishing and equipment shall have the approval of Metro and be capable of providing quiet, private communications, as well as adequate ventilation, light, heat, hot and cold water, toilet facilities and electrical outlets. Additionally, this station must also be equipped with a first-aid kit suitable to service the number of personnel assigned to the project, towels and paper cups, a blood pressure cuff and stethoscope, a cot or an equivalent resting place, and other items as required by the consulting physician.
2. For small Capital Improvement Construction Projects where the Contractor *does not* maintain a portable or temporary office at the worksite, the location, size, furnishing and equipment shall have the approval of Metro and be capable of providing quiet, private communications, and may be nothing more than the cab of a Company Truck. This station must also be equipped with a first-aid kit suitable to service the number of personnel assigned to the project, and other items as required by the consulting physician.

#### D. INCIDENTS

Incidents involving either personal injury, serious or significant property damage (in excess of \$5,000) or a report to the '9-1-1' agency shall be reported by the Contractor's Safety Representative immediately to the Metro Construction Safety Manager or designee. The Metro Construction Safety Manager or designee shall notify Metro staff in conformance with the Metro Emergency Reporting Procedures. The Contractor shall issue standing orders to all supervisors directly in charge of operations that the scene of an incident shall not be

disturbed, except for rescue or other emergency measures, until otherwise directed by the Metro Construction Safety Manager or designee.

The Contractor's Safety Representative shall report 'near miss' or non-serious property damage incidents to the Metro Construction Safety Manager or designee immediately. If the incident falls below the reporting criteria for activating the Emergency Reporting Procedures the Metro Construction Safety Manager or designee will follow Metro procedures and make notifications as needed.

Contractors' personnel, either witnessing or party to the incident, shall be detained at the site to provide detailed accounting of facts in the form of a written, signed statement. All statements as well as a preliminary investigation into the facts conducted by contractor management personnel including drawings and pictures shall be submitted to the Metro Construction Safety Manager or designee within 24 hours of the incident. The contractor shall designate a responsible person to make emergency calls.

## **2.6 Protection of the Public**

### **A. PROTECTIVE MEASURES**

Necessary precautions shall be taken to prevent injury to the public or damage to property of others. Installation of temporary barriers and/or fencing designated to protect the public shall be reviewed and accepted by Metro and monitored for compliance by the Metro Construction Safety. Precautions shall include but not be limited to the following:

1. Work shall not be performed in any area occupied by the public unless specifically permitted by the contract or approved in writing by Metro.
2. When necessary to maintain public use of work areas involving sidewalks, entrances to buildings, lobbies, corridors, aisles, stairways, vehicular roadways, etc., the contractor shall protect the public in accordance with all applicable laws and regulations.
3. Sidewalks, entrances to buildings, lobbies, corridors, aisles, doors or exits shall be kept clear of obstructions to permit safe ingress and egress of the public at all times.
4. Appropriate warnings, signs and instructional safety signs shall be conspicuously posted where necessary. In addition, a signal person shall control the movement of motorized equipment in areas where the public might be endangered. Signs, signals or other control devices used to regulate vehicular traffic shall meet the requirements of paragraph 1.5.B of this document, and the Work Area Traffic Control Handbook (known as the "Watch Manual") or California Manual on Uniform Traffic Control Devices (MUTCD).
5. Sidewalks, sheds, canopies, catch platforms and appropriate fences shall be provided when necessary to maintain public pedestrian traffic adjacent to the erection, demolition or structural alteration of outside walls on any structure. The protection required shall be in accordance with all applicable laws and regulations and paragraph 1.5.B of this document.

6. Temporary fencing shall be provided around the perimeter of the worksite adjacent to public areas except where a sidewalk shed or fence is provided by the contractor as required by subparagraph 5, above. Perimeter fences shall be at least eight feet high.
7. Temporary fencing may be constructed of wood or metal frame and sheathing, chain link, a combination of both, or as otherwise provided in contract documents. To address line of sight issues, when the fence is adjacent to a sidewalk at a street intersection or driveway, the upper portion of fence shall be open wire mesh from a point not to exceed three feet above the sidewalk and extending at least twenty-five feet in both directions from the corner of the fence.
8. Guardrails shall be provided on both sides of vehicular and pedestrian bridges, ramps, runways and platforms. Pedestrian walkways elevated adjoining surfaces, or walkways within four feet of the top of excavated slopes or vertical banks, shall be protected with guardrails, except where sidewalk sheds or fences are provided as required by subparagraph 6, above. Guardrails shall be constructed in accordance with paragraph 1.5.B, of this document.
9. Barricades shall be provided between work areas and pedestrian walkways, roadways or occupied buildings unless more specific protection is required in the paragraphs above. When a barricade is temporarily removed for the purpose of work, an employee shall be assigned to monitor the openings to prevent injury or damage to the public.
10. Temporary sidewalks shall be provided when a permanent sidewalk is obstructed by the contractor's operations. Guardrails shall be provided on both sides of temporary sidewalks.
11. Warning signs, reflective stripes or tape, and lights shall be maintained along guardrails, barricades, temporary sidewalks and at every obstruction to the public. Lights shall be placed at both ends of such protection or obstructions and not over twenty feet apart alongside of such protection or obstruction where pedestrians are expected to travel along the path.
12. The use of fuel burning type lanterns, torches, flares or other open flame devices is prohibited.

## **2.7 Group Tours and Site Visitors**

### **A. CONDUCT OF TOURS**

It is particularly important that a high degree of protection be afforded persons on authorized tours of construction worksites. The following instructions shall be complied with, as applicable, by the contractor and those responsible for arranging such tours:

1. In all cases, Metro shall advise the Contractor of any tour being hosted by Metro in a timely manner prior to the tour taking place.
2. Tours hosted by the Contractor must be cleared through the Metro Department of Public Affairs, as well as the Project Director or designee, allowing maximum advance notice and in compliance with Metro's Policies and Procedures.
3. Metro Public Affairs will coordinate the tour arrangements and ensure notification of the Construction Manager.

4. Metro Public Affairs will coordinate the following with the individual or organization requesting the tour:
  - a. Number of Visitors - Tour groups in non-work areas will be limited to no more than twenty-five persons per tour guide. Tour groups in work areas will be limited by agreement between Construction Safety and Public Affairs based upon the specific conditions to be encountered by the tour group.
  - b. Clothing - Visitors entering the work areas of the Project (regardless of whether construction work is taking place in the area or not) will be required to wear appropriate work pants, shirts, and sturdy leather work shoes or rubber safety toed boots. Sneakers, high-heeled shoes, light weight hiking footwear, steel toed athletic or casual footwear are prohibited. Dress or suit slacks or pants, dress shirts or blouses and suit coats will be highly discouraged due to the potential for damage. Loose fitting clothing of any type or clothing that does not protect the legs from scratches and abrasions is also prohibited.
  - c. Minors - Persons under 18 years of age are not permitted on project tours.
  - d. Protective Equipment - Hard hats, eye protection, ear-plugs, and other personal protective equipment will be required as necessary. Metro Public Affairs shall provide protective equipment in coordination with the Director, Construction Safety or designee for tours hosted by Metro only.
  - e. Release and Hold Harmless Agreement - Each visitor shall be required to sign a release and hold harmless agreement prior to the commencement of the tour. A sample Visitor's Release and Hold Harmless Agreement is contained in this manual as Exhibit 2-1.
  - f. Visitors shall comply with contractor safety requirements. This includes Self Rescuer training prior to entering an underground station or tunnel.
  - g. Metro Construction staff members and tour guides shall familiarize their group(s) with the hazards to be encountered on the tour as well as how to protect themselves from these hazards prior to entering the work site through a pre-tour safety orientation presentation.

## **2.8 Locating Utilities**

### **A. REQUIREMENTS**

Prior to any underground work being performed, utilities within the area of work shall be located in accordance with the California Government Code.

1. The contractor shall contact the Underground Service Alert (USA) of Southern California via telephone at 1-800-422-4133 or 8-1-1 or via the internet at [www.digalert.org](http://www.digalert.org), to arrange for the utilities within the area of work to be located.
2. The construction project specifications and drawings shall be reviewed by the contractor for notations of utility companies that are not a member of an underground service alert group. Those non-members of an underground service alert group must be contacted directly.
3. Contact with Underground Service Alert or utility companies shall be logged on the Underground Service Alert Contact Log and retained by the contractor. This



log shall be maintained at the primary worksite and made available to Metro for review without prior notice. See Exhibit 2-2.

4. The contractor shall visually check the area for signs indicating the possibility of recent underground relocation work by an outside entity.
5. The contractor shall notify the RE and staff at the periodic look ahead and/or readiness review meetings as to any upcoming underground work expected during the look ahead time period.
6. The contractor shall take all necessary steps to protect the utilities from damage including 'pot-holing' at appropriate intervals to positively locate the utilities. Confirm with the Metro Third Party staff and or directly with the owners of underground utilities in the area to confirm the need for a representative of the utility to be on location during the work. If the Utility requires the presence of a representative, work with the potential to affect that utility installation shall not be commenced without the required representative present.
7. Strict compliance with the utility provisions of this manual as determined by Metro shall be considered part of the original scope of work and shall not delay the schedule for performance of work by the contractor nor shall they be the basis for any claim of delay or to increase the cost of the Contract.

## **2.9 Concrete Barricades**

Temporary concrete barricades, such as "K-rail" or "Jersey barricades", shall be used along streets where work is being performed to separate vehicular traffic from the work areas. Temporary concrete barricades shall be used along streets to separate vehicular traffic from pedestrian detours in streets. These barricade installations shall be designed and installed in compliance with the provisions of this Contract and the most recent revision of the California Manual of Uniform Traffic Control Devices (CA-MUTCD).

A chain-link fence, or its equivalent, at least four feet in height shall be installed on top of the concrete barricades to prevent pedestrians from climbing or jumping over the barricades. *Plastic type fencing (snow fence) shall not be permitted on the project for this use.* This requirement may be waived by Metro Director, Construction Safety or the Construction Safety Manager for specific locations or periods of work when the fencing or concrete barricades are impractical or inappropriate and other means of protecting the workers and public can be utilized by the Contractor. Waivers shall be in writing and not only have the approval of the Director, Construction Safety or the Construction Safety Manager, but shall also be approved by any other Authority Having Jurisdiction.

## **2.10 Office Safety and Security**

Offices are comparatively safe places to work, however incidents and injuries do occur. To ensure safety of all personnel, follow these rules:

- a. Walk; do not run in corridors or on stairs. Use hand rails.
- b. Do not stand in front of closed doors - they may open suddenly.
- c. Do not read correspondence or other material while walking.
- d. Do not push or crowd at elevators, entrances, exits, or on stairways.

- e. Be careful of swivel chairs. Do not lean back in them without testing your weight gradually.
- f. Electrical or telephone cords shall not be placed across aisles or doorways unless properly protected.
- g. Use handles when closing files, desk drawers and safe or vault doors.
- h. Keep file drawers, desk drawers and locker doors closed when not in use. Open only one file or desk drawer at a time. File cabinets and bookcases shall be properly secured to prevent overturning.
- i. Check your office furniture regularly to assess safe conditions.
- j. Familiarize yourself with emergency office procedures for fire, earthquakes and bomb threats.

## EXHIBIT 2-1

### VISITOR'S RELEASE AND HOLD HARMLESS AGREEMENT

Contractor: \_\_\_\_\_

Contract No: \_\_\_\_\_ Date: \_\_\_\_\_

In consideration of being permitted, for my own purposes and interests, to enter upon the premises or construction site of the Metro Transit Project, I hereby release, hold harmless, and indemnify Metro, the construction managers, contractors and subcontractors from and against, and assume the risk, for and on behalf of myself, my heirs, my survivors and my estate, for any damages, losses, injuries and any and all other claims of any type whatsoever for personal injury (including death) and other loss or damage of any nature whatsoever including damage to my personal property, sustained or caused while on such premises or site, except those injuries which are caused solely by the negligence of Metro, the construction managers, contractors, subcontractors or its agents or employees. In the event any clause, term or provision of this agreement shall be declared or adjudicated void or invalid, it shall in no manner affect the other clauses, terms and provisions hereof, which shall remain in full force and effect, as if the clause, term or provision so declared or adjudicated invalid was not originally a part hereof.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

## Metro TRANSIT PROJECTS

CONTRACT NO: \_\_\_\_\_ CONTRACTOR/SUBCONTRACTOR: \_\_\_\_\_

[illegible]

**EXHIBIT 2-3**

**ALTERNATE SAFETY COVERAGE REQUEST (FORM DSR-1)**

Contract No: \_\_\_\_\_ Date: \_\_\_\_\_

Contractor: \_\_\_\_\_

**LEAD SAFETY REPRESENTATIVE/SAFETY REPRESENTATIVE COVERAGE SITUATION:**

- |                                              |                                                   |                                     |
|----------------------------------------------|---------------------------------------------------|-------------------------------------|
| <input type="checkbox"/> Vacation            | <input type="checkbox"/> Personal Leave           | <input type="checkbox"/> Sick Leave |
| <input type="checkbox"/> Termination         | <input type="checkbox"/> Resignation              | <input type="checkbox"/> Other      |
| <input type="checkbox"/> Small Crew Coverage | <input type="checkbox"/> End of Contract Coverage |                                     |

Coverage Situation Details: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Detailed Scope of Operation(s) to be covered: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Coverage Start Date: \_\_\_\_\_ Expected End Date: \_\_\_\_\_ Time of Day: \_\_\_\_\_

Individual Coverage is being requested for: \_\_\_\_\_  
(name)

Designated Safety Representative Nominee: \_\_\_\_\_  
(name)

Designated First Aid Responder: \_\_\_\_\_  
(name)

Designated CPR Responder: \_\_\_\_\_  
(name)

Assigned Certified Tunnel Safety Representative: \_\_\_\_\_  
(if required by work scope) (name)

Assigned Certified Gas Tester: \_\_\_\_\_  
(if required by work scope) (name)

Complete and submit this form in compliance with Section 2.4 of this Manual.

### **3 INSTRUCTION AND TRAINING**

#### **3.1 Purpose and Scope**

To establish minimum requirements for safety and security training and instruction activities required of every contractor while under contract with Metro. This training should begin with Notice to Proceed and continue through Substantial Completion and Punch List work.

#### **3.2 Objectives**

To ensure that all personnel trained in the awareness of safety hazards and security vulnerabilities involved in their specific job assignments.

To ensure contractors are in compliance with all the specific requirements of paragraph 1.5.B.

#### **3.3 Basic Elements**

The following areas of safety instruction and communication will satisfy the statutory as well as Metro requirements:

- A. Safety, Health and Security indoctrination
- B. Work assignments and job hazard analyses
- C. Safety meetings (including security topics); general, toolbox and task training
- D. Job specific instruction
- E. Location awareness (for security vulnerabilities)
- F. Promotional materials
- G. Supervisor safety and security training
- H. OSHA 30-hour construction safety training
- I. Safety incentives

#### **3.4 Procedures**

##### **A. INDOCTRINATION**

Newly employed, promoted and/or transferred personnel shall be fully instructed in the safety and security practices required for their assignments by audio/visual means including but not limited to video tape presentations, computer interactive training, instructor presentations and or a combination of methods. Initial instructions for project personnel shall include, but not be limited to, instruction on the following:

1. For each individual, the safety hazards and security vulnerabilities presented by the specific work assignment and in the general work area.
2. Personal protective equipment required to be worn at all times in the project work areas including but not limited to hard hat, safety eyewear, and contract compliant clothing and footwear.

3. Instructions on the proper procedure for reporting unsafe job conditions or security vulnerabilities that may be encountered.
4. Reporting of any and all injuries or illnesses, collisions and or damage to public, project or Contractor equipment or property, including near misses.
5. Contractor's job rules and Injury-Illness Prevention Program (IIPP) for the job.
6. Location of first-aid and medical facilities.
7. Toolbox safety/security meeting requirements.
8. Emergency service notification procedures for fires, medical emergencies, police services or other emergency situations.
9. An orientation by the foreman, superintendent or other supervisor of the new employee's work area to the specific safety hazards and security vulnerabilities of that area.

#### A. WORK ASSIGNMENTS

Work assignments, regardless of level, shall include specific instructions on safety and security. Supervisors shall monitor under actual working conditions to ensure that all safety and security instructions are being followed.

#### B. MEETINGS

Properly conducted safety meetings of substantive length are an effective means of communicating with employees about safety and security topics. To be effective, the material presented must be specific as well as practical.

1. Crew Training Meeting (Toolbox) - Each foreman shall hold a weekly toolbox safety training meeting in the work area with their entire crew. Subject matter should cover specific safety or security procedures pertinent to the crew's on-going activity. Following these meetings, a "Report of Safety Meeting" Form No. CS-49 (Exhibit 3-1) (or approved Contractor equivalent) shall be completed and distributed in accordance with Appendix A, Summary of Construction Safety and Security Reports. The Contractor's Lead Safety Representative/Safety Representative shall regularly attend and participate in these meetings.
2. Operational or Progress Meetings - Safety shall be the first agenda item. The record of these meetings should reflect the specific items discussed. The contractor's Lead Safety Representative/Safety Representative is required to attend. Operational or Progress Meetings shall be held in compliance with the Contract Meetings Specification of this Contract.

**EXHIBIT 3-1a**



| REPORT OF TAILGATE SAFETY MEETING        |
|------------------------------------------|
| DATE:                                    |
| MTA CONTRACT NO:                         |
| PROJECT:                                 |
| CONTRACTOR:                              |
| CRAFT:                                   |
| NO. ATTENDING:                           |
| SAFETY AND/OR SECURITY TOPICS DISCUSSED: |
| SUGGESTIONS FOR IMPROVEMENT:             |
| FOREMAN'S SIGNATURE:                     |
| SUPERINTENDENT:                          |
| SAFETY REPRESENTATIVE:                   |

FORM NO. CS-49 (front)



**EXHIBIT 3-1b**

| ATTENDANCE ROSTER |           |       |
|-------------------|-----------|-------|
| NAME - PRINTED    | SIGNATURE | CRAFT |
| 1.                |           |       |
| 2.                |           |       |
| 3.                |           |       |
| 4.                |           |       |
| 5.                |           |       |
| 6.                |           |       |
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| 21.               |           |       |
| 22.               |           |       |
| 23.               |           |       |
| 24.               |           |       |
| 25.               |           |       |

FORM NO. CS-49 (back)

## **4 WORK PRACTICES CONTROL**

### **4.1 Purpose and Scope**

This section describes certain basic practices and procedures to be followed by contractors and their subcontractors for the control and elimination of unsafe or insecure practices by employees, during the prosecution of Metro work. Control and elimination of unsafe and insecure acts is a major portion of an effective safety and security program.

### **4.2 Objectives**

Eliminate job-related injuries and illnesses.

Provide a safe and secure work environment.

Ensure protection of the general public and the environment.

Protect construction supplies, equipment and in process facilities.

Eliminate overall losses and claims.

### **4.3 Procedures**

The techniques which may be applied by the contractor in the control of unsafe and insecure acts include but are not limited to:

#### **A. Planning**

Controlling unsafe or insecure acts starts with the Contractor's planning of the work including planning for proper equipment, tools, personal protective equipment and employee training. This planning process is incorporated into the Construction Work Plan/Job Hazard Analysis process. This process is fully discussed in Section 5 – Physical Conditions Control, however, the process is integral to controlling both physical and behavioral hazards and vulnerabilities.

#### **B. Supervisory Controls**

1. Contractor - Each contractor shall be responsible for continuous surveillance of their operations in order to eliminate the sources of injuries or losses due to unsafe or insecure acts or procedures.
2. Contractor Supervision Staff - The practical safety experience of project supervision shall be utilized in managing the actions of those under their direction.
3. Never, under any circumstance, will an employee be assigned to perform work alone in an isolated work area. Employees working alone must be within visual contact of other workers and or supervision.

#### **C. Reporting of Identified Unsafe or Insecure Practices or Hazardous Conditions**

Responsibility for monitoring and recording the safety and security compliance of contractors is located with Metro Construction Safety Staff and the Construction Manager's field staff. Contractor supervision will be notified verbally at the time an unsafe or insecure practice or condition is discovered or noted by Metro or other

staff. Contractor supervision will be expected to take immediate corrective action appropriate to the practice or condition noted. When correction is not immediately possible, written documentation may be directed to the Contractor by Metro Staff to facilitate follow-up. The lack of notification of the contractor by Metro Staff or Construction Manager's staff regarding a specific practice or hazard shall not in any way relieve the contractor of the responsibility and obligation to identify and address unsafe and or insecure conditions or practices.

The Contractor's Safety Representative, Metro Construction Safety Staff and other Construction Management Staff will use forms appropriate to their position and assignments to record observations and feedback of both safe and unsafe behaviors and conditions. Construction Inspectors and other construction professionals under the control of the Resident Engineer shall inform the contractor and Metro Construction Safety of any unsafe or insecure practices or conditions recognized or brought to their attention by recording such information in their daily inspection or activity reports and forwarding copies of these reports to the Construction Safety Manager when needed.

#### D. Substance Abuse

1. Metro is committed to the establishment and maintenance of a safe and efficient work environment for all personnel, free from the intoxicating effects of alcohol, illegal drugs and other controlled substances.
2. The contractor and subcontractors, regardless of tier, suppliers and all other persons performing work on Metro property shall comply with the provisions of the Construction Contractor Alcohol and Drug Free Workplace Program found in section 4.3.F of this Manual.

#### E. Other Controlled Items

Metro prohibits the use, possession, concealment, transportation, promotion or sale of the following controlled items:

1. Firearms, weapons, and ammunition - except when possessed by authorized security professional or law enforcement personnel assigned or responding to the Work Site.
2. Switchblades or other illegal knives.
3. Unauthorized explosives including fireworks.
4. Stolen property or contraband.

The use, possession, concealment, transportation, promotion or sale of the above items will result in the involvement of law enforcement personnel. Prosecution of personnel will be at the discretion of the Authority Having Jurisdiction.

#### F. Alcohol And Drug Free Construction Workplace Program

The Contractor and any Subcontractors of any tier with subcontracts exceeding twenty-five thousand dollars (\$25,000) are subject to these requirements. At the time of execution of the Contract, the Contractor shall submit to Metro an Alcohol and Drug-Free Construction Workplace Program which at a minimum shall include the following:

- 1) An alcohol and drug-free construction workplace policy statement notifying its employees and subcontractor employees that the unlawful manufacture, distribution, dispensing, possession, or use of alcohol or a controlled substance is prohibited in the Contractor's construction workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- 2) Establishment of an on-going alcohol and drug-free awareness program to inform its employees about:
  - a) The Contractor's policy of maintaining an alcohol and drug-free construction workplace.
  - b) The dangers of alcohol and drug abuse in the construction workplace.
  - c) Any available alcohol and drug counseling, rehabilitation, and employee assistance programs.
  - d) The penalties that may be imposed upon an employee for alcohol and drug abuse violations occurring in the construction workplace.
- 3) Provide to all employees engaged in the performance of the Contract a copy of the alcohol and drug free policy statement.
- 4) As a condition of initial employment or re-employment of any Contractor's employee, employment shall be conditional until pre-employment drug screening has been passed. Drug test types shall be performed according to current national standards by a certified laboratory or certified "instant" test device(s).
  - a) "Initial employment" means the date the employee begins work on the Metro Project for a Contractor subject to this Contract.
  - b) "Re-employment" means the date the employee begins a second or more period of work on the Metro Project for a Contractor subject to this Contract after a period away from the Work of more than forty-five (45) days.
- 5) Notification to all employees, in writing, that as a condition of employment the employee will:
  - a) Abide by the terms of the policy statement.
  - b) Upon request by the Contractor, agree to submit to a drug screening/alcohol test if either of the following exists:
    - i. Reasonable suspicion exists to believe the employee is under the influence or possession of drugs, alcohol or other controlled substances; or
    - ii. Employee is involved in an incident or situation that results in an injury to the employee or any other individual during the performance of the employee's assigned duties or property damage.

Drug test types shall be performed according to current national

standards by a certified laboratory or certified "instant" test device(s).

- c) Notify the employer, in writing, of the employee's conviction under a criminal drug statute for a violation occurring in the construction workplace no later than five (5) calendar days after such conviction.
  - d) Notify the employer of employee's use of prescription drugs which may impair alertness during the performance of the employee's assigned duties.
  - e) Upon reasonable suspicion of a violation of policy, submit to a search and inspection upon entering, while working or leaving the Work Site.
  - f) Upon returning to active employment from rehabilitation for alcohol or drug abuse, sign a "Return to Work Agreement", agreeing to unannounced testing for a period of one (1) year, maintaining an acceptable attendance and performance record and participation in follow-up treatment/counseling recommendations by the treatment program.
  - g) Permit the notification of the Metro's contracting officer by the contractor, in writing, within ten (10) calendar days after receiving notice from an employee or otherwise receiving actual notice of an employee's conviction under a criminal drug statute for a violation occurring in the construction workplace. The notice shall include the name and position title of the employee.
  - h) Understand that within thirty (30) calendar days after receiving notice of a conviction, the employer shall take one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the construction workplace.
    - i. Taking appropriate personnel action against such employee up to and including termination, or
    - ii. Requiring such employees to satisfactorily participate in a drug abuse assistance or rehabilitation program approved by a Federal, State or local health, law enforcement or other appropriate agency.
  - i) That the employer will provide, throughout the construction period, periodic seminars and instruction to site superintendents, supervisory personnel including foremen and other key employees in the characteristics, behavior and detection of alcohol and drugs.
  - j) That the employer is required by contract to submit, on a monthly basis, certain anonymous information regarding the number of new employees, number of retested employees, and billing or inventory invoices as well as other information that allows Metro to audit the activities of the Contractor in compliance with the Alcohol and Drug Free Construction Workplace Program.
- 6) The Contractor, if an individual, agrees by award of the Contract, not to engage in the unlawful manufacture, dispensing, possession, or use of a controlled substance in the performance of the Contract.

- 7) If the Contract involves the use of Union Craft personnel in performing the Work, the Contractor may wish to obtain a Memorandum of Understanding regarding its Alcohol and Drug-Free Construction workplace program from the Unions involved.
- 8) The Program shall also contain an explanation of a monthly submittal to Metro which allows Metro to validate the ongoing nature and effectiveness of the Program. This submittal may take the form of one of the three following reports or another of similar nature as determined by the Contractor and included in the Approved Program:
  - a. A copy of invoices paid to an independent laboratory for the conducting of screening tests. The report should indicate the number of new employees tested, employee retests and tests for cause. This number should equal the number of tests the Contractor is being billed for. Any personal information included on the invoices shall be redacted by the Contractor prior to submittal.
  - b. When the contractor is using a urinalysis device that allows for testing on site, verification of testing is completed via an inventory report. The report should indicate the number of unused testing cups at the beginning of the month, subtracting the number of new employees tested, employee retests, tests for cause, and adding the number of new cups received. This number should equal the number of test cups on site at the end of the month.
  - c. When the contractor is using some other device that allows for testing on site (such as an oral swab), verification of testing is completed via an inventory report. The report should indicate the number of unused testing devices at the beginning of the month, subtracting the number of new employees tested, employee retests, tests for cause, and adding the number of new devices received. This number should equal the number of testing devices on site at the end of the month.

#### G. Safety First Incentive Program

##### 1. General

- a) Application – This Section and the Program it describes applies ONLY to those Contract Packages where a defined value for this Program is indicated in the Special Provision titled SAFETY'S FIRST INCENTIVE PROGRAM. In Contract Packages where the above titled Special Provision is excluded, blank or marked with the words "Not Used" or similar language, the requirements of this section are null and void.
- b) Purpose. -- This Section will provide guidelines for the Contractor to develop a Safety's 1st Award Program (Program) to recognize and provide incentive to its personnel at all levels of employment, as well as the of its Subcontractors, for superior safety performance. Metro will reimburse the Contractor the actual cost of the awards, as set forth below, associated with this Program.
- c) Announcement/Presentation. -- The Program status may be reviewed at Metro's Monthly Safety Meeting. Actual presentation of awards will be made in a convenient area on or near the Worksites.
- d) Approval & Audit. -- To ensure that awards are distributed fairly and consistently, Contractor's Safety 1st Incentive Program shall be subject to Review and Approval, as well as audit, by Metro.

2. Metro Funding Cap, Reimbursement & Audit.
  - a) Funding Cap. -- This Program will be funded under the item listed in the Schedule of Quantities and Prices and described in the Special Provisions.
  - b) Reimbursement. -- All requests for reimbursement must be accompanied by a copy of the approved submittal for the Award Item in question, a copy of the invoice clearly indicating the specific award item, quantity & pricing and a copy of the Contractor's payment of the invoice. Reimbursements requests shall be Approved by the Director, Construction Safety or written designee.
  - c) Audit. -- All costs for which the Contract seeks reimbursement shall be subject to financial audit in accordance with the Section entitled MAINTENANCE OF, ACCESS TO AND AUDIT OF RECORDS.
3. Submittal Requirements -- Within thirty (30) Days of the Notice to Proceed (NTP), the Contractor shall develop a detailed SAFETY FIRST INCENTIVE PROGRAM PLAN for submittal to (and Approval by) Metro. Requests for reimbursements under this article will be rejected prior to the Approval of the Contractor's SAFETY FIRST INCENTIVE PROGRAM PLAN.
4. SAFETY FIRST INCENTIVE PROGRAM PLAN Criteria - The Contractor's SAFETY FIRST AWARD PROGRAM PLAN shall address the following:
  - a) Program Administrator. -- Identification of the individual(s) who will administer the Award Program for the Design Builder.
  - b) Employee Eligibility. -- Design Builder's employees, as well as the employees of its Subcontractors (of any tier), who are working at the Site during the eligibility period for the award (hereinafter "Eligible Employees").
  - c) Eligible Employee Listing. -- A process enabling accurate accounting (and reporting) of all Eligible Employees in the Incentive Program.
    1. Contractor and its Subcontractors (of any tier) shall develop and maintain a tabular list of its Eligible Employees, which tracks, at a minimum, the following information regarding each employee:
      - (a) Start and end date at the Worksite;
      - (b) Number of hours worked or logged at the Site;
      - (c) A number count of the times he/she has won an award under the Award Program in question, including date of last award;
      - (d) A number count, logging relevant safety metrics directly attributable to the individual:
        - i. The number of incidents resulting in a recordable injury/illness.
        - ii. The number of vehicle collisions or incidents.
        - iii. The number of incidents resulting in equipment damage (Construction Equipment or otherwise) exceeding five-hundred US Dollars (\$500).
        - iv. The number of incidents meeting the criteria for "Special Circumstances", as defined in the Article entitled ASSESSMENTS FOR SPECIAL CIRCUMSTANCES
    2. Upon Metro's request, Design Builder shall provide Metro with an electronic file-copy and/or hardcopy of the latest "Eligible Employee Listing", for itself as

well as its Subcontractors (of any tier). The electronic file-copy of the Listing given to Metro shall either be in a spreadsheet or a database format, or as otherwise agreed upon between Contractor and Metro.

5. Incentive Criteria. -- The basis for the Incentive shall be any Eligible Employee (as defined above in this Section) who has:
  - a) No recordable injuries/illnesses;
  - b) No claims of public liability;
  - c) No vehicle accidents or equipment damages exceeding five hundred US Dollars (\$500);
  - d) No incidents meeting the criteria for "Special Circumstances".
6. Incentive Structure. -- The Incentive structure shall include the following:
  - a) Period of performance required for the specific incentive.
  - b) Approximate dollar values of incentives to be awarded, as well as types of awards in each category.
  - c) Incentives for reimbursement shall be logo bearing items such as caps, cups, coolers, jackets, T-shirts, belt buckles, watches and other such items of value to the construction work force.
  - d) The methodology by which Contractor will document and provide certification for awards distributed.
7. Approval of Safety Award Nominations.
  - a) Award Distribution List. -- Prior to issuance of an incentive by the Contractor, the Contractor shall submit to Metro for its Approval, an AWARD DISTRIBUTION LIST containing the following:
    1. A listing of the names of Eligible Employees (as defined above in the previous Section) who are considered by the Contractor for an incentive, for the period to be presented (hereinafter "Incentive Recipients");
    2. The type(s) of incentive to be presented to each Incentive Recipient, for the period to be presented; and
    3. The specific Incentive Criteria used for selection of the Incentive Recipients.
  - b) Approval of Distribution List. -- Metro's Contracting Officer (or its duly delegated Authorized Representative), at its sole discretion, will review and Approve the Contractor's incentive Distribution List, as well as the corresponding distributions of money to the Contractor to fund the awards.
8. Approval of Safety Award Format.
  - a) Award documents must be approved by Metro for style, wording and logo use prior to procurement by the Contractor.
  - b) Items to be used as incentives must be submitted to and approved by Metro as meeting Metro's criteria for design and use of logos prior to being procured by the Contractor.
  - c) Failure of the Contractor to obtain required approvals may result in the rejection of payment requests made under this section.



## **5 PHYSICAL CONDITIONS CONTROL**

### **5.1 Purpose and Scope**

Establish and maintain physical conditions in the workplace that control observed or expected hazards and vulnerabilities. This control applies to any area under the control of the Contractor which is or may be occupied by the Project Workforce or exposes the general public to construction hazards or vulnerabilities in any way.

### **5.2 Objective**

Prevent injuries and incidents resulting from uncontrolled physical hazards or vulnerabilities.

### **5.3 Procedures**

#### **A. PLANNING**

Planning for the safety and security of the project shall begin with initial design and continue throughout the construction phase. Contractors shall plan the safety procedures to be followed for each phase of construction. The Contractor's Safety Representative, in conjunction with the Contractor's Project Management staff that is directly responsible for the work will develop and implement Job Hazard Analyses (JHA) as part of the development of Construction Work Plans. Use Form CS-51, Worksheet for Job Hazard Analysis (see Exhibit 4-0) or similar form accepted by Metro Construction Safety.

#### **1. Job Hazard Analysis (JHA)**

The written JHA is an integral part of the Construction Work Plan. For each work activity undertaken by the Contractor a Construction Work Plan (CWP) shall be developed and submitted in compliance with the Project Quality Requirements and Worksite Safety Requirements Technical Specifications...

- a. The contractor shall submit as soon as possible after Notice to Proceed (NTP) a matrix of JHA's to be completed for major work activities as well as a schedule for the preparation and submittal of the CWPs/JHAs. As work progresses, additional CWPs/JHAs may be required by Metro and shall be submitted upon notification. (See also Section 8.3.A.3 of this Manual.)
- b. JHAs will be developed and submitted with the associated CWP prior to commencement of the activities included in the CWP/JHA and in compliance with the Project Quality Requirements and Worksite Safety Requirements Technical Specifications.
- c. No work included in a CWP/JHA will commence prior to the submittal and acceptance of the CWP/JHA. The CWP/JHA shall be reviewed as part of the Readiness Review meeting in compliance with the Project Quality Requirements Technical Specification.
- d. High Hazard Operations: When a JHA identifies high hazard activities such as, but not limited to the activities listed below, the crew will review the written JHA on a daily basis before starting the work.

- 1) Potential for the release of stored energy; i.e., electrical, pressure, explosive, etc.
- 2) Danger of striking against or being struck by.
- 3) Potential injury from burns, including chemical, thermal and or radiation.
- 4) Potential oxygen-deficient environments, limited access or exit conditions (confined spaces).
- 5) Potential of being caught in, on, or between objects.
- 6) Potential injury the use of improper body positions.
- 7) Potential exposure to toxic/radioactive gases, vapors, mists, dusts, heat, cold or other physical stress agents.
- 8) Potential for property damage or loss of function.
- 9) Any change in process or procedures that effect the crew's operation.

## 2. JHA's - Distribution and Training

The JHA serves as an operating procedure and shall be made available to the personnel performing the work. A copy of the accepted JHA will be provided to supervisors and foremen involved in the operation and will be reviewed by the affected employees during a crew safety meeting held prior to the start of the new activity. Personnel involved with the operation will be instructed as to the hazards involved and methods required to control the hazards, including emergency action to be taken in the event of an incident. Personnel will be made aware of the procedures to be used and of the requirements of the JHA. The preparation of CWP/JHAs will be included in the contractor's two week look-ahead schedule and will be discussed at the weekly progress meeting.

### A. RESPONSIBILITY AND SUPERVISORY TRAINING

The contractor is responsible for effective performance through its supervisors and foremen. The supervisor or foreman has direct control of the work being performed, and the responsibility to observe and correct any unsafe or insecure conditions and/or behaviors that they observe or are brought to their attention.

Supervisors and foremen shall complete 30 hours of job specific safety training before beginning contract related activities. Certification of successful completion of an accredited OSHA 500 Construction Outreach Course shall satisfy this requirement. At a minimum, instruction in the following topics shall be included:

1. Hazard identification and abatement
2. Preparation of Job Hazard Analyses
3. Communications in Safety
4. Applicable Federal and State Regulations
5. Injury and Incident Investigation

Training certificates and other records shall be submitted to Metro for review and acceptance. Training records shall be maintained at the worksite and made available to Metro for review without prior notice.

## B. REVIEW OF PHYSICAL CONDITIONS

There are many reviews of physical conditions (inspections) required by statute and this document. However, merely inspecting a work area and documenting physical hazards, security vulnerabilities and unsafe or insecure behaviors does nothing to prevent injuries or losses. Any observation or discovery of physical hazards, security vulnerabilities and unsafe or insecure behaviors must be followed by immediate intervention to control the physical condition or correct the behavior.

1. In addition to other responsibilities for review of physical conditions contained herein, the contractor shall ensure that its Lead Safety Representative makes or coordinates thorough weekly reviews of each of the work areas (including storage, office and/or shop facilities) to ensure compliance with paragraph 1.5.B; utilizing a form approved via the submittal process by Metro. The Contractor may utilize Form CS-54, Construction Safety Hazards Review Record, (see Exhibit 5.1) in lieu of a submitted form to document these reviews. The Safety Representative shall involve the line supervision responsible for each area of work in the inspection of each specific area as a form of training and to expedite correction of the unsafe or insecure condition or practice. Issues that are noted during the review shall be recorded on the approved form. The contractor's project management staff shall be responsible for implementing corrective actions in a time frame appropriate to the severity of the hazard.
2. The contractor shall provide for the performance of required crane inspections and maintain daily, monthly, quarterly, and annual logs. Form No. CS-55, Crane Inspection Record and Form No. CS-56, Wire Rope Inspection Record are included as Exhibits 5-2 and 5-3 and may be used by the Contractor in lieu of the Contractor's equivalent corporate forms. Copies of the completed Forms CS-55 and CS-56, or contractor's equivalent, are to be maintained on the site and shall be provided to Metro upon request without prior notice.
3. Site visits by Representatives of Regulatory Compliance Agencies
  - a. Contractors shall immediately notify the Resident Engineer and Metro Construction Safety Staff whenever a Cal/OSHA or Fed/OSHA compliance officer arrives on the project in compliance with 6.3.G, Inspections by Regulatory Agencies and other sections of this Manual.
  - b. Contractors shall immediately notify the Resident Engineer and Metro Construction Safety Staff of visits by the Fire Department and/or Fire/Safety Inspectors.
  - c. This project is a publicly funded project and at no time shall the contractor or subcontractor at any tier request or require state or federal OSHA compliance officers to obtain a warrant prior to entering a Metro Construction Project. It is; however, appropriate to request a delay in the inspection only until such time as a member of Metro Construction Safety Staff arrives.
  - d. Contractors shall expect continuous monitoring and review of their safety practices and procedures by Metro. Full cooperation by the contractor shall be given to correct any safety or security discrepancies noted verbally or in writing by Metro Construction Safety Staff and or Construction Management Staff. These activities shall not relieve the contractor of any of its regulatory or other obligations. Due to the transitory nature of worksite conditions and personnel, unsafe or insecure conditions or behaviors may occur

occasionally or routinely and may be undetected by any given review by Metro Construction Safety Staff or the staff of the Construction Manager. For this reason, the contractor is expected to exercise absolute control over worksite conditions and personnel through each level of supervision to minimize the potential for injury or property damage.

#### C. METRO "RED TAG" PROCEDURE

Metro has established a program by which equipment, tools or other items used to complete the work that have been determined to present a potential for injury when used as directed by the manufacturer, shall be removed from service. A tag with a prominent red and black message including the word 'DANGER' will be utilized by Metro Construction Safety Staff (Exhibit 5-0). All equipment, tools or other items used to complete the work are subject to periodic inspection by Metro and any item of the contractor that is rejected as not conforming to paragraph 1.5.B of this manual, the manufacturers recommendations, or applicable ANSI standards and presents a potential for injury when used as directed by the manufacturer shall be "Red Tagged" by Metro Construction Safety Staff. The tag will be dated and signed and will note the unsafe condition.

Any item so tagged shall not be used until the condition noted on the tag has been corrected and the tag has been removed by the person who has signed and attached the tag. Any employee who ignores, removes, damages or otherwise tampers with a Metro "Red Tag" shall immediately be removed from the project by the contractor and shall not return to the project without the written permission of the Metro Director, Construction Safety or Construction Safety Manager.

A Metro "Red Tag" is considered the equivalent of a **Notice of Suspension of Work** for the particular equipment, tools or other item so tagged. Any violation of the provisions of this section shall be considered a violation of the Special Circumstances Special Provision, if included in the Contract, and the violation may result in the penalties described in the Special Circumstances Special Provision.

#### D. INFORMATION EXCHANGE

Nothing shall be done to impede the free flow and exchange of information between the contractor's Safety Representative and Metro Construction Safety Manager or designee.

#### E. NOTIFICATION OF HAZARDS

Contractors shall provide the RE and Metro Construction Safety Manager with immediate verbal notification, to be followed by written notice of the existence of any hazardous conditions, property or equipment at the worksite that are not under the contractor's control. However, it shall be the contractor's responsibility to take all necessary precautions against injury to persons or damage to property from such hazardous conditions until corrected by the responsible party.

CS-51  
WORKSHEET FOR JOB HAZARD ANALYSIS

|                                                            |                                |                         |        |
|------------------------------------------------------------|--------------------------------|-------------------------|--------|
| Corporation:                                               |                                | JHA By:                 | JHA #: |
| Craft:                                                     |                                | Date of Analysis:       |        |
| Briefly describe the job:                                  |                                |                         |        |
| Required and/or recommended Personal Protective Equipment: |                                |                         |        |
| WORK OPERATION                                             | POTENTIAL ACCIDENTS OR HAZARDS | SAFE JOB ACTIONS NEEDED |        |
|                                                            |                                |                         |        |

FORM NO. CS-51 (REVISION 3)



Rear Side



a.

## CONSTRUCTION SAFETY HAZARDS REVIEW RECORD

FORM NO. CS-54

# **EXHIBIT 5-2**

| CRANE INSPECTION RECORD                                                                                                                                       |           |             |                             |           |             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-------------|-----------------------------|-----------|-------------|
| CRANE NO: _____ MILEAGE: _____ HOURS: _____ DATE: _____                                                                                                       |           |             |                             |           |             |
| <b>A. GENERAL REQUIREMENTS</b>                                                                                                                                | <b>OK</b> | <b>*REP</b> | <b>C. MAIN MACHINE</b>      | <b>OK</b> | <b>*REP</b> |
| 1. Capacity charts in cab                                                                                                                                     |           |             | 1. Controls                 |           |             |
| 2. Special instruction posted                                                                                                                                 |           |             | 2. Clutches                 |           |             |
| 3. Barricades (tail swing)                                                                                                                                    |           |             | 3. Brakes                   |           |             |
| 4. Exhaust, pipes guarded                                                                                                                                     |           |             | 4. Brake locks              |           |             |
| 5. 5 BC fire ext. in cab                                                                                                                                      |           |             | 5. Main drum                |           |             |
| 6. First-aid kit in cab                                                                                                                                       |           |             | 6. Boom hoist               |           |             |
| 7. Safety glass in cab                                                                                                                                        |           |             | 7. Boom hoist panel         |           |             |
| 8. Guardrails/hand holds                                                                                                                                      |           |             | 8. Boom hoist kickout       |           |             |
| 9. Platform and steps/non-skid                                                                                                                                |           |             | 9. Oil leaks                |           |             |
| 10. Proximity signs, 10 ft. min.                                                                                                                              |           |             | 10. Hook rollers and turret |           |             |
| <b>B. ATTACHMENTS</b>                                                                                                                                         |           |             | <b>D. CARRIER</b>           |           |             |
| 1. *Hooks and blocks (safety latch on hook)                                                                                                                   |           |             | 1. Steering                 |           |             |
| 2. Sockets and rope clamps                                                                                                                                    |           |             | 2. Brakes (all system)      |           |             |
| 3. Boom and lacing                                                                                                                                            |           |             | 3. Lights, horn, wipers     |           |             |
| 4. Boom stops                                                                                                                                                 |           |             | 4. Transmission             |           |             |
| 5. Spreaders and gantry                                                                                                                                       |           |             | 5. Differential             |           |             |
| 6. Jib and stops                                                                                                                                              |           |             | 6. Clutch                   |           |             |
| 7. Outriggers and pads                                                                                                                                        |           |             | 7. Engine                   |           |             |
| 8. Counterweights                                                                                                                                             |           |             | 8. Tires and wheels         |           |             |
| 9.                                                                                                                                                            |           |             | 9. Gauges                   |           |             |
| 10.                                                                                                                                                           |           |             | 10.                         |           |             |
| USE WIRE ROPE FORM FOR CABLE INSPECTIONS                                                                                                                      |           |             |                             |           |             |
| Inspected at: (Location) _____ By: _____                                                                                                                      |           |             |                             |           |             |
| * Repair or Replace - Respond on reverse side by specific item letter and number. Require separate, recorded annual inspection for deformation and/or cracks. |           |             |                             |           |             |

FORM NO. CS-55



### EXHIBIT 5-3

| WIRE ROPE INSPECTION RECORD                                       |      |                                       |         |                                                      |                |                                                             |                                                                             |                                                    |
|-------------------------------------------------------------------|------|---------------------------------------|---------|------------------------------------------------------|----------------|-------------------------------------------------------------|-----------------------------------------------------------------------------|----------------------------------------------------|
| CRANE NO: _____ MILEAGE: _____ HOURS: _____ DATE INSPECTED: _____ |      |                                       |         |                                                      |                |                                                             |                                                                             |                                                    |
| WIRE ROPE                                                         |      | (A) NUMBER OF<br>BROKEN WIRES<br>PER: |         | (B) % DIAMETER<br>REDUCTION (WEAR<br>OR CORE DAMAGE) |                | (C) KINKED,<br>CRUSHED<br>OR CUT,<br>LOSS OF<br>LAV., ETC.? | (D) LUBED,<br>CORROSION<br>(INTERNAL<br>OR<br>EXTERNAL),<br>HEAT<br>DAMAGE? | (E) TERMINAL<br>TACKLE,<br>BLOCKS,<br>HOOKS, ETC.? |
| TYPE                                                              | SIZE | LAY?                                  | STRAND? | IND.<br>WIRE?                                        | TOTAL<br>ROPE? |                                                             |                                                                             |                                                    |
| Main Hoist<br>(Ld. Line)                                          |      |                                       |         |                                                      |                |                                                             |                                                                             |                                                    |
| Boom Hoist<br>(Top Lift)                                          |      |                                       |         |                                                      |                |                                                             |                                                                             |                                                    |
| Jib Hoist<br>(Whip Line)                                          |      |                                       |         |                                                      |                |                                                             |                                                                             |                                                    |
| Pendants<br>(Main)                                                |      |                                       |         |                                                      |                |                                                             |                                                                             |                                                    |
| Pendants<br>(150 foot<br>boom+)                                   |      |                                       |         |                                                      |                |                                                             |                                                                             |                                                    |
| Jib guys<br>(Upper)                                               |      |                                       |         |                                                      |                |                                                             |                                                                             |                                                    |
| Jib guys<br>(Lower)                                               |      |                                       |         |                                                      |                |                                                             |                                                                             |                                                    |

Replacement of hoisting rope shall be done in compliance with the replacement criteria set forth in the California Code of Regulations, Title 8, Chapter 4, Subchapter 4, Construction Safety Orders, §1588.6.

Inspected at: (Location) \_\_\_\_\_ By: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FORM NO. CS-56

## **5.4 Audit Procedure**

In compliance with Metro Staff Policies and Procedures, Metro reserves the right to conduct periodic Audits of the effectiveness of the Contractor's Safety & Security program. These reviews of the Project will be completed on a specific pre-arranged date. Due to the transitory nature of worksite conditions and personnel, unsafe or insecure conditions or behaviors may occur occasionally or routinely and may be undetected by any given review by Metro Construction Safety Staff or the staff of the Construction Manager. For this reason, the contractor is expected to exercise absolute control over job site conditions and personnel to minimize the potential for injury or property damage.

Metro's Construction Safety Staff and the Resident Engineer will schedule the periodic audits. The Resident Engineer shall in turn notify the contractor's Project Manager of the date and time.

The audit team shall consist of the contractor's Project Manager, contractor's Lead Safety Representative/Safety Representative, Resident Engineer, Metro Safety Manager, and or Metro Safety Representative. The team shall review the contractor's worksite including but not limited to active work areas, project public interface areas, and office, mechanical and or storage areas.

## **6 CALIFORNIA AND UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ACTS**

### **6.1 Purpose and Scope**

The purpose of this section is to ensure that each Contractor is aware of its responsibility for compliance with the California and/or United States Occupational Safety and Health Acts, (the Acts) and to ensure that the contractor has readily available the applicable occupational and construction safety standards. This section applies to Contracts of any dollar value or duration regardless of whether the Contractor establishes a field office or other formal management area or not.

### **6.2 Objectives**

The prevention of injuries and other losses is the primary rationale for the requirement that contractor's comply with these regulations. Contractors shall comply with applicable portions of these Acts as interpreted by Metro.

### **6.3 Procedures**

#### **A. CAL/OSHA AND/OR FED/OSHA**

Under the California Occupational Safety and Health Act (Cal/OSHA), the Department of Industrial Relations has established Safety Orders requiring employers to provide safe and secure working conditions in places of employment in California. The California Code of Regulations, Title 8 - Industrial Relations, contains the Safety Orders for specific industries or activities such as construction or tunneling as well as General Industry Orders which apply to all industries.

Under the Federal Occupational Safety and Health Act (Fed/OSHA), the federal government has established safety standards (Code of Federal Regulations Title 29) for specific industries or activities such as construction or tunneling as well as Standards which apply to all industries.

Contractors shall comply with the recordkeeping requirements of CCR Title 8 in compliance with paragraph 1.5.B of this manual.

Regulations of note to the Contractor include, but are not limited to, the following:

California Code of Regulations, Title 8:

Subchapter 4 - Construction Safety Orders (C.S.O.), §§ 1500 - 1938. These portions of the Cal/OSHA Safety Orders are applicable specifically to construction work. Copies of Subchapter 4 as well as other pertinent portions, or the entire Cal/OSHA Safety Orders may be obtained as indicated in paragraph 6.3.E below. A helpful publication for job supervisors is the "Cal/OSHA Guide for the "Construction Industry" – S-300. S-300 is a digest of basic applicable standards and it is recommended that contractors provide their job supervisors with copies. This document is available electronically from the DOSH website.

Contractors performing work that requires the establishing of Construction Work Zones or other Traffic Controls should be aware that the California Manual of Uniform Traffic Control Devices is incorporated into CCR Title 8 by reference and

shall be treated my Metro as equivalent to any other portion of the Construction Safety Orders.

Subchapter 5 - Electrical Safety Orders (ESO), §§ 2300 - 2974.

Subchapter 7 - General Industry Safety Orders (GISO), §§ 3200 - 6184. Cal/OSHA's Construction Safety Orders are applicable specifically to construction; as such, it does not address the entire spectrum of injury and incident prevention. Cal/OSHA's General Industry Safety Orders (GISO) applies to each employer performing work in California unless specifically superseded by a more specific safety order.

Subchapter 7 - General Industry Safety Orders, § 3203: Injury and Illness Prevention Program (IIPP)/SB198. This addresses the requirements of the written injury and illness prevention program that is required of every employer in the state of California employing more than 10 employees. Each contractor, regardless of the numbers of employees on the project, shall have in place an IIPP that is project and site specific and incorporates each of the specified elements contained in § 3203.

If the specific procedure or hazard is not specifically regulated in the standards discussed in this section, the employer is still charged with the employee's safety and security. Standards for a particular hazard could come from the Manufacturer's Operators Manual, warning labels, ANSI/ISEA standards or other publicly available standards. The employer's failure to discharge its responsibilities to maintain a safe and secure work place is a citable offense.

#### B. FAMILIARIZATION WITH SAFETY STANDARDS

Each contractor must be familiar with the State and/or United States Occupational Safety and Health Acts (Cal/OSHA and/or Fed/OSHA) as they pertain to the contractor's work responsibility.

#### C. REPORTING FATAL/SERIOUS INJURIES AND ILLNESSES

Fatal incidents and/or serious injuries and illnesses shall be reported to Cal/OSHA immediately to a Division of Occupational Safety and Health (DOSH) district office in compliance with CCR 8 § 342. Immediately following notification of Cal/OSHA, the Contractor shall notify the Director, Construction Safety or designee. A serious injury or illness as defined by CCR 8 § 330 "any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by the commission of a Penal Code violation, except the violation of Section 385 of the Penal Code, or an accident on a public street or highway." Employers must immediately report all blasting incidents to the Mining and Tunneling Unit.

Contractors performing work in or adjacent to a public street or highway shall report any incident within or adjacent to the work zone to Director, Construction Safety or designee regardless of any involvement of Contractor personnel or equipment. In

addition, the Contractor is strongly advised to report any injury that meets the above definition of serious to Cal/OSHA regardless of the location where the injury occurred.

#### **D. LABOR AND OTHER POSTER REQUIREMENTS**

State and Federal Regulations include requirements for each employer to post in a defined location various labor compliance, safety and health posters. Failure to post these documents is a citable offense under the Act and posting areas will be reviewed by Metro Construction Safety Staff as part of their assessment of the effectiveness of the Contractor's Safety and Security Program.

#### **E. ORDERING SAFETY MATERIALS**

Copies of the California and/or Federal Occupational Safety and Health Act, Safety Orders/Standards and related information on education and training programs may be secured from various sources both locally and outside the local area including via a wide variety of government and private internet sites. If additional information is required regarding the procurement of required standards or other information, contact the Construction Safety Staff or the local Cal/OSHA or Fed/OSHA District Offices.

#### **F. CAL/OSHA PERMIT/REGISTRATION REQUIREMENTS**

Contractors shall obtain required permits from the California Division of Occupational Safety and Health and the City and/or County of Los Angeles, or other jurisdictions within which work is being performed, for the following types of construction operations, at a minimum, prior to the start of such operations:

1. Construction of trenches or excavations five feet or deeper into which a person shall be required to descend.
2. The construction of any building, structure, scaffolding or falsework three stories high or the equivalent height.
3. The demolition of any building, structure or the dismantling of scaffolding or falsework more than three stories high or the equivalent height.
4. Operation of diesel engines underground.
5. Prior to doing any asbestos related work register with the California Division of Occupational Safety and Health (Labor Code 6501.5).

#### **G. INSPECTIONS BY REGULATORY AGENCIES**

Regular and unscheduled inspections of Metro contracts by Cal/OSHA and or Fed/OSHA as well as other regulatory agencies are to be expected by Metro contractors. Due to the fact that Metro expects to be considered a "Controlling Employer" by both OSHA bodies (see CCR Title 8 §§ 336.10 & 336.11) with respect to the multi-employer worksite policies, the following policy and procedure shall be strictly adhered to:

1. Upon notification of an OSHA inspection by a Compliance Officer, the contractor shall notify immediately the RE or Construction Management staff and the Director, Construction Safety or designee of the inspection request and provide a copy of these requirements to the OSHA Compliance Officer.

2. It is the policy of Metro that no inspection shall begin without the presence of a member of the Construction Safety Staff designated by the Director, Construction Safety.
3. Upon notification, the Director Construction Safety or designee will provide an estimated time of arrival at the site to participate as the Metro representative.
4. The Contractor or RE shall communicate with the Compliance Officer and request the cooperation of the Compliance Officer in scheduling the start of any opening conference or inspection until Metro representative is present. The RE shall further advise the Compliance Officer as to the estimated arrival time for the representative.
5. These requirements are instituted only to insure proper MTA representation during the inspection process and in no way are to be interpreted as an attempt by Metro or any other party to impede or limit the inspection powers of regulatory agencies. Full cooperation with regulatory agencies is a requirement of this contract.
6. At no time shall a contractor, construction manager or any other entity performing work upon a Metro project request or require the obtaining of a warrant by regulatory compliance personnel before allowing access to the worksite.

## **7 INCIDENT INVESTIGATION, REPORTING AND RECORDKEEPING**

### **7.1 Purpose and Scope**

The purpose of this section is to establish thorough requirements and guidelines for the investigation and timely reporting of any illnesses or injuries affecting any person, including third parties which are in any way connected, associated or otherwise the result of Metro Construction activities.

The Contractor's adherence to the following will promote contractor and subcontractor compliance with MTA incident investigation and reporting requirements, and the State of California statutory recordkeeping requirements.

### **7.2 Objectives**

It is the objective of any incident investigation to determine the root cause(s) of the incident and establish corrective actions, policies and or procedures in order to prevent future recurrence(s).

#### **A. INVESTIGATION**

Incidents shall be thoroughly investigated without delay by the contractor. The investigation should generate appropriate recommendations for corrective actions to prevent recurrence of similar incidents. Information gathered during the investigation shall be made available to Metro Construction Safety Department within 24 hours of the incident.

In the event of a serious incident, the contractor shall immediately make an oral report of the preliminary details to Metro in compliance with Section 7.3.C, Telephone Reports, of this document. A serious incident is defined as those injuries to project staff (at any level) or the public that are immediately life threatening, require hospitalization (including admission for observation) and or those injuries that result in time away from work or duty restrictions as prescribed by a physician. Any injury to a member of the public shall be considered serious and reported to the Director, Construction Safety of designee. Serious incidents also include property damage equal to or in excess of \$1,000, regardless of the owner of the property.

Serious incidents may be directly investigated by Metro Construction Safety Staff. Contract or Project employees regardless of tier, shall make themselves available to Metro for interviews regarding the incident under investigation. Depending upon the circumstances and severity of the incident, Contractor employees may be requested to remain at the Project Location beyond their normal shift hours in order to complete the interviews in a timely and appropriate manner. The contractor shall also preserve the incident scene in an undisturbed condition until advised by Metro that the area may be cleaned or otherwise disturbed and work may continue. Compliance with this procedure including the payment of overtime wages to effected employees, as determined by the Director, Construction Safety or designee shall be considered within the original scope of this Contract and shall not delay the schedule for performance of Work by the Contractor nor shall it be relied upon to form the basis of any claim.

The contractor shall provide employee, witness or other personal contact information to Metro immediately upon request and without prior notice with regard to the incident investigation.

## **B. ANALYSIS AND CORRECTIVE ACTION**

Corrective action can only be taken when specific factors of an incident have been accurately developed and the resulting recommendations have been disseminated to responsible persons.

In preparing written reports of an incident, statements and comments should be confined to facts.

The contractor's incident report, project records, progress reports and daily time reports may become important evidentiary material in any ensuing legal action. Accordingly, for the date on which an incident has occurred, it is important to be specific and accurate in describing work being performed, crew and equipment being utilized, and their exact location.

## **C. RECORDKEEPING**

Complete records are necessary incident prevention tools. In addition, specific records are required by Cal/OSHA and/or Fed/OSHA and may become part of an evidentiary record. Failure to maintain these records is a citable offense. Appendix B of this document sets forth Metro recordkeeping requirements which incorporate Cal/OSHA and/or Fed/OSHA guidelines.

## **7.3 Procedures**

### **A. INVESTIGATIONS AND REPORTS**

#### **1. General Requirements**

Exhibits 7-1 and 7-2 contain administrative instructions and report forms to be used by contractors and subcontractors for the following required reports:

- a. Supervisor's Incident Investigation Report, CS-52 (Exhibit 7-1)
- b. The Monthly Injury Summary & Work Hour Report,

#### **2. Supervisor's Incident Investigation Report, CS-52 (Exhibit 7-1)**

- a. This form, or an approved Contractor's equivalent, shall be submitted to Metro within 24 hours of the incident by the contractor for each incident involving any of the following:
  - i) Injury to an employee of the contractor or any subcontractor.
  - ii) Any injury to persons not directly connected with the project (including all alleged injuries reported by a member of the general public).
  - iii) Incidents resulting in damage to public, private or commercial property (including all alleged property damages).
  - iv) "Near Miss" Incidents - any incident which could have involved any of the above.



- b. Initial submittals shall be made within twenty-four hours of the incident. A complete supplemental report including written statements, sketches, photographs and any other pertinent facts shall be submitted within seven calendar days of the incident.
  - c. This form shall be prepared by the contractor and distributed in accordance with Appendix A, Summary of Construction Safety Reports.
3. The Monthly Injury Summary and Work Hour Report

The Monthly Injury Summary, CS-53 (Exhibit 7-2) shall be prepared in strict compliance with Metro Recordkeeping Policy for Occupational Injuries and Illnesses, Appendix B. The Contractor shall utilize the most recent version of for CS-53 or a Microsoft ® Excel ® compatible data file supplied by the Director, Construction Safety or designee.

## B. PHOTOGRAPHS

Photographs shall be taken in conjunction with investigations of all incidents involving serious personal injury, all non-project personnel injuries, substantial property damage (including motor vehicle), equipment or material failure, and all incidents that may, even remotely, involve third party action.

Photographs shall be sufficient in number to adequately reflect the general area as well as pertinent details from a variety of angles. Photographs should be taken as soon as possible following the incident.

Identify each print on its reverse as follows: name of injured (if equipment damage, type; if property damage, location); date of incident; photographer's name, and time photographs taken (date if different from occurrence); direction facing, and brief description of photo.

Documentary photographs shall utilize 35mm color print film or electronic media. The use of photographic equipment capable of imprinting the date upon the negative or electronic image is highly recommended. Developed negatives shall be maintained in file by the contractor or Construction Manager for review by Metro without prior notice. Digital photographs shall be taken utilizing recently manufactured equipment which codes date/time and other data into the image in a manner that cannot be edited. All images taken, regardless of photographic quality or clarity, shall be immediately downloaded from the camera and copied to permanent optical media. The original of this media shall be kept in file by the Contractor. Copies of this media shall be made available to Metro for review or duplication by Metro without prior notice.

In the event of the most serious incidents, additional documentary information may be recorded by the contractor and or Construction Manager utilizing video recording equipment. Video recordings should begin with the time and date recorded directly onto the sequence by the camera's internal mechanism as well as verbally by the camera operator. A duplicate copy of such a recording shall be submitted to the Director, Construction Safety or designee.

### C. TELEPHONE REPORTS

Should a serious incident occur, it shall be reported immediately by phone to the Resident Engineer and Director, Construction Safety or designee and others as indicated in the Contractor's Approved Emergency Action Plan. The Resident Engineer shall notify others as outlined in the Metro Emergency Reporting Procedure specific to each project.

The use of electronic mail from portable hand held devices in lieu of a voice telephone call shall be considered a compliant method of notification with regard to Telephone Reports.

**EXHIBIT 7-1 (front)**

| SUPERVISOR'S INCIDENT INVESTIGATION REPORT                                                                                                                            |                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| CONTRACTOR: _____                                                                                                                                                     |                                |
| INCIDENT DATE: _____                                                                                                                                                  | TIME: _____ CONTRACT NO: _____ |
| INCIDENT LOCATION (SPECIFIC): _____                                                                                                                                   |                                |
| WHAT HAPPENED?<br>(Describe operation, activity, condition and how injury or loss occurred. Use separate sheet and diagram if necessary.):<br>_____<br>_____<br>_____ |                                |
| PRIMARY CAUSE<br>(Condition or act that caused the injury or loss.): _____<br>_____                                                                                   |                                |
| Recommended correction action: _____<br>_____                                                                                                                         |                                |
| Equipment involved #: _____ Employee involved: _____                                                                                                                  |                                |
| Employee Injury (Describe): _____<br>_____ Medical referral?: _____                                                                                                   |                                |
| Company Property Damage or Loss (Describe): _____<br>_____                                                                                                            |                                |
| Property, Damage or Injury to Others (Describe): _____<br>_____                                                                                                       |                                |
| Owner/Injured (Name, address, phone): _____<br>_____                                                                                                                  |                                |
| Witnesses (Name, address, phone): _____<br>_____                                                                                                                      |                                |
| Police Report?: _____ Agency: _____ Photos?: _____ Taken by: _____                                                                                                    |                                |
| Foreman/Supervisor: _____ Date: _____                                                                                                                                 |                                |
| Contractor Project Manager/Supt. Approval: _____ Date: _____                                                                                                          |                                |

FORM NO. CS-52 (front)

# **EXHIBIT 7-1(back)** **SUPERVISOR'S INCIDENT INVESTIGATION REPORT** **INSTRUCTIONS**

This form is a guideline only. For serious or significant incidents, additional pages and detailed facts, analysis and conclusions must be provided.

Complete investigation of any incident, whether or not injury or damage is involved, is a vital part of an effective prevention program. The investigation is not complete until the causes and proper corrective actions are determined.

The investigation and this report must be completed by you immediately after any incident relating to your job which involves:

- Personal injury to any of our employees or any other persons.
- Damage or loss to company property, materials or equipment
- Damage or loss to property of others
- "Near misses" - which could have involved any of the above

If property damage or personal injury to others is involved, do not assume any responsibility or obligate the company or MTA in any way. Do not sign anything for anyone except your employer's Safety Representative. You should politely refer any question to your office manager.

In your investigation and preparation of this report give extra attention to the following areas:

## **WHAT HAPPENED?**

- (a) This does not mean list the injuries or damages that resulted. It means explain the events, in detail, which led to the injuries or damages.
- (b) Describe the work or activity involved, the conditions and what the people involved were doing.
- (c) Describe the tools, equipment or materials involved, their condition and how they were involved.
- (d) Describe the specific event or occurrence which resulted in the injury, damage or loss.
- (e) If more space is needed or if a diagram will help your description, attach another sheet.

**CAUSES:** Primary and Secondary - See Common Causes of Incidents below

**CORRECTIVE ACTIONS:** Primary and Secondary

**LOCATION:** Specific place on job-site (street and city when applicable).

**PROPERTY DAMAGE OR INJURY TO OTHERS:** Describe the property, extent of damage or nature of injury. If vehicle is involved, show year and model.

| DESCRIBE PRACTICES OF EMPLOYEE                                                                                                                                                                                                                                                                                                                                               | UNSAFE EQUIPMENT OR MATERIALS                                                                                                                                                                                                                                                                 | UNSAFE CONDITIONS                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Safety equipment provided but not used.<br>Personal protective equipment provided but not used.<br>Improper or unsafe tool or equipment used.<br>Horseplay or practical jokes.<br>Instructions or rules disregarded<br>Inattention.<br>Inexperience.<br>Physical condition of employee.<br>Improper method of doing work.<br>Action of another person.<br>Improper clothing. | Ineffectively guarded equipment.<br>Unguarded equipment.<br>Defective materials.<br>Defective tools.<br>Defective equipment (not motor vehicles).<br>Defective motor vehicle equipment.<br>Improper type or poor design.<br>Unsafe equipment or material of another contractor or a customer. | Poor light.<br>Poor ventilation.<br>Congested area.<br>Improper storage of materials.<br>Exits or emergency escapes inadequate or not provided.<br>Faulty layout of plant or facilities<br>Unsafe conditions caused by another contractor or a customer.<br>Tools or equipment improperly stored.<br>Poor housekeeping. |

File original for company records, and submit a copy to the Resident Engineer and MTA Construction Safety. Retain copy for your records. Use a Medical Referral slip for any injured employee who goes to a Doctor. Keep your office advised.  
 FORM NO. CS-52 (back)

### EXHIBIT 7-2a (front)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------|------------------------------------|--------------------------------|-----------------------------------|--------------------------------------------------------------------|-------------------------------------|----------------------------------|-------------------------------|
| <b>MONTHLY INJURY SUMMARY &amp; WORK HOUR REPORT</b><br><b>Metro Construction Safety Form CS-53</b>                                                                                                                                                                                                                                                                                                                                                                                                                        |                          |                |                                    |                                |                                   | Contract No: _____<br>Contractor: _____<br>Reporting Period: _____ |                                     |                                  |                               |
| This form must be submitted to the Construction Safety Department no later than the 10th of each month.<br><br>Directions: Enter the requested information of the prime contractor and each subcontractor for the reporting period. Report any work related injury including those classified as first-aid. Report number of recordable medical cases that had lost or restricted work days and number of days. Carry over days are for a previously recorded case where the worker is still off in this reporting period. |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | TOTAL<br>HOURS<br>WORKED | TOTAL<br>CASES | TOTAL<br>LWD<br>CASES <sup>1</sup> | LWD<br>LD<br>ONLY <sup>2</sup> | LWD<br>RESTR<br>ONLY <sup>3</sup> | TOTAL<br>DAYS<br>AWAY <sup>4</sup>                                 | TOTAL<br>RESTR<br>DAYS <sup>5</sup> | CARRY<br>OVER<br>LD <sup>6</sup> | CARRY<br>OVER RD <sup>7</sup> |
| PRIME CONTRACTOR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |
| IDENTIFY ALL SUBCONTRACTORS WORKING ON THE CONTRACT BELOW. DO NOT LIST VENDORS.                                                                                                                                                                                                                                                                                                                                                                                                                                            |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |
| TOTAL (ADD COLUMNS)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |
| RECORDABLE INJURIES :                      INFORMATION BELOW MUST EQUAL CASES REPORTED ABOVE                                                                                                                                                                                                                                                                                                                                                                                                                               |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |
| NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | CRAFT                    | TYPE<br>INJURY | DISPOSITION                        |                                | DAYS<br>OFF                       | CONTRACTOR                                                         |                                     |                                  |                               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                          |                |                                    |                                |                                   |                                                                    |                                     |                                  |                               |

<sup>1</sup> Include cases with Lost Days, Days of Restricted Duty or both

<sup>2</sup> Include cases with Lost Days ONLY.

<sup>3</sup> Include cases with Days of Restricted Duty ONLY

<sup>4</sup> Count only Days Away from work for injuries occurring in this reporting period (calendar month).

<sup>5</sup> Count only Days of Restricted Duty for injuries occurring in this reporting period (calendar month).

<sup>6</sup> Count only Days Away from work for injuries which occurred prior to this reporting period.

<sup>7</sup> Count only Days of Restricted Duty for injuries which occurred prior to this reporting period.

**EXHIBIT 7-2b (back)**

**MONTHLY INJURY SUMMARY AND WORK HOUR REPORT (Form CS-53)**

1. This form shall be prepared in strict compliance with the Metro Recordkeeping Policy for Occupational Injuries and Illnesses as shown in Appendix B.
2. This form shall be submitted monthly by the contractor to reflect the monthly injury experience of the contractor and each subcontractor.
3. This report shall be submitted monthly no later than the tenth day of each month and shall be signed by the prime contractor's project manager.
4. This form is available in an electronic format (Microsoft Excel). Completing the form in this format is highly recommended.

These report forms do not relieve the contractor from completing the Employers Report of Occupational Injury or Illness and the Cal/OSHA or Fed/OSHA Form 300.

## **8 REQUIREMENTS AND GUIDELINES FOR SUBMITTALS**

### **8.1 Purpose and Scope**

The purpose of this section is to provide the Contractor with information regarding the various safety and security submittals required by the Contract Sections listed below. While this section is not intended to be a detailed "How to" guide, it will provide Contractors with minimum requirements, general information and guidance to assist in the preparation of these submittals.

The sections where the requirements for these submittals can be found are:

- Worksite Safety Requirements Technical Specification
- Worksite Security Requirements Technical Specification
- Safety's 1<sup>st</sup> Safety Incentive Program (applies to Major Capital Projects only)
- Construction Safety & Security Manual

### **8.2 Objectives**

It is the objective of any submittal to provide Metro with specific information regarding the Contractors Safety and Security Program and how that Program is being implemented in the field. In addition, completed and approved submittals are in many cases a document that can then be used as a tool in the field to insure compliance with the Contractors Safety and Security Program and in so doing insure compliance with Metro's Construction Safety and Security Program.

Contractors are strongly encouraged to use an Over the Shoulder Commenting Process when developing the submittals listed below to facilitate the submittal/approval process. An Over the Shoulder Commenting Process involves the Contractor providing Metro staff with a Pre-Final or Final copy of the proposed submittal package for review, comment and comment resolution. Effective use of this type of program will improve not only the return time of packages once officially submitted for Metro review, but will also reduce both the number of comments returned as well as the potential that a submittal is rejected and must be revised and resubmitted.

### **8.3 Procedures**

#### **A. Worksite Safety Requirements Technical Specification (Typically Section 01 53 23)**

The following four Submittals Requirements (1,2,3,4) are listed as required for every Metro Contract prior to beginning construction work:

#### **1. Worksite Specific Injury and Illness Prevention Program (IIPP)(01 53 23; 1.05.D.1).**

- A. Minimum Requirements: (Although included in one Contract paragraph, compliance with this section requires for separate stand alone submittals.)
  - Site Specific IIPP which complies with CCR Title 8, Section 3203 (one submittal)
  - Site Specific Emergency Action Plan (one submittal)
  - Contractor's New Employee Training and Orientation Program (one submittal)

- Site Specific Code of Safe Work Practices which complies with CCR Title 8, Section 1509 and or 8406. (one submittal)

**B. General Information and Guidance:**

The rationale for breaking these requirements into four separate submittals is two-fold: first this allows the Contractor to submit for review each section as it becomes ready rather than needing to wait for one section when one or more of the others is prepared. In addition, if the need to reject one of the submittals for one reason or another, having four separate submittals allows Metro to approve one part even while another is being rejected for revision.

The first submittal must be an Injury and Illness Prevention Program (IIPP) that has been tailored to the specific Project and Site for the Contract with Metro. Use of the Contractor's corporate IIPP as a starting point is acceptable, but this document must be modified to reflect the unique hazards and conditions presented by the specific work required under the Contract. The primary criteria for this submittal is that the IIPP submitted clearly fulfills the seven requirements found in CCR Title 8 § 3203.

The next submittal is a site specific Emergency Action Plan. This submittal should include the contractor's plans for various foreseeable emergencies including Contact Personnel and means of contact.

The third submittal must be the Contractors New Employee Training and Orientation Program, which when approved will be presented to each employee who is new to the Project (even if they are not new to the Contractor's employ.) This Program should include a review of site specific rules, hazards, control methods as well as a review of the Emergency Action Plan.

The fourth submittal is a copy of the Contractor's Code of Safe Work Practices. This document is required by CCR Title 8 § 1509 (Construction Safety Orders) and § 8406 (Tunnel Safety Orders). The initial submittal may be the Contractors Corporate Code of Safe Work Practices; however, a site specific version must be submitted once actual construction work has begun if requested by the Director, Construction Safety or designee.

**2. Staffing Plan (1.05.D.2)**

**A. Minimum Requirements:**

- Resume and credentials which meet the requirements of 01 35 23 Worksite Safety Requirements section as described in paragraph 3.01.F and or 3.01.H.
- Description of the work schedule for each person nominated in compliance with 01 35 23, 3.01.F or 3.01.H. The schedule shall comply with the requirements found in 01 35 23, 3.01.A through 3.01.C.

**B. General Information and Guidance:**

The Worksite Safety Requirements Technical Specification require the contractor to employ a Lead Safety Representative for the Day Shift and additional Safety Representatives as needed to properly monitor the Contractor's Safety and Security Program. The Contractor is responsible to provide Metro not only with a submittal of the individuals nominated to hold these positions (see item 4 below), but also a schedule of their work hours and days of work. This submittal must be resubmitted any time there is a change in the information



### 3. Job Hazard Analyses (JHA) Master List (1.05.D.3)

#### A. Minimum Requirements:

- A list of the expected tasks or operations which will require Job Hazard Analyses to be developed.

#### B. General Information and Guidance:

This submittal is to be a master listing of the task specific job hazard analyses (JHA) the contractor expects to complete during the prosecution of the work. This listing may be a combination of pre-written JHA's the Contractor already has in place as well as new tasks that will require a new JHA. This list is not expected to be all encompassing or complete, it is however, expected to be a well thought out starting point for the Contractors development of JHA's.

### 4. Qualified or Competent Persons (1.05.D.4)

#### A. Minimum Requirements:

- The name(s) and qualifications of individuals designated by the Contractor as Qualified Competent Persons and the activities to which the designation applies.
- Qualified Crane Operators are to be submitted under this Section. Crane Operator submittals shall contain only the following information: Operators name, employer and a readable photocopy of the individual's Operators Certification Card (both sides).

#### B. General Information and Guidance:

Over one hundred sections of the Cal-OSHA regulations require a "Qualified Person" to perform or supervise the task. CCR § 3207 (General Industry Safety Orders), § 1504 (Construction Safety Orders) and § 8405 (Tunnel Safety Orders) each use the following language:

"Qualified Person, Attendant or Operator": A person designated by the employer who by reason of his training and experience has demonstrated his ability to safely perform his duties and, where required, is properly licensed in accordance with federal, state, or local laws and regulations."

It is the responsibility of the Contractor to determine who meets this definition for required operations or tasks. This submittal should contain the following information:

- Task or operation the individuals are qualified to oversee/perform
- Names of the Qualified Person(s)
- Employer of the Qualified Person(s) (if different from the Contractor)
- Rationale for Qualification including copies of appropriate certification, license or other identification.

This submittal is to be resubmitted whenever there is a change to the submitted list.

The following Submittals (5 through 15) are listed as required as needed for every Metro Contract prior to performing work activities related to or covered by the submittal:

5. Fall Protection Program (1.05.D.5)

A. Minimum Requirements:

- The Fall Protection Program shall be site specific and include details of procedures, equipment and training to prevent falls during the Contractor's Work.

B. General Information and Guidance:

The Worksite Safety Requirements of the Contract require the contractor to prevent employees from being exposed to an unprotected fall hazard of six feet (6') or greater. This requirement applies to any work being done by the contractor's employees or any tier subcontractor employees as part of the Work. The Fall Protection Program shall be submitted and accepted prior to any Work covered by the program. The program is to be revised and resubmitted as conditions warrant.

This program shall be established and implemented to ensure that the Contractor's and subcontractor's workers, exposed to a vertical fall of six (6) feet or more to another level, are properly protected. This program shall provide protection from hazards such as, but not be limited to: skylights (at any angle), floor and wall openings, leading edges, and steel erection. Methods of protection shall include, but not be limited to: fixed systems (guardrails, covers, nets, etc.), personal fall arrest systems and job specific fall protection plans. A key provision of this program shall be that no employee shall work in an unprotected manner while exposed to a vertical fall of six (6) feet or greater.

The size, complexity and detail of this program will vary from Contract to Contract depending upon the Scope of Work. Over The Shoulder reviews with Metro's Construction Safety Staff prior to completing and submitting the program will significantly help the contractor submit a program which can be approved by Metro.

6. Hazardous Waste Operations and Emergency Response (1.05.D.6)

A. Minimum Requirements:

- Listing of qualified personnel with documentation of required training and experience.
- Site Specific Health and Safety Plan (if not submitted as required by another Contract Section other than 01 35 23 – Worksite Safety Requirements).

B. General Information and Guidance:

Submit a list of Hazardous Waste Operations (Hazwoper) qualified personnel at least 15 days before commencing any excavation or other activity which exposes employees to known hazardous wastes or involves the clean up and removal of known hazardous wastes. Update at monthly intervals during ongoing hazardous waste operations. Include, for each individual, the date of certification and sufficient evidence of training and medical screening to conform to appropriate laws, regulations and the requirements of this Contract.

This submittal is in regards to the training required by CCR Title 8, Section 5192, Hazardous Waste Operations and Emergency Response (Hazwoper), with respect to the handling of hazardous or contaminated wastes and the mandated specialty training and health screening.

Unless required by another section of this contract, also submit as part of this requirement the written site specific Hazwoper Health and Safety Plan for the planned work. Plan to be revised and resubmitted as conditions warrant.

#### 7. Excavation Action Plans (1.05.D.7)

##### A. Minimum Requirements:

- An Excavation Action Plan (similar to a Construction Work Plan) for the designated excavation activity. The plan should not only explain the expected steps and ground support systems(s) to be used, but also explain any contingencies to be used in the event the excavation activities are not able to be conducted as planned.

##### B. General Information and Guidance:

Excavation Action Plans are required to be submitted for any excavation activities for which a protective system is required by CCR Title 8 Section 1541.1(a). A Protective System is defined as "A method of protecting employees from cave-ins, from material that could fall or roll from an excavation face or into an excavation, or from the collapse of adjacent structures. Protective systems include support systems, sloping and benching systems, shield systems, and other systems that provide the necessary protection".

Include drawings for any ground support system to be used during the excavation activity. Include the slopes and configurations of sloping or benching systems. Also include the general Construction Work Plan for the excavation as well as the Contractor's Contingency Plan should the soils encountered not meet the engineering requirements for the chosen support system.

Excavation Action Plan submittals shall be submitted at least 15 days prior to the planned Work. Compliance with this provision and any stoppage of Work resulting from compliance with this provision shall be considered within the original scope of this Contract and shall not delay the schedule nor shall it be relied upon to form the basis of a claim for delay for performance of Work by the Contractor.

#### 8. Crane Certifications (1.05.D.8)

##### A. Minimum Requirements:

- Submit the current Annual and Quadrennial Certification forms for each crane to be used on the Project at least 15 days prior to the equipment arriving on site.

##### B. General Information and Guidance:

Provide annual and four year certifications for any cranes operated on the Worksite by the Contractor and or subcontractors of any tier. Resubmit as required on multi-year projects or if the crane is recertified during the prosecution of the Work.

Re-certification is required for any crane subjected to any upset, overloading, side pulling, shock loading or support failure, prior to any further use of the equipment on the Worksite.

Crane information shall be submitted prior to the crane arriving on the Work Site for any equipment owned by the Contractor or Subcontractor of any tier.

**EXCEPTION 1** – The Prime Contractor is responsible for procuring and submitting certification documents for rental cranes in the same manner and time frame as owned equipment. However, if the rental company changes the assigned equipment without prior notification to the renting Contractor, the certification paperwork may be submitted at the time the crane arrives on site **ONLY AFTER** field verification by Metro Construction Safety Staff.

**EXCEPTION 2** – Knuckle Boom and or Stinger type cranes fixed to flat bed trucks owned and operated by vendors making irregular deliveries to the Work Site need not be submitted. This exception also applies to the Operators of this equipment. This equipment is subject to field verification by Construction Safety Staff.

**EXCEPTION 3** – Crane equipment used in Pile Driving operations are held to a different annual inspection standard than cranes in use for material handling. These cranes require an annual inspection that is equivalent to and recorded as a Quadrennial Inspection. Therefore, only the most recent Quadrennial Inspection Report need be submitted for these cranes.

9. Critical Lift Plans (1.05.D.9)

A. Minimum Requirements:

- A complete lift plan for the specific lift. Plan shall contain the elements list below:

B. General Information and Guidance:

Critical Lift Plans - Before making a Critical Lift, a Critical Lift Plan shall be prepared by the crane operator, lift supervisor, rigger. The plan shall be reviewed and signed by all contractor personnel involved in the lift. The signed plan shall be submitted for acceptance by Metro. The lift shall not be under taken until the Contractor has received the Accepted Submittal from to Metro.

Critical Lift: A Critical Lift is defined as a crane lift requiring detailed planning and additional or unusual safety precautions. Critical lifts include, but are not limited to:

- lifts made with more than one crane;
- hoisting of personnel with a crane;
- a lift which will meet or exceed 80% of the rated capacity of the specific crane as indicated on the Manufacturer's Load Charts or Tables;
- lifts which the load will be lifted, swung, or placed out of the operator's view;
- a lift which by its nature is unusual and not regularly (at least monthly) completed by the lifting crew (Crane operator, oiler & or riggers);
- Any lift deemed Critical by Metro.

The Critical Lift Plan shall include, at minimum, the following elements:

The exact size and weight of the load to be lifted and all crane and rigging components which add to the weight.

The manufacturer's maximum load limits for the entire range of the lift, as listed in the load charts, shall also be specified.

The plan shall specify the lift geometry and procedures, including the crane position, height of the lift, the load radius, and the boom length and angle, for the entire range of the lift.

The plan shall designate the crane operator, lift supervisor and rigger and state their qualifications.

The plan will include a rigging plan that shows the lift points and describes rigging procedures and hardware requirements.

The plan will describe the ground conditions, outrigger requirements, and if necessary, the design of mats, necessary to achieve a level, stable foundation of sufficient bearing capacity for the lift.

The plan will list environmental conditions under which the lift operations are to be stopped.

The plan will specify coordination and communication requirements for the lift.

The plan will include any traffic control requirements including a schedule of lane takes and releases.

Strict compliance with this paragraph as determined by Metro or its designee shall be considered within the original scope of this Contract and shall not delay the schedule for performance of Work by the Contractor nor shall it be relied upon to form the basis of a claim for delay. Compliance with determinations by Metro or its designee shall not relieve the Contractor from other obligations imposed by law or regulation nor serve as the basis of request for change to increase the cost of the Work.

#### 10. Qualified Riggers and Signalers (1.05.D.10)

##### A. Minimum Requirements:

- A list of personnel designated by their employer as trained and qualified as either a Crane Load Rigger or Crane Signaler or both.

##### B. General Information and Guidance:

The submittal shall include a description of each candidates training, experience and qualifications. Training may be from in-house or outside training sources. This list shall be re-submitted by the contractor upon any changes in the personnel submitted.

#### 11. Energy Isolation Program (Lock Out, Tag Out) (1.05.D.11)

##### A. Minimum Requirements:

- Submit a site specific written program in compliance with the requirements of CCR, Title 8, § 3314 - The Control of Hazardous Energy for the Cleaning, Repairing, Servicing, Setting-Up, and Adjusting Operations of Prime Movers, Machinery and Equipment, Including Lockout/Tagout.

B. General Information and Guidance:

Include details of procedures, equipment and training. This program shall be established and implemented to ensure that the Contractor's and Sub-contractor's workers exposed to sources of stored energy are properly protected. This program shall provide protection from hazards such as, but not limited to: electrical, hydraulic, gravitational and compressed air or gas. The Energy Isolation Program shall be submitted and accepted prior to any Work covered by the plan.

12. Written Compressed Air Safety Program (1.05.D.12)

A. Minimum Requirements:

- Submit a site specific written program in compliance with the requirements of CCR, Title 8, Article 154 (§§6070 – 6120)

B. General Information and Guidance:

Employees working in a compressed air environment encounter specific and unusual hazards. The minimum requirements for the control of these hazards are found in CCR Title 8, Article 154 – Pressurized Worksite Operations. While this section of the CCR does not have a specific requirement for a written program when conducting Pressurized Worksite Operations, the requirements of §3203 and the Injury and Illness Prevention Program provide an umbrella of responsibility for the drafting of a written program.

Compressed air operation shall not be commenced by the Contractor prior to the approval of the written program and Qualified Persons.

Consult and retain one or more physicians licensed in the State of California familiar with and experienced in the medical aspects of compressed air work. Submit this information as a Qualified Person in compliance with 8.3.A.4 above.

13. Written Track Maintenance Plan (Tunnel Construction) (1.05.D.13)

A. Minimum Requirements:

- Submit a site specific program for the maintenance of the construction haulage rail system. The program shall ensure compliance with the manufacturer's recommendations and provide for the maintenance of the rails in a safe operating condition.

B. General Information and Guidance:

Written Track Maintenance Plan (Tunnel Construction) to be revised and resubmitted as conditions warrant as determined by the Authority.

This plan should be based upon the recommendations of the manufacturer and should include both maintenance and inspection procedures and documentation to insure the rail system is kept in a safe operating condition.

#### 14. Confined Space/Underground Emergency Response Team Program (1.05.D.14)

##### A. Minimum Requirements:

- Site specific written Plan and Program for Emergency Response into either Confined Spaces or Underground Construction areas (or both).

##### B. General Information and Guidance:

This submittal should include training procedures, equipment lists, equipment maintenance and inspection plan for The Confined Space/Underground Emergency Response Team for confined space and/or underground emergency entry and rescue as determined by the Authority.

The Confined Space/Underground Emergency Response Training shall be coordinated with the Los Angeles Fire Department or the Authority Having Jurisdiction to ensure that rescue personnel are familiar with the confined spaces/tunnels during construction.

The Plan should describe training provided to employees of various responsibilities including notification procedures, first response duties, response protocols and other aspects of a Confined Space/Underground Emergency Response.

#### 15. Injury and incident Reports (1.05.D.15)

##### A. Minimum Requirements:

- Monthly report submitted to Metro which reports work hours, injuries and other injury related data. These reports are to be submitted using an Excel spread sheet provided to the Contractor by Metro.
- Incident specific reports for any incident meeting the definition of *incident* below.

##### B. General Information and Guidance:

As part of Metro's responsibility to monitor site safety and security, the Contractor is required to communicate certain information to Metro on both a regular and an as needed basis. The contractor shall report to Metro immediately upon becoming aware of an incident, injury, or illness involving an employee of the project (including Metro or third party staff) or a member of the public.

By the 10<sup>th</sup> calendar day of each month of the contract, the contractor shall submit for review and record incident, injury, work hour statistics on the form provided by Metro. See Appendix B for additional definitions and information.

For the purposes of these reports the following definitions shall apply:

- i. *First Aid* means the following:

- a. Using a non-prescription medication at nonprescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment);
  - b. Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);
  - c. Cleaning, flushing or soaking wounds on the surface of the skin;
  - d. Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc., are considered medical treatment);
  - e. Using hot or cold therapy;
  - f. Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);
  - g. Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.).
  - h. Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;
  - i. Using eye patches;
  - j. Removing foreign bodies from the eye using only irrigation or a cotton swab;
  - k. Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;
  - l. Using finger guards;
  - m. Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or
  - n. Drinking fluids for relief of heat stress.
- ii. *Incident:* Any occurrence resulting in (a) an Occupational Injury, (b) an Occupational Illness, (c) Personal Injury to a third party (defined as any person not employed by the Contractor or Metro) (d) property damage to any property, real or other, estimated at \$1,000.00 or more or (e) theft of or intentional damage to any property, real or other, estimated at \$1,000.00 or more.
  - iii. *Lost workday cases* are those which involve days away from work, **or** days of restricted work activity, **or both**.



- iv. *Lost workday cases involving days away from work* are those which result in days away from work (not counting the day of injury or onset of illness), or a combination of days away from work and days of restricted work activity.
- v. *Lost workday cases involving restricted work activity* are those which result only in restricted work activity, defined as follows: The employee was assigned to another job on a temporary basis; **or** The employee worked at a permanent job less than full time; **or** The employee worked at a permanently assigned job but could not perform all duties normally connected with it.
- vi. *Nonfatal recordable injuries and illnesses are:* 1. Nonfatal occupational illnesses; or 2. Nonfatal occupational injuries which involve one or more of the following: Lost work time, loss of consciousness, restriction of work or motion, transfer to another job, or medical treatment other than first aid.
- vii. *Occupational injury* is any injury such as a cut, fracture, sprain, amputation, etc., which results from a work-related event or from a single instantaneous exposure in the work environment. The level of care provided is not relevant to the definition.
- viii. *Occupational illness* is any abnormal condition or disorder, other than one resulting from an occupational injury, caused by exposure to factors associated with employment. It includes acute and chronic illnesses or diseases which may be caused by inhalation, absorption, ingestion, or direct contact.

#### 16. Materials Hazards Communication Program (CSSM 8.3.A.16)

##### C. Minimum Requirements:

- Submit a plan for the coordination and exchange of Material Safety Data Sheets (MSDS) for products used as part of this work.

##### D. General Information and Guidance:

As part of Metro's responsibility to provide material safety information to its employees, consultants and contractors, the Contractor must provide Metro with information regarding the location and mode of storage of Material Safety Data Sheets for chemicals the contractor will introduce to the Work Site. This submittal, beyond providing Metro with the information it requires from the Contractor also triggers a response from Metro which will include information on the Metro material Hazard Communication Program and the location of and access to Material Safety Data Sheets for chemicals used at Metro Facilities.

#### B. Worksite Security Requirements Technical Specification (Typically Section 01 53 35)

The following Submittal is listed as required for every Metro Contract prior to beginning construction work:

##### 1. Worksite Specific Security Plan (1.05.D.1).

##### A. Minimum Requirements:

- A site specific security plan which outlines the various security measures the contractor will be taking to secure the Project.

**B. General Information and Guidance:**

The Submitted Program shall address both active and passive security measures to be implemented by the Contractor and shall include, but is not limited to the following.

- a. Security Guard Service – The contract may require or the contractor may elect to employ a security guard service. This section of the plan should review the requirements for that service, work hours, posts, roving responsibilities and routes, etc.
- b. Lighting / illumination – Providing and maintaining adequate lighting throughout each area of the Worksite including but not limited to staging, lay-down areas and employee parking lots is an important aspect of a Security Plan. This section should include minimum lighting levels to be maintained, inspection and maintenance provisions and lighting plans for applicable areas of the Project.
- c. Office Security – Project office facilities directly supporting the Work require physical security to prevent entry, alarm systems to deter burglars and alert occupants as well as other measure to ensure the security of staff in these facilities.
- d. Physicals barriers – Physical barriers are the first line of security for many Project areas. Fences and other barriers need to be planned and design to be in compliance with contract specifications as well as providing the desired security.
- e. Project warning signage – Posting warning signage is another way the Contractor secures the Project and provides information to workers and the public regarding areas of restricted or authorized access only. Plot plans of Project areas should indicate not only lighting and physical barriers but also expected signage.

The initial submittal for this requirement is to be a preliminary Plan that includes plot plans for the initial yards, storage area, trailer camps and office buildings that will support the Project. As additional areas are added to, or other changes are made to the Project site, the Plan shall be updated and resubmitted.

**C. Safety's 1<sup>st</sup> Safety Incentive Program (applies to Major Capital Projects only)**

The following Submittal is listed as required for every Metro Contract prior to beginning construction work:

**1. Safety's 1<sup>st</sup> Safety Incentive Program (1.05.D.1).**

**A. Minimum Requirements:**

- First Submittal – written program plan which complies with the requirements of the Contract Section that contains the Safety's First Incentive Program details and requirements.
- Subsequent Submittals – for each item to be purchased by the contractor for distribution, the contractor must provide a proof of the layout of the logo's and text for approval prior to actually ordering the merchandise. Listing of Eligible Employees may also be requested to be submitted by the Director, Construction Safety or designee.

**B. General Information and Guidance:**

Incentive programs can create a positive consequence that rewards desired behaviors. This assists the employer in modifying the behaviors of employees from undesirable behaviors and outcomes to desirable behaviors and outcomes. Metro recognizes that the behaviors of every person on the Project, regardless of station or duties, have an equal potential impact on overall Project safety and security. Therefore, this program is intended to equally reward all employees of the Contractors team regardless of subcontracting tier or position.

Due to the administrative and other requirements for Metro when a Program of this type is sponsored, only larger Capital Construction Contracts are eligible to have this program included in the Contract. When this Program is included in a package, information regarding the value of the Program is found in the Special Provision titled – SAFETY'S FIRST INCENTIVE PROGRAM.

Details regarding the submittal and other requirements for this Program are found in Section 4.3.G of this Manual. The submitted Plan must fulfill those requirements while documenting the fair and equitable distribution of incentive awards.

#### D. Construction Safety and Security Manual

The following Submittals are listed as required for every Metro Contract prior to the contractor being able to participate in the Alternate Safety Coverage Program:

##### 1. Alternate Safety Coverage Policy – Candidate Roster (2.4.A.2).

###### A. Minimum Requirements:

- First Submittal – List of nominated candidates and their qualifications.
- Subsequent Submittals – Changes to the approved DSR listing (either new candidates for approval or deletions from the approved list).

###### B. General Information and Guidance:

The first submittal for this requirement is to be a list of candidates for DSR coverage. The submittal should contain at minimum the name of each candidate, information on their qualification including documentation of experience, appropriate training records and any Cal/OSHA Mining and Tunneling certifications or first aid/CPR training certifications.

The minimum requirements for DSR Candidate Qualifications are found in section 2.4.C of this manual. Additional information deemed useful by the Contractor to Metro in approving the candidate may also be included.

Additional submittals under this requirement must indicate any deletion(s) to the current Approved list (if any) as well as provide the names of new candidates for DSR coverage. Information submitted for new candidates should contain similar information to the initial submittal.

##### 2. Alternate Safety Coverage Policy – Alternate Safety Coverage Request Form (DSR-1) (2.4.A.5).

###### A. Minimum Requirements:

- Completed Alternate Safety Coverage Request Form (DSR-1)

###### B. General Information and Guidance:

This submittal is required whenever the Contractor's Lead or other Safety Representative(s) will be off the Project and unable to fulfill contractually required duties and responsibilities as described in Section 2.4. This form MUST be completed and submitted at least 48 hours in advance of the coverage need as indicated in paragraph 2.4.A.5.

As indicated in Section 2.4, DSR coverage is expected to be limited to no more than fourteen consecutive days for any reason. In the event that the Contractor becomes aware of a situation where more than fourteen (14) consecutive days will be required, the Metro Construction Safety Manager should be notified immediately to discuss what options the Contractor has to propose to ensure compliance with the terms and conditions of the contract.

The following Submittals are listed as required for every Metro Contract prior to the contractor beginning Design or Construction work:

3. Alcohol and Drug Free Workplace Program (CSSM 4.3.F).

C. Minimum Requirements:

- First Submittal – Complete and Compliant Program. (See 4.3.F for detailed list of minimum requirements.)
- Subsequent Submittals – Changes to the Approved Program as determined by the Contractor or Metro.

D. General Information and Guidance:

The first submittal for this requirement is to be a complete and compliant Alcohol and Drug Free Workplace Program as described in CSSM Section 4.3.F. The minimum requirements for the A&DFW Program are found in Section 4.3.F of this manual.

4. Alcohol and Drug Free Workplace Program – Monthly Status Report (4.3.F.8).

C. Minimum Requirements:

- Monthly Invoice or Inventory Report indicating ongoing A&DFW Program activities.

D. General Information and Guidance:

This monthly submittal is outlined in the Contractors Approved Alcohol and Drug Free Workplace Program to fulfill the requirements of Section 4.3.F.8.

## 9 9. APPENDICES

### 9.1 APPENDIX A – SUMMARY OF CONSTRUCTION SAFETY REPORTS

| FORM NO.                                                                                                                                | TITLE                                                 | EVENT(S) GENERATION REQUIRED REPORT                                      | PREPARED BY                        | DIST | REMARKS                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------------------------|------------------------------------|------|----------------------------------------------------------------------------------------------------------------------------|
| CS-49                                                                                                                                   | Report of Safety Meeting                              | Recording of weekly tool box meeting                                     | Supervisor/Foreman holding meeting | (3)  |                                                                                                                            |
| CS-51                                                                                                                                   | Job Hazard Analysis                                   | Known safety hazards and all major construction operations               | Contractor                         | (1)  | Filled out and submitted within 24 hours of the event                                                                      |
| CS-52                                                                                                                                   | Supervisor's Injury Investigation Report              | Bodily injury to contractor/subcontractor employee or the general public | Contractor                         | (5)  | Report must be submitted within 24 hours of the event.                                                                     |
| CS-53                                                                                                                                   | Monthly Injury Summary & Work Hours Report            | Monthly report                                                           | Contractor                         | (2)  |                                                                                                                            |
|                                                                                                                                         |                                                       |                                                                          |                                    |      | Metro                                                                                                                      |
| CS-55 and CS-56                                                                                                                         | Crane Inspection Record & Wire Rope Inspection Record | Monthly report(s)                                                        | Contractor                         | (1)  |                                                                                                                            |
| Federal OSHA and Cal/OSHA Form 300                                                                                                      | Log & summary of occupational injuries & illnesses    | Employee occupational injury or illness                                  | Contractor                         | (3)  | Contractor required to retain Form 300 and related records for 5 years subject to Cal/OSHA and/or Federal OSHA inspection. |
| Distribution: (1) Contractor, RE, SM (2) Contractor, SM, RE, MTA (3) Contractor (4) Contractor, RE, SM, (5) Insurer, Contractor, SM, RE |                                                       |                                                                          |                                    |      |                                                                                                                            |

RE = Resident Engineer; SM = Metro Safety Manager

## **9.2 APPENDIX B - RECORDKEEPING POLICY FOR OCCUPATIONAL INJURIES AND ILLNESSES**

### **A. INTRODUCTION**

Injury reporting and recording activities shall be in compliance with the applicable sections of CCR Title 8, Chapter 7 and CFR Title 29, Parts 1904 and 1952. Strict compliance with these regulations, as interpreted by Metro, shall be considered within the original scope of this Contract and shall not delay the schedule for performance of Work by the contractor nor shall it be relied upon to form the basis of a claim for delay. Compliance with determinations by Metro or its designee shall not relieve the contractor from other obligations imposed by law or regulation nor serve as the basis of request for change to increase the cost of the Work.

Thorough investigation of all factors relating to the occurrence of each reported work-related injury or illness is essential. Determination as to whether or not the case should be considered recordable under the provisions of the applicable Regulations and this Policy shall be based upon the evidence developed in such investigations. Unless there is a preponderance of evidence that the injury or illness did not result from the work activity or environment of employment in compliance with State of California and or Federal regulations, the injury or illness shall be considered a work-related case.

### **B. PURPOSE**

The purpose of reporting occupational injuries and illnesses to Metro is to provide an accurate and uniform method for recording, classifying, and reporting injuries as a means of evaluating safety and injury prevention programs and establishing training requirements for this and future projects. These records will also be utilized to determine eligibility and merit within the Craft Level Safety Incentive Program (CLSIP). This procedure shall not replace the employers' legal responsibility for accurately recording and reporting all work-related injuries and illnesses to the appropriate government agencies in compliance with State and Federal Occupational Safety and Health Regulations.

In order to insure accurate and uniform recording, classifying, and reporting of injuries and illnesses, Metro utilizes strict interpretations of the recordkeeping regulations as promulgated by the United States and California OSHA. Interpretive letters and other documents published by these agencies shall be the sole source of interpretive information regarding the recording, classifying, and reporting of injuries and illnesses.

Metro recognizes the need to support and encourage the returning to work of injured employees as soon as is medically appropriate and recommended following an occupational injury or illness. This philosophy is proven Metro improve the quality of life of the employee by preventing the loss of self esteem that frequently occurs in individuals who remain out of work for extended periods. However, each case shall be recorded in compliance with California and United States Regulations.

### **C. SCOPE**

This policy shall apply to Metro construction field staff, consultants, prime contractors and subcontractors.

## D. DEFINITIONS

- a. 1. Employee: Any person paid W-2 reportable wages for work performed in direct connection to a contract for the construction or construction management of a Metro Transit project. This includes both those who appear on that employer's Certified Payroll Report and salaried or other supervisory staff who do not. Staff members of Metro and Metro consultants, whose job duties involve work on the construction worksites shall come under this definition.
- b. 2. Work Hours: The total number of actual hours worked by all employees including craft workers, clerical, administrative, and supervision, overtime hours are to be counted as straight time. This shall also include all hours for any subcontractor but NOT for suppliers and vendors. Hours worked are to be used for calculating incidence rates. When actual hours cannot be accurately determined, estimated hours may be used, provided the estimate is replaced within thirty days by a report of actual hours used from documented sources. If employee hours are estimated, indicate the reason for the estimation and the basis upon which estimates are made.
- 1) 3. FLSA Exempt Employee: For executives, project management, supervisors, and other employees whose working hours are not defined, the employer shall use an average of 8 hours per day for computing exposure hours.
- c. 4. Work Environment: The work environment is comprised of the physical location, equipment used, and kinds of operations performed by an employee in the performance of his work associated with Metro Transit Project, whether on or off the project premises.
- d. 5. First-Aid Treatment: First Aid treatment is defined as those treatments listed under the definition of first aid in CCR Title 8, Chapter Seven. Any other treatment provided which does not appear in the regulatory definition of first aid shall be considered Medical Treatment regardless of who provides the treatment.
- e. 6. Medical Treatment: Any medical procedure or treatment which is not included in the definition of First Aid in CCR Title 8 or excluded as a diagnostic procedure or treatment by the regulations regardless of who provides the treatment.
- f. 7. Diagnostic Procedures: Certain diagnostic procedures performed by medical personnel such as x-rays or blood tests, including the administration of prescription medications used solely for diagnostic purposes as defined in CCR Title 8.
- g. 8. Preventive Procedures: Tetanus shots or tetanus boosters are considered preventive first-aid and not medical treatment. However, the treatment for a reaction to a tetanus shot administered because of an injury shall be considered medical treatment.
- h. 9. Work-Related Case: Any injury suffered by an Employee which results from a work incident or from an exposure involving a single incident in the work environment, and any illness caused by exposure to environmental factors associated with employment. Work environment is comprised of the physical location, equipment and materials used, and kinds of operations performed by an employee in the performance of his work, whether on or off the employer's

premises. Whether any case is work-related will be determined in strict compliance with applicable regulations and reviewed by Metro.

- i. 10. Recordable Case: A work-related injury or illness requiring medical treatment. Recordable cases are cases which result in one or more of the following:
  - 1) a) Death, regardless of the time between the occupational injury or illness and death, provided the cause of death is determined to be directly related to the occupational injury or illness by the county coroner.
  - 2) b) Days away from work.
  - 3) c) Restricted work or transfer to another job.
  - 4) d) Medical treatment beyond first aid.
  - 5) e) Loss of consciousness.
  - 6) f) A significant injury or illness diagnosed by a physician or other licensed health care professional.
- j. 12. Lost Work Day Cases: Lost Work Day Cases are comprised of two types of lost work: Days Away from Work and Days of Restricted Duty. An individual case may include either one, the other or both types of Lost Work Days.
  - 1) a. Days Away from Work are those calendar days (consecutive or not) on which the employee could not work due to an occupational injury or illness. Lost work days shall not include the day of injury or onset of illness but shall include all calendar days from the days after the injury or onset of illness until the employee is medically cleared to return to full duty.
  - 2) b. Restricted Duty Cases which include days upon which the employee is unable to perform any or all of the defined duties of the particular craft, trade or job title to which the employee was assigned upon the day of injury shall also be considered Lost Work Day Cases.
- k. 13. Calculation of Incident Rates: Injury and illness experience is related to a common exposure base of 100 full-time worker years (2000 hours per worker year). The common exposure base enables management to make accurate comparisons, trend analyses or comparisons among other similar projects regardless of size. These measurements are called Occupational Injury and Illness Incident Rates. Metro Transit Projects will be compared against the most recently available industry average for construction as published by the US Bureau of Labor Statistics. Metro will measure:
- l. 14. Recordable Case Incident Rate: Total number of OSHA recordable cases for the reporting period.

TOTAL RECORDABLE INCIDENT RATE:

$$\frac{\text{NO. OF RECORDABLE CASES X 200,000}}{\text{ACTUAL EMPLOYEE HOURS}}$$

- m. 15. Lost Workday Case Incident Rate: Recordable cases that are classified as Lost Workday Cases for the reporting period.



LOST WORKDAY CASE INCIDENT RATE:

$$\frac{\text{NO. OF LOST WORKDAY CASES X 200,000}}{\text{ACTUAL EMPLOYEE HOURS}}$$

- n. 16. Lost Workday Case (Days Away) Incident Rate: Recordable cases that are classified as Lost Workday Cases with days away from work only for the reporting period.

LOST WORKDAY CASE (DAYS WAY) INCIDENT RATE:

$$\frac{\text{NO. OF LOST WORKDAY CASES WITH DAYS AWAY ONLY X 200,000}}{\text{ACTUAL EMPLOYEE HOURS}}$$

- o. 17. Lost Workday Case (Restricted Duty) Incident Rate: Recordable cases that are classified as Lost Workday Cases with Restricted Duty only for the reporting period.

LOST WORKDAY CASE (RESTRICTED DUTY) INCIDENT RATE:

$$\frac{\text{NO. OF LOST WORKDAY CASES WITH RESTRICTED DUTY ONLY X 200,000}}{\text{ACTUAL EMPLOYEE HOURS}}$$

E. PROCEDURE

Upon notification of a work-related injury or illness the employer shall record and classify the injury.

Submitting a worker's compensation claim does not alone determine that an occupational injury or illness is recordable. Claims may be submitted for cases in which only first-aid and or diagnostic treatments were rendered by a physician or registered professional.

Employer shall notify MTA Construction Safety and the Resident Engineer immediately of all occupational injuries or illnesses and, within 24 hours, submit a copy of the Claim forms, supervisor's incident investigation, medical release form, and physician report. These documents assist the Construction Safety staff in determining injury or illness trends that may occur on the project, and verification that all work-related injuries and illnesses are properly recorded. Follow-up reports provided by the Health Care Provider must be forwarded to MTA Safety within 24 hours of receipt.

Failure of the contractor to provide this documentation to Metro within the specified time frame (including injury notifications) may result in the revocation of the Alternate Safety Coverage Policy, the invocations of Special Assessments as defined in the Special Provisions and or the loss of Craft Level Safety Program moneys for the three months following the documented incident.

## F. MONTHLY INJURY SUMMARY

By the 10th of each month, each employer shall submit to MTA Construction Safety, Metro Monthly Injury Summary (CS-53). This form shall include:

### Prime contractors and all subcontractors:

- p. 1. Total hours worked.
- q. 2. Total number Recordable Cases for that month.
- r. 3. Total number of Lost Work Day Cases for that month.
- s. 4. Total Lost Work Days for that month.
- t. 5. Lost Work Days resulting from an injury or illness from a preceding month.
- u. 6. Information on all injuries (name, craft, type injury, disposition, days off and contractor).
- v. 7. The Project Injury Review Committee (Committee), upon receipt of the Monthly Injury Summary, shall review all cases reported. The review shall consist of comparing the employer's report with the Doctors' First Report and release forms.

Should a discrepancy be found during the review by the Committee, the employer will be immediately notified. Restricted Days will be determined by the duty restrictions as indicated by the physician's release forms.

Metro or its' designee will prepare the Project Monthly Injury Report. This report will list all hours and recordable injuries reported by the owner, consultants and contractors assigned to the project for the reporting month.

The Monthly Injury Report shall measure the monthly, year to date, and project to date incident rates of Metro staff assigned to the Construction Project Management Division and each construction management consultant or contractor as well as a project total.

The Monthly Injury Report will be distributed to each employer and to others as required by MTA.

## G. REFERENCES - MONTHLY INJURY SUMMARY (CS-53)

CFR Title 29 Part 1904 – Recording and Reporting Occupational Injuries & Illnesses

CFR Title 29 Part 1952.4 Injury and Illness recording & Reporting Requirements

CCR Title 8, Chapter 7 Division of Labor Statistics and Research

### 9.3 APPENDIX C – SAFETY AND SECURITY SUBMITTAL MATRIX

The table below is for easy reference by the Contractor only and does not supersede the detailed information or requirements found in the referenced section. Work type covered by a required submittal shall not start until the submittal is returned Approved or Approved as Noted to the Contractor.

| Submittal Source      | Title                                                                                                                                                                                                                                                                                  | When Submitted                                                    | When Resubmitted                               |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------------------|
| 01 53 23;<br>1.05.D.1 | Worksite Specific Injury and Illness Prevention Program, including: <ul style="list-style-type: none"> <li>• Site Specific Emergency Action Plan</li> <li>• Contractor's New Employee Training and Orientation Program</li> <li>• Site Specific Code of Safe Work Practices</li> </ul> | Between NTP and any On site Construction Work                     | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.2 | Staffing Plan                                                                                                                                                                                                                                                                          | Between NTP and any On site Construction Work                     | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.3 | Job Hazard Analyses (JHA) Master List                                                                                                                                                                                                                                                  | Between NTP and any On site Construction Work                     | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.4 | Qualified or Competent Persons                                                                                                                                                                                                                                                         | Between NTP and any On site Construction Work                     | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.5 | Fall Protection Program                                                                                                                                                                                                                                                                | Prior to any Work requiring Fall Protection                       | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.6 | Hazardous Waste Operations and Emergency Response                                                                                                                                                                                                                                      | Prior to any Work requiring Hazwoper procedures                   | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.7 | Excavation Action Plans                                                                                                                                                                                                                                                                | Prior to any Work on excavations requiring ground support systems | When conditions change or as required by Metro |

| <b>Submittal Source</b> | <b>Title</b>                                               | <b>When Submitted</b>                                                     | <b>When Resubmitted</b>                        |
|-------------------------|------------------------------------------------------------|---------------------------------------------------------------------------|------------------------------------------------|
| 01 53 23;<br>1.05.D.8   | Crane Certifications                                       | Prior to use of Crane on site                                             | Upon recertification or as required by Metro   |
| 01 53 23;<br>1.05.D.9   | Critical Lift Plans                                        | Prior to Critical Lift                                                    | Only if initially rejected                     |
| 01 53 23;<br>1.05.D.10  | Qualified Riggers and Signalers                            | Prior to the individual performing covered duties                         | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.11  | Energy Isolation Program (Lock Out, Tag Out (LOTO))        | Prior to any Work requiring LOTO                                          | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.12  | Written Compressed Air Safety Program                      | Prior to any Work in a compressed air atmosphere                          | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.13  | Written Track Maintenance Plan (Tunnel Construction)       | Prior to installation of Tunnel Construction Track                        | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.14  | Confined Space/Underground Emergency Response Team Program | Prior to any Permit Required Confined Space Entry, or Tunnel Construction | When conditions change or as required by Metro |
| 01 53 23;<br>1.05.D.15  | Injury and Incident Reports                                | At the time of each incident, and Monthly Summary                         | Only if initially rejected                     |
| 01 53 23;<br>1.05.D.16  | Materials Hazards Communication Program (Site Specific)    | After NTP and before Program implementation                               | When conditions change or as required by Metro |
| 01 53 35;<br>1.05.D.1   | Worksite Specific Security Plan                            | Between NTP and establishment of on-site facilities                       | When conditions change or as required by Metro |

| <b>Submittal Source</b>      | <b>Title</b>                                                                      | <b>When Submitted</b>                           | <b>When Resubmitted</b>                        |
|------------------------------|-----------------------------------------------------------------------------------|-------------------------------------------------|------------------------------------------------|
| CSSM, 4.3.G Spec. Provisions | Safety's First Incentive Program                                                  | After NTP and before Program implementation     | Only if initially rejected                     |
| CSSM, 2.4.A.2                | Alternate Safety Coverage Policy – Candidate Roster                               | After NTP and before Program implementation     | When conditions change or as required by Metro |
| CSSM, 2.4.A.2                | Alternate Safety Coverage Policy – Alternate Safety Coverage Request Form (DSR-1) | As required by Alternate Safety Coverage Policy | Only if initially rejected                     |
| CSSM, 4.3.E                  | Alcohol and Drug Free Workplace Program                                           | After NTP and before Program implementation     | When conditions change or as required by Metro |
| CSSM, 4.3.E.8                | Alcohol and Drug Free Workplace Program – Monthly Status Report                   | Monthly after Program implementation            | Monthly report, no resubmittal unless rejected |

## END OF CONSTRUCTION SAFETY & SECURITY MANUAL

## **EXHIBIT M – CONST & DEMO DEBRIS RECYCLE & REUSE POLICY**

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# Metro

## Construction and Demolition Debris Recycling and Reuse Policy (GEN 51)

### POLICY STATEMENT

Metro must give preference to recyclable and recycled products in the selection of construction materials to the maximum extent feasible during design and construction of Metro or Metro-funded capital projects. Selected materials used in the construction of all structures related to transportation projects should not adversely affect the performance, safety or the environment of the transportation system for which the material is used.

It is also Metro's policy to review all licenses and permits for landfills, recycling facilities, and similar entities that will be used for the disposal or diversion of any waste or construction and demolition debris. Metro will not use any landfill or recycling facility that does not present and maintain acceptable documentation indicating their legitimacy for disposal or diversion purposes.

### PURPOSE

The purposes of this Construction and Demolition Debris Recycling and Reuse Policy are to:

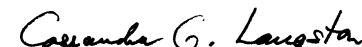
- (1) Implement consistent criteria and procedures on the use of recyclable and recycled products and materials in capital projects, and
- (2) Ensure that facilities used for disposal and recycling are complying with applicable federal, state, or local rules and regulations.

### APPLICATION

This policy is applicable agency-wide to the maximum extent feasible in all phases of design, construction, and procurement of all Metro and Metro-funded projects.



Chief of SBU



APPROVED: County Counsel or N/A



ADOPTED: CEO

Effective Date: 12/24/07

Date of Last Review 12/24/07



# Metro

## Construction and Demolition Debris Recycling and Reuse Policy (GEN 51)

### 1.0 GENERAL

This policy provides guidelines for the consideration of recycled and recyclable materials and products during all phases of design, construction, and procurement of any Metro or Metro-funded project, as well as procedures for the disposal or diversion of construction or demolition debris or wastes that cannot be recycled or reused on site.

### 2.0 PROCEDURES

#### *Procedures for Consideration of Recyclable and Recycled Materials in Construction*

Metro shall follow these procedures during all phases of the design, construction, and procurement of any Metro or Metro-funded projects:

1. To the maximum extent feasible, recyclable and recycled materials should initially be considered in materials selection for design, construction, or procurement.
2. The use of recyclable and recycled materials in design or construction should include a review of their engineering, environmental, and economic feasibility.
3. Restrictions that prohibit the use of recyclable and recycled materials without technical basis should be removed from specifications.

Any material used in the design or construction of all structures related to transportation projects should not adversely affect the performance, safety or the environment of the transportation system.

#### *Procedures for Disposal or Diversion to Landfills and Recycling Facilities*

Construction debris or wastes that cannot be recycled or reused on site should be manifested, transported and disposed to the most appropriate facility. Metro staff will review all licenses and permits for landfills, recycling facilities, and similar entities that will be used for the disposal or diversion of any waste or construction and demolition debris. Metro will not use any landfill or recycling facility that does not present and maintain acceptable documentation indicating their legitimacy for disposal or diversion purposes.





# Metro

## Construction and Demolition Debris Recycling and Reuse Policy (GEN 51)

### 3.0 DEFINITION OF TERMS

- 3.1 Construction and Demolition Debris – Materials that consist of the debris generated during the construction, renovation, and demolition of buildings, roads, and bridges. These may include concrete, wood (from buildings), asphalt (from roads and roofing shingles), gypsum (the main component of drywall), metals, bricks, glass, plastics, salvaged building components (doors, windows, and plumbing fixtures), and trees, stumps, earth, and rock from clearing sites.
- 3.2 Recycling – The collection and reprocessing of discarded materials for reuse.
- 3.3 Reuse – To use again, especially after salvaging, special treatment or processing.
- 3.4 Landfill – A facility where solid waste or refuse is buried between layers of dirt to fill in or reclaim low-lying ground.
- 3.5 Recycling Facility – A facility where any method, technique, or process is utilized to separate, process, modify, convert, treat or otherwise prepare non-putrescible waste so that component materials or substances may be used or reused or sold to third parties for such purposes.

### 4.0 RESPONSIBILITIES

The Chief Executive Officer is responsible for ensuring that the policy is incorporated in Metro's procurement, construction specifications, construction monitoring, operations, and planning documents. At the Chief Executive Officer's discretion, this authority may be delegated to appropriate Metro staff responsible for implementing the procurement, construction specifications, construction monitoring, operations, and planning policies and procedures.

### 5.0 FLOWCHART

Not applicable.

### 6.0 REFERENCES

- 6.1 AB 939: The California Integrated Waste Management Act of 1989
- 6.2 14 CCR Chapter 3. Minimum Standards for Solid Waste Handling and Disposal
- 6.3 Los Angeles County Ordinance No. 2005-0004



Los Angeles County  
Metropolitan Transportation Authority

**Metro**

## **Construction and Demolition Debris Recycling and Reuse Policy** (GEN 51)

- 6.4 Waste Reduction Policies and Procedures for State Agencies, California  
Environmental Protection Agency, Integrated Waste Management Board.  
August 1999.

### **7.0 ATTACHMENTS**

Not Applicable

### **8.0 PROCEDURE HISTORY**

December 12, 2007: New Policy and Procedure

## **EXHIBIT M- ENERGY & SUSTAINABILITY POLICY**

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## Summary of Policy

The purpose of the Energy and Sustainability Policy is to control energy consumption and embrace energy efficiency, energy conservation, and sustainability to:

- Avoid unnecessary expenditure
- Help in protecting the environment
- Improve cost effectiveness, productivity, and working conditions
- Prolong the useful life of fossil fuels by using resources more efficiently

### **Metro's long term objectives are to:**

- Reduce, whenever possible, Metro's use of fossil fuels through the use of ambient and renewable energy sources
- Buy fuels and electricity at the most economic cost
- Use fuels and electricity as efficiently as possible
- Reduce the amount of emissions, especially carbon dioxide (CO<sub>2</sub>), caused by our required consumption

### **Metro's immediate objectives are to:**

- Gain more control over our energy consumption by aggressively pursuing renewable energy sources, take advantages of rebates and subsidies for energy and water conservation wherever feasible, conduct energy audits of Metro divisions and facilities, and implement energy conservation measures where they are feasible and fiscally prudent.

- Construct all new facilities and projects, including new transit corridor projects, using energy efficiency and conservation strategies. For buildings or structures over 10,000 square feet, projects must be constructed to achieve leadership in Energy and Environmental Design (LEED) Silver certification, at minimum.

## Historical Perspective

Metro spends approximately \$30 million per year on utility costs for electricity, gas, and water alone, with \$26 million of those costs being just for electricity. Of the \$26 million expended on electricity, \$20 million is for propulsion power for the Metro Redline and other light rail lines, whereas \$7 million is for operation of our bus and rail maintenance facilities, layovers, terminals, and headquarters building. As the years progress, Metro also expects that these costs will rise along with periodic utility rate increases that will occur in future years. Staff believes that in this volatile and costly energy market, embracing sustainability, energy efficiency, conservation, and renewable energy sources is a primary pathway towards gaining control of, and reducing, Metro's energy costs.

In June 2007, the Board adopted the Energy and Sustainability Policy to control energy consumption and embrace energy efficiency, energy conservation, and sustainability. Adoption of the Energy and Sustainability policy will not only help to immediately lower our electrical and water bills, but will provide the baseline and business case to further our sustainability goals at Metro.

As staff began the formulation of the policy, staff performed a review of energy policies for other federal, state, and local

agencies to determine what other similar agencies had adopted. The policy was then written to incorporate lessons learned from our interagency review, as well as the comments of Metro staff in affected departments.

### Last Board Action

June 28, 2007

The Board approved on consent calendar the Energy & Sustainability Policy

### See Also

[Compressed Natural Gas Hedging](#)

## **EXHIBIT O – ENVIRONMENTAL POLICY**

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## Summary of Policy

The purpose of the Environmental Policy is to provide guidance in:

- 1) identifying potential environmental impacts generated by our development activities and developing mitigation measures to address those impacts;
- 2) operating and maintaining Metro vehicles and facilities to minimize negative impacts on the environment;
- 3) reducing our consumption of natural resources;
- 4) reducing or eliminating the use of hazardous materials;
- 5) increasing the amount of recycling and use of recycled products; and
- 6) reducing and/or diverting the amount of solid waste going to landfills.

## Historical Perspective

On August 13, 2007, the Federal Transit Administration (FTA) published an invitation to state and local transit agencies to apply for Environmental Management Systems (EMS) training and assistance, which is offered in the form of workshops, on-site technical advice, consultation and comprehensive training in the development of an International Organization for Standardization (ISO) 14001-based EMS. An EMS is a set of operational procedures, based on an adopted Environmental Policy, to ensure compliance with federal, state and local environmental regulations, as well as to facilitate environmental stewardship.

These procedures address energy conservation, efficient water use, material recycling and waste minimization, vehicle emissions reduction, improved fueling operations and hazardous material management and substitution, among other practices. Evidence shows that

adoption of environmental management systems result in better regulatory compliance and fine avoidance, as well as advantages in financing, insurance, marketing, regulatory compliance, and other areas of planning, construction, operations, and procurement.

In December 2007, LACMTA was selected as one of seven participating agencies in the Second Round of FTA assisted EMS training. The EMS training is designed to help agencies develop and implement a complete EMS using the 14001 Standard of the International Organization for Standardization (ISO). The ISO 14001 Standard is a toolbox of management techniques to minimize harm to the environment. The ISO 14001 Standard serves as the basis of the EMS development, although it will be at the discretion of the implementing agency whether to pursue ISO certification or not. FTA will assemble a final report that includes the participating transit agencies' case studies and assesses training results. The FTA will also participate in ensuring that participating agencies' EMS conform with ISO 14001 certification standards.

In April 2009, the Board adopted the Environmental Policy which provides guidance in carrying out the agency's on-going commitment to provide multi-modal public transit services that greatly improve the quality of the environment in the communities it serves; and its commitment to planning and constructing projects, operating and maintaining facilities and vehicles, and procuring products and services consistent with state and federal laws and regulations and in a manner that protects human health and the environment but not neglecting the efficient delivery of quality public transit services within its financial ability.

## Last Board Action

April 23, 2009 – Environmental Policy

The Board adopted the Environmental Policy.

## Attachment

Environmental Policy

## See Related

[Energy & Sustainability](#)

[Sustainability](#)



## **METRO ENVIRONMENTAL POLICY**

### **POLICY STATEMENT**

The Los Angeles County Metropolitan Transportation Authority (LACMTA) will be a leader in maximizing the environmental effort and its benefits for Los Angeles County through our core mission of moving people efficiently and effectively using an Environmental Management System as its primary tool in applying sustainable principles and practices in our planning, construction, operations, and procurement to protect the environment for present and future generations.

### **PURPOSE**

The purpose of this policy is to provide guidance in 1) identifying potential environmental impacts generated by our development activities and developing mitigation measures to address those impacts; 2) operating and maintaining Metro vehicles and facilities to minimize negative impacts on the environment; 3) reducing our consumption of natural resources; 4) reducing or eliminating the use of hazardous materials; 5) increasing the amount of recycling and use of recycled products; and 6) reducing and/or diverting the amount of solid waste going to landfills.

### **COMMITMENT**

Metro provides multi-modal public transit services that greatly improve the quality of the environment in the communities it serves. We are committed to planning and constructing our projects, operating and maintaining our facilities and vehicles, and procuring products and services consistent with State and federal laws and regulations and in a manner that protects human health and the environment but not neglecting the efficient delivery of quality public transit services within our financial ability.

To demonstrate our commitment, we will:

- Comply with all environmental, federal, State, and local laws and regulations;
- Restore the environment by providing mitigation and corrective action and by monitoring to ensure that environmental commitments are implemented;
- Improve our ability to manage and account for environmental liabilities and risk;
- Avoid environmental degradation by minimizing releases to air, water, and land;

- Prevent pollution and conserve resources by reducing waste, reusing materials, recycling, and preferentially procuring for environmentally-friendly products and materials;
- Encourage and support the development of standards that encourage public transit use and environmental protection;
- Conduct training to raise awareness among employees and the general public regarding environmental protection and sustainable practices;
- Ensure that the planning, design, construction, and operation of our facilities and services consider environmental protection and sustainable features;
- Periodically review and implement updated environmental protection procedures and practices to ensure that they provide effective solutions for the problems they are designed to prevent or correct;
- Recognize and encourage citizen awareness and involvement in our efforts to protect the environment and educate the public about the environmental benefits of our transit system;
- Build relationships with our contractors, vendors, consultants, and transit partners during planning, design, construction, operation and procurement to protect and enhance the environment;
- Consider alternative solutions such as promoting and tapping renewable energy sources to address energy and environmental challenges;
- Establish and maintain an Environmental Management System (EMS) with environmental objectives and targets that are measurable, meaningful and understandable; and
- Communicate the goals and progress of this Policy and the EMS to Board Members, officers, employees and the public.

## **EXHIBIT P – WATER USE & CONSERVATION POLICY**

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Los Angeles County  
Metropolitan Transportation Authority

**Metro**

## GENERAL MANAGEMENT Water Use and Conservation

(GEN 52)

### POLICY STATEMENT

It is the policy of the Los Angeles County Metropolitan Transportation Authority (LACMTA) to conserve the use of potable water resources at its facilities in the most cost-effective and efficient manner. The use of water for construction, operations, and maintenance purposes must be consistent with local, state, or federal water conservation measures. In instances where it is necessary to protect public safety, human health, and the environment, the LACMTA may deviate from water conservation measures.

### PURPOSE

Varying conditions required the LACMTA to use potable water in order to fulfill its mandates. The purpose of this policy is to ensure that potable water is used in a consistent manner during any LACMTA construction and operation related activity by:

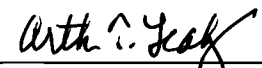
- (1) Ensuring the uniform and sustainable implementation of water conservation and efficiency actions within the LACMTA.
- (2) Prioritize the use of potable water only to those instances where public safety or the environment is impacted.

### APPLICATION

This policy is applicable agency-wide in the planning, procurement, design, construction, operations, and maintenance of all LACMTA and LACMTA-funded projects and assets.

  
\_\_\_\_\_  
Chief of SBU

  
\_\_\_\_\_  
APPROVED: County Counsel or N/A

  
\_\_\_\_\_  
ADOPTED: CEO

Effective Date: 7/27/2009

Date of Last Review \_\_\_\_\_



## 1.0 GENERAL

The LACMTA uses potable water in a variety of situations to ensure the safe operation of its system and implementation of construction activities. The LACMTA may selectively curtail the use of potable water only to essential services during periods when statewide water conservation measures are in effect. State and local statutes and guidelines further outline potable water use prohibitions to reduce water consumption and encourage water conservation on both a regional and local scale. Examples of prohibited uses currently required by local jurisdictions where the LACMTA operates include:

- use of a water hose to wash any hard or paved surfaces including, but not limited, to sidewalks, walkways, driveways, and parking areas;
- continuous leaking of water from any pipe or fixture within LACMTA's facilities;
- washing of any vehicle with a hose if the hose does not have a self-closing water shut-off or device attached to it;
- irrigation during periods of rain or allowance of any excess irrigation water to sheetflow onto adjoining streetscape;
- irrigation between the hours of 9:00 a.m. to 4:00 p.m.;
- irrigation of landscaping for more than the required watering times per station;
- irrigation of any large landscaped areas where rain sensors are not installed; and
- use of non re-circulating systems in new conveyor car wash systems.

The use of potable water at LACMTA construction sites is permitted under best management practice for dust suppression purposes required to comply with applicable environmental regulations.

Divisions and departments may use potable water to wash LACMTA vehicles only at bus or rail washing systems designed to capture and re-circulate water.



**Metro**

Los Angeles County  
Metropolitan Transportation Authority

## **GENERAL MANAGEMENT Water Use and Conservation**

(GEN 52)

### **2.0 PROCEDURES**

#### **2.1 Procedure in Using Potable Water for Pressure Washing Activities**

- 2.1.1 Prioritize facility locations that must be regularly cleaned using pressure washing equipment.
- 2.1.2 If pressure washing is deemed essential, appropriate water conservation and efficiency measures must be applied.
- 2.1.3 Conduct pressure washing activities using cost-effective water efficient equipment.
- 2.1.4 Capture and dispose any generated wastewater to an appropriate facility.

#### **2.2 Procedure in Using Potable Water for Construction**

- 2.2.1 Develop a plan for dust suppression purposes to comply with applicable environmental statutes, regulations, and guidelines.
- 2.2.2 Use of potable water as a dust suppression agent should always be secondary and should only be used if all other dust suppression technologies are not feasible or cost-effective.

#### **2.3 New Construction Planning, Design and Construction; Existing Buildings Operations.**

- 2.3.1 Use water conservation and efficiency guidelines outlined in applicable Leadership in Energy and Environmental Design (LEED) reference books for all planning, procurement, design, construction, operations, and maintenance of our linear and non-linear facilities.
- 2.3.2 Prepare manuals of operation, as applicable, to ensure that water efficiency and conservation technologies are adopted and maintained.



### **3.0 DEFINITION OF TERMS**

**Sustainable** – Meeting the resource needs of the present without compromising the ability of future generations to meet their own needs.

**Water Conservation** – Implementation of an action, behavioral change, device, technology, or improved design or process implemented to reduce water loss, waste, or use. Water efficiency is a tool of water conservation that results in more efficient water use and thus reduces water demand. The value and cost-effectiveness of a water efficiency measure must be evaluated in relation to its effects on the use and cost of other natural resources and any beneficial reduction in water loss, waste, or use.

**Water Efficiency** – The accomplishment of a function, task, process, or result with the minimal amount of water feasible, or an indicator of the relationships between the amount of water needed for a specific purpose and the amount of water used, occupied or delivered.

### **4.0 RESPONSIBILITIES**

**Environmental Compliance and Services Unit (ECSD)** oversees the water conservation policy and assists LACMTA Strategic Business Units in applying LACMTA water conservation measures.

**Strategic Business Units (SBUs)** are responsible for following and applying water conservation measures.

### **5.0 FLOWCHART**

Not applicable.

### **6.0 REFERENCES**

Ordinance Amending Chapter XII, The Water Conservation Plan of the City of Los Angeles, Article I – Emergency Water Conservation Plan of the Los Angeles Municipal Code by Amending Sections 121.00 Through 121.10 to Establish Additional Prohibited Uses of Water and Eliminate Water Rationing Requirements

South Coast Air Quality Management District Rule 403 and amendments

U.S. Green Building Council LEED® Reference Guides



Los Angeles County  
Metropolitan Transportation Authority

**Metro**

## GENERAL MANAGEMENT Water Use and Conservation

(GEN 52)

### 7.0 ATTACHMENTS

Not Applicable


### 8.0 PROCEDURE HISTORY

03/24/2009    New water conservation policy



## **EXHIBIT Q – DRUG & ALCOHOL FREE WORK ENV POLICY**

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# Metro Board Approved Policy

## Drug and Alcohol Free Work Environment

*Adopted: January 1, 1995*

### Historical Perspective

This policy was amended on July 28, 2011.

The current Drug & Alcohol-Free Work Environment policy has its roots in the policies of its predecessor agencies, the Southern California Rapid Transit District (RTD) and the Los Angeles County Transportation Commission (LACTC). Under its own authority, RTD introduced preemployment drug testing in 1973 and three years later made drug screening a part of the periodic medical examination required for Commercial Driver's License holders. In 1985, the RTD implemented a drug and alcohol abuse policy that included post-accident and incident based drug and alcohol testing. The LACTC adopted a drug and alcohol policy in May 1992 that included testing for reasonable cause.

After the merger between RTD and LACTC, the Board adopted on September 1994 a comprehensive Alcohol and Drug Abuse policy, which became effective January 1, 1995. The new policy integrated the policies of its predecessor agencies and complied with the U.S. DOT and FTA drug and alcohol testing regulations. The regulations included provisions for workers who perform safety sensitive functions and the addition of random testing. Since then, the U.S. DOT and the FTA have issued several amendments that have required the Board to periodically revisit its drug and alcohol policy.

The Board updated the policy in May 1997 to clearly differentiate drug and alcohol testing conducted under U.S. DOT and FTA regulations from testing conducted under its own authority. And in May 1999, the Board adopted amendments to the policy to reflect administrative changes and to clarify language regarding the Drug-Free Workplace Act of 1988. In addition, the Board changed the policy's name to the Drug & Alcohol-Free Work Environment Policy.

The Board approved on consent calendar the revised Drug & Alcohol-Free Work Environment Policy (#HR 4-2, effective date 05/26/2005).

The Board updated the policy in July 2011 to approve changes to the guidelines. Federal Transit Administration regulation 49 CFR Part 655 requires that recipients of FTA funding have a drug and alcohol policy that meets federal guidelines and that the Board of Directors adopt the policy. The Drug and Alcohol Free Work Environment policy establishes Metro's commitment to comply with all federal and state regulations to ensure a safe and substance abuse-free environment. This revision is the first update of the policy since May 26, 2005.

The policy applies to employees identified as safety-sensitive under the FTA's guidelines and complies with the latest amendments to the federal regulations. The policy also applies to non-safety-sensitive employees as permitted by law. In the revised policy, the requirement for preemployment testing of non-safety sensitive employees is eliminated based on a 9th Circuit Court of Appeals Decision (*Lanier v. City of Woodburn*).

The policy encourages employees with alcohol or drug dependency issues to seek professional rehabilitation assistance through Metro's Employee Assistance Program. To ensure sobriety and safety, this policy revision allows Metro to require monitoring of evaluation and treatment when self-disclosure or legal action reveals a substance abuse problem.

The policy previously prohibited the use of alcohol on all Metro property. The definition of "Metro property" specific to this policy has been changed as a result of Metro's purchase of Union Station, which contains facilities and designated areas where alcohol consumption is permitted.



**Metro**



**Metro**

Los Angeles County  
Metropolitan Transportation Authority

## HUMAN RESOURCES Drug and Alcohol Free Work Environment

(HR 46)

### POLICY STATEMENT

The Los Angeles County Metropolitan Transportation Authority (LACMTA) is dedicated to providing safe, dependable and efficient transportation services to customers and a safe work environment for employees. An employee's use of prohibited drugs and misuse of alcohol poses a significant risk to the safety of the employee, his or her coworkers, and the public.

By this reference, all applicable state and federal regulations governing workplace anti-drug use and alcohol misuse programs in the transportation industry are incorporated herein, as though fully set forth, as part of this policy. These regulations include, but are not limited to, Department of Transportation (DOT) regulations 49 CFR Part 40, as amended ("Procedures for Transportation Workplace Drug Testing Programs"); Federal Transit Administration (FTA) regulations, 49 CFR Part 655, ("Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"); 41 U.S.C. Section 701-707 ("Federal Drug-Free Workplace Act of 1988"); and California Government Code section 8350 *et seq.*, ("Drug-Free Workplace Act of 1990").

NOTE: Additional requirements and/or disciplinary actions established under LACMTA authority are entered in **bold-faced type**. Requirements of the Federal Drug-Free Workplace Act (not covered under 49 CFR Part 655) are in *italics*.

### PURPOSE

The purpose of this policy is to:

- A. Create a work environment free from the adverse effects of drug abuse and alcohol misuse;
- B. Deter and detect employees' use of illegal drugs and misuse of alcohol;
- C. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances;

  
Department Head

  
APPROVED: County Counsel or N/A

  
ADOPTED: CEO

Board Approved Date: 8/4/11

Date of Last Review: 1/27/16



**Metro**

## HUMAN RESOURCES

### Drug and Alcohol Free Work Environment

(HR 46)

- D. Encourage employees to seek professional assistance anytime personal problems, including drug or alcohol dependency, adversely affect their ability to safely perform their assigned duties; and
- E. Discipline employees who violate the policy, up to and including termination.

#### APPLICATION

Unless otherwise noted in specific provisions, this policy applies to **all** LACMTA employees regardless of their functions and to LACMTA property as defined in Section 11.0. It applies to split assignments, off-site lunch periods and/or breaks when an employee is scheduled to return to work or is on-call. **The application of this policy to non-safety-sensitive employees comes under LACMTA's own authority. Volunteers, visitors, invitees, licensees, contractors and vendors are also governed by the requirement to remain drug and alcohol free while on LACMTA property or when performing any business for or providing a service to LACMTA.**

As a condition of employment, safety-sensitive (covered) employees are required to submit to all drug and alcohol tests administered in compliance with the requirements of 49 CFR Parts 40 and 655 and **other conditions and testing required under LACMTA authority. Non-safety-sensitive employees are subject to all incident-based testing (reasonable suspicion, post-accident, return-to-duty and follow-up).**

As defined by the FTA, safety-sensitive employees include those who perform, or may be called upon to perform, the following safety-sensitive functions:

- A. Operating a revenue service vehicle, even when it is not in revenue service;
- B. Operating a non-revenue service vehicle when required to be operated by a Commercial Driver's License (CDL) holder;
- C. Controlling dispatch or movement of a revenue service vehicle;
- D. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or
- E. Carrying a firearm for security purposes.

Managers and supervisors are considered safety-sensitive if they perform, or may be called upon to perform any of the above safety-sensitive functions.

The job classifications listed on Appendix A are considered safety-sensitive for the purposes of this policy.



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#### 1.0 PROHIBITED BEHAVIORS

##### 1.1 Illegal Drugs

All LACMTA employees are prohibited from consuming the following products at all times:

- A. Marijuana
- B. Cocaine
- C. Opiates
- D. Amphetamines
- E. Phencyclidine (PCP)

All LACMTA employees are prohibited from possessing or distributing the above products and are prohibited from reporting to work with these products or their metabolites in their systems.

##### 1.2 Alcohol

###### A. All LACMTA employees are prohibited from:

1. Consuming alcohol and/or having an open container of alcohol while on duty or while on LACMTA property, including parking areas, whether on-duty or not.
2. Having alcohol in their system at 0.02 alcohol concentration or greater while performing safety-sensitive functions or while on duty.
3. Consuming alcohol within four (4) hours prior to performing safety-sensitive functions or prior to reporting for duty.
4. Consuming alcohol within eight (8) hours following an accident requiring a post-accident alcohol test or until undergoing a post-accident test, whichever occurs first.

- B. All safety-sensitive employees are prohibited from alcohol consumption while on-call and for the duration of the on-call status. If an employee is called to report to duty, the employee has the opportunity to acknowledge alcohol use and inability to perform his or her safety-sensitive function. If the employee acknowledges alcohol use but claims ability to perform his/her safety-sensitive function, the employee must first take an alcohol test and test negative before performing such function.

##### 1.3 Prescriptions or Over-the-Counter Medications

(Refer to Fitness-for-Duty Policy, HR 29)



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#### 1.4 Volunteers, Visitors, Invitees, Licensees, Contractors and Vendors

Whenever there is evidence or reasonable suspicion that a volunteer, visitor, invitee, licensee, contractor or vendor possesses, is distributing or may have used drugs or alcohol, they may be prohibited from entering or remaining on LACMTA property and may be prohibited from conducting any further business with or on behalf of LACMTA.

#### 2.0 CONSEQUENCES OF POSITIVE DRUG AND/OR ALCOHOL TESTS

Any employee who has a verified positive drug test result, an alcohol concentration of **0.02 or greater**, or refuses to submit to a drug and/or alcohol test, including adulteration or substitution and all other actions deemed to constitute a refusal (for more details see Section 11.0 - Definitions), shall be considered to have violated this policy. The consequences of a violation are listed below and shall be imposed in all the types of tests listed in section 4.0.

1. Immediate removal from duty.
2. Referral to a Substance Abuse Professional (SAP) for evaluation, education and/or treatment.
3. **Discipline, up to and including termination.** Prior to assessing discipline, management will consider pertinent information including any aggravating and/or mitigating circumstances and will meet with LACMTA's Drug and Alcohol Disciplinary Review Committee (DADRC).
4. **Responsibility for the cost of any treatment or rehabilitation services will be paid directly by the employee or through his/her insurance provider.**

#### 3.0 CONTACT PERSON

Any questions about this policy or any aspect of LACMTA's Drug and Alcohol Program should be referred to:

|                   |                                          |
|-------------------|------------------------------------------|
| Title:            | Drug and Alcohol Program Manager         |
|                   | Human Resources Department, MS 99-14-8   |
| Address:          | One Gateway Plaza, Los Angeles, CA 90012 |
| Telephone Number: | (213) 922-7172                           |
| Fax:              | (213) 922-3885                           |



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#### **4.0 TYPES OF TESTING**

A test refusal, a verified positive drug test result or an alcohol test result of 0.02 alcohol concentration or above, on any of the types of tests listed below will subject the employee to consequences as described in Section 2.0.

##### **4.1 Pre-Employment Testing**

Candidates for employment into a safety-sensitive position or any employee transferring from a non-safety-sensitive position to a safety-sensitive position will be required to undergo a pre-employment drug and alcohol test at a time and place designated by LACMTA. An alcohol test result below 0.02 and a verified negative drug test result must be received prior to any candidate's assuming the position or an employee's performance of any safety-sensitive function. If a pre-employment drug test is canceled, the candidate/employee will be required to submit to another drug test with no advance notice and successfully pass it.

LACMTA will check on the drug and alcohol testing background of all candidates (external applicants and current employees in non-safety-sensitive job classifications) being considered for final selection into any safety-sensitive position within LACMTA, subject to a candidate's written consent. Any candidate who refuses to provide the required written consent will not be hired into a safety-sensitive position, regardless of qualifications.

In instances where a safety-sensitive employee is on extended leave, regardless of the reason, for a period of 90 days or more and is removed from the random testing pool, the employee will be required to take a drug test and have negative results prior to performing any safety-sensitive functions. This requirement also includes employees who have been working in non-safety-sensitive positions and removed from the random testing pool for 90 days or more.

##### **4.2 Reasonable Suspicion Testing**

LACMTA shall conduct drug and alcohol tests when there is reasonable suspicion to believe any employee has used a prohibited drug and/or engaged in alcohol misuse. A determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning appearance, behavior, speech, or odors while the employee is on duty or subject to duty. These observations must be made by a supervisor or other LACMTA official who is trained in detecting the signs and symptoms of drug use and alcohol misuse.



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The supervisor or LACMTA official who makes the testing determination need not be the employee's own supervisor, as long as he/she has received training in detecting the signs and symptoms of drug use and alcohol misuse. The supervisor's observations will be documented in accordance with LACMTA policy, procedures and practices, and such documentation must be forwarded to the Drug and Alcohol Program Manager identified in Section 3.0.

**All LACMTA employees may be subjected to reasonable suspicion testing for drugs anytime while on duty. Under FTA authority, a covered employee may only be subjected to reasonable suspicion testing for alcohol immediately before, during, or immediately after performance of any safety-sensitive function. However, under LACMTA authority, all employees may be subject to reasonable suspicion testing for alcohol at any time while on duty.**

**The following circumstances are also grounds for a reasonable suspicion testing referral:**

- A. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substances in the workplace or while on duty.**
- B. Industrial accident resulting in a traumatic injury which requires medical treatment. Any or all of the employees directly involved may be subjected to an alcohol and/or drug test when there is reasonable suspicion to believe that an employee's use of alcohol or drugs may have caused or contributed to the accident or injury.**
- C. Physical altercation or assault between two or more employees. All employees involved in the altercation will be tested, except when the employee is only attempting to restrain those involved in the altercation or a security officer is performing his or her official function.**

Once a supervisor or other authorized LACMTA official has made a reasonable suspicion determination, he/she must remove the employee from his/her job functions and have the employee accompanied to the collection site for testing immediately. If testing is not conducted within two hours, the reason for the delay must be documented and forwarded to the LACMTA Drug and Alcohol Program Manager, along with other documentation on decision to test. All attempts to complete an alcohol test must cease after eight hours from the time of the incident or observation.





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### 4.3 Post-Accident Testing

All safety sensitive employees who are involved in a traffic accident while operating a mass transit vehicle will be required to submit to drug and alcohol tests as soon as practicable after the accident, if as a result:

- A. An individual dies;
- B. An individual suffers bodily injury and immediately receives medical treatment away from the scene;
- C. The mass transit vehicle (bus, truck, van, or automobile) or any other vehicle involved in the accident suffers disabling damage as a result of the accident and is transported away from the scene by a tow truck or other vehicle; or
- D. The mass transit vehicle is a rail car and is removed from revenue service.

**This requirement also applies to any employee who is operating any other LACMTA vehicle at any time, or who is driving a private vehicle while conducting LACMTA business at the time of the accident.**

#### 4.3.1 Fatal Accidents

Whenever there is a loss of human life, any surviving employee operating an LACMTA vehicle at the time of the accident must be tested for drugs and alcohol. Any safety-sensitive employee whose performance could have contributed to the accident must also be tested.

#### 4.3.2 Non-Fatal Accidents

Following non-fatal accidents, the employee operating the vehicle at the time of the accident must be tested unless his/her performance can be completely discounted as a contributing factor to the accident. Any other safety-sensitive employee whose performance could have contributed to the accident must also be tested.

#### 4.3.3 Other Post-Accident Testing Requirements

If an alcohol or drug test is required under this section, the employee must be tested as soon as practicable following the accident. An alcohol test must be administered within 8 hours of the accident. A drug test must be administered within 32 hours of the accident. If LACMTA is unable to perform such post-accident testing (i.e., employee is unconscious, employee is detained by law enforcement agency), LACMTA may use drug and alcohol post-accident test



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results administered by local law enforcement officials in lieu of testing under DOT procedures. The local law enforcement officials must have independent authority for the test, and LACMTA must obtain the results in conformance with local law.

The employee involved in an accident that requires testing must remain readily available for testing, including notifying LACMTA of his/her location if the employee leaves the scene of the accident before testing to obtain emergency medical care, or to obtain assistance in responding to the accident. The employee will be considered to have refused to submit to testing if the employee fails to comply with these requirements.

**If the accident results in a fatality or if there is reasonable suspicion that the employee has used alcohol or a prohibited drug, the employee will be held out of service until LACMTA has received a verified negative drug test result and an alcohol test result of less than 0.02. All other employees may return to work as soon as practicable while the results of testing are pending.**

**Following receipt of negative drug and alcohol test results, the employee shall be promptly returned to his/her regular work and made whole for any lost wages, unless the employee must be held out-of-service or suspended for violations of other LACMTA policies, procedures or rules.**

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit an employee from leaving the scene of an accident to obtain assistance in responding to the accident or for emergency medical care.

#### **4.4 Random Testing**

All safety-sensitive employees are required to undergo random drug and alcohol tests. The random selection will be conducted using a scientifically valid method that gives each covered employee an equal chance of being selected every time a selection is made. As is the nature of the random method, it is possible that some employees will be selected several times in one year, and other employees not for several years. Management has no discretion regarding selection.

The number of employees randomly selected for drug and alcohol testing during the calendar year shall not be less than the percentage rates established by the FTA. Random testing will be spread throughout the calendar year and conducted at all days and times when safety-sensitive functions are performed. The testing dates and times are



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unannounced. Employees are required to proceed immediately to the designated collection site following notification. An unreasonable delay shall be considered a test refusal.

A covered employee shall only be randomly tested for alcohol immediately before, during, or immediately after performance of any safety-sensitive function. The employee may be randomly tested for drugs anytime while on duty.

### 4.5 Return-to-Duty Testing

If an employee who has violated this policy is not terminated, the employee shall not be allowed to return to duty until he/she has successfully completed the return-to-duty process. Violations include refusing a required test, having a verified positive, adulterated or substituted drug test result, and testing positive for alcohol at 0.02 or greater. This return-to-duty process includes evaluation by a SAP, successful completion of the rehabilitation, treatment or education program outlined by the SAP and obtaining a verified negative observed return-to-duty drug test and/or alcohol test under 0.02. A positive return-to-duty test will be considered a violation of this policy.

### 4.6 Follow-Up Testing

In addition to the return-to-duty test, **any** employee meeting the conditions described in Section 4.5 who returns to duty shall also be subject to follow-up testing for drugs and/or alcohol. The SAP determines the number, frequency and duration of follow-up tests that will be performed for a period of a minimum of 12 months to a maximum of five years. LACMTA will determine the actual follow-up testing dates. The employee's manager is responsible for coordinating testing with the LACMTA Drug and Alcohol Program Manager. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing. Employees are required to proceed immediately to the designated collection site following notification. An unreasonable delay shall be considered a test refusal.

### 4.7 Commercial Driver's License (CDL/Periodic) Testing

The California Department of Motor Vehicles (DMV) requires drivers of commercial motor vehicles (Class A or B licenses) to pass a medical examination to obtain or renew their medical certificates. LACMTA requires a drug test as part of this examination to ensure that the CDL holder is qualified to operate a commercial vehicle.



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#### 4.8 Rail Safety Incident Testing

Any employee directly involved in, or who contributed to, a rail incident compromising the safety of employees, passengers, the general public or that could have potentially resulted in loss of life, injury or significant damage to property due to non-compliance with LACMTA safety rule(s) and/or LACMTA Standard Operating Procedures, shall be required to submit to drug and alcohol testing as soon as practicable after the incident. This includes:

- (a) non-compliance with a verbal and/or written train directive, unauthorized bypass of a safety system, violation of manual block procedures, or violation of a stop indication signal or safety-related special instruction;
- (b) operating through a misaligned switch in violation of LACMTA rules and/or procedures, unauthorized operation of a switch under a train, unauthorized movement through a switch, or entering a crossover prior to ensuring switches are aligned for intended movement;
- (c) providing improper, unsafe and/or conflicting directions during the performance of a control function, which results in an unsafe condition;
- (d) non-compliance with other safety rules and/or procedures that create unsafe conditions.

#### 5.0 TESTING PROCEDURES

All drug and alcohol tests required under this policy will be administered and analyzed in accordance with the procedures set forth by DOT 49 CFR Part 40 ("Procedures for Transportation Workplace Drug Testing Programs") as amended. Throughout the testing process, the privacy of the employee will be protected and the integrity and validity of the process will be maintained. Detailed drug and alcohol specimen collection procedures are available at MyMetro.net or upon request from the Drug and Alcohol Program Manager identified in Section 3.0 of this policy.

##### 5.1 Alcohol Testing Procedures

Tests for alcohol concentration will be conducted using an alcohol screening device and an evidential breath testing (EBT) device if the screen test is at 0.02 alcohol concentration or greater. An Alcohol Testing Form will be used and a unique sequential number will be assigned to each test.



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### 5.2 Drug Testing Procedures

For each drug test, a Custody and Control Form with a unique identification number will be used to ensure that the correct urine specimen and the test result for that specimen is attributed to the correct employee. A split specimen collection process will be utilized. An initial screening test using an immunoassay technique will be performed. If the specimen is positive for one or more of the drugs tested, then a confirmation test will be performed using mass spectrometry analysis. If the test is confirmed positive, the Medical Review Officer (MRO) will conduct a verification process, which includes giving the employee an opportunity to provide a valid medical explanation for the positive test result and an opportunity to request a test of the split specimen.

The laboratory must also conduct analyses to determine if a urine specimen is consistent with human urine or has been adulterated, tampered with, or diluted. If the MRO reports a “negative-dilute” test result from a pre-employment test, the candidate or employee will be required to immediately take a second test, unobserved. The result of the second test becomes the test of record.

If the laboratory reports to the MRO an “Invalid Result” or “Rejected for Testing” (because of a fatal or uncorrectable flaw), a recollection may also be required by the MRO, and depending on the circumstances, the specimen may have to be recollected under direct observation. The result of the second test becomes the test of record.

After notification by the MRO of a verified positive drug test or refusal to test because of adulteration or substitution, the employee has 72 hours to request, in writing, a test of the split specimen unless the employee presents the MRO with information documenting that serious injury, illness, lack of actual notice of the verified test result, or other circumstances unavoidably prevented the employee from making a timely request.

Following the employee’s timely request, the MRO will send a written request to the primary laboratory to forward the split specimen to a second laboratory certified by Health and Human Services (HHS) for testing without regard to the cut-off concentration. If the second laboratory fails to reconfirm the substance detected in the primary specimen or the adulterant identified, the test will be canceled. The MRO will report the cancellation and the reasons for it to the DOT, LACMTA and the employee. If the split specimen is not available for testing, the employee shall be directed, with no advance notice, to submit another specimen under direct observation.

**All costs related to split specimen testing, including the shipping of the split specimen to the second HHS certified laboratory, will be paid by the candidate, the employee or the**



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union, if such an arrangement is in effect. The employee or the union will be reimbursed if the second test invalidates the original test or if the test was canceled.

### 5.3 Directly Observed Urine Specimen Collection

Under the following circumstances, the employee will be instructed to undergo an immediate urine specimen collection under direct observation with no advance notice:

- A. If the laboratory reported to the MRO that a specimen was invalid and there was no adequate medical explanation for the result;
- B. If the MRO reported that the original positive, adulterated, or substituted test result had to be canceled because the split specimen testing could not be performed;
- C. If the collector observes employee conduct that clearly indicates an attempt to tamper with a specimen;
- D. If the temperature on the original specimen is out of range;
- E. If the original specimen appeared to have been tampered with; or
- F. If the test being conducted is a return-to-duty test or a follow-up test.

The observer must be the same gender as the employee, but need not be the collector. The observer must request the employee to raise his/her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer, by turning around, that they do not have a prosthetic device. The observer must also watch the specimen go from the employee's body into the collection container. If the employee declines to allow a directly observed collection when required or permitted under this policy, it is considered a refusal to test.

### 6.0 EDUCATION AND TRAINING

All employees will receive a copy of this policy. Additional employee education and training programs include posters, new employee orientation, community resources, informational materials and seminars.

All safety-sensitive employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use and alcohol misuse, including the effects and consequences on personal health, safety and the work environment. This mandated training will include information on community treatment and drug-abuse prevention resources and voluntary rehabilitation.

**Drug and alcohol training similar to that mandated for safety-sensitive employees is available to non-safety-sensitive employees.**



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Managers, supervisors and/or other LACMTA officers authorized by LACMTA to make reasonable suspicion determinations will receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

### 7.0 REHABILITATION ALTERNATIVES

- A. **Voluntary Rehabilitation:** LACMTA strongly encourages employees to voluntarily seek professional assistance for problems dealing with drug abuse and/or alcohol misuse. Voluntary rehabilitation means seeking treatment before the problem is detected as a result of LACMTA-directed alcohol and/or drug tests. LACMTA provides an Employee Assistance Program (EAP) to help employees identify the problem and obtain treatment. However, participation in the EAP does not excuse or exempt an employee from discipline following a positive test result or other violation of this policy.
- B. **Self Disclosure to Management:** When an employee admits alcohol misuse or drug abuse to a supervisor or a manager, LACMTA has a responsibility to act on this information to protect the safety of the employee, his or her coworkers and the public. Therefore, the employee will be referred to the SAP for an assessment. The employee must successfully complete the rehabilitation, treatment and/or education that are prescribed by the SAP and pass the return-to-duty test(s) as determined by the SAP. The employee will also be subject to follow-up testing as prescribed by the SAP. Self-disclosure, on its own, would not be considered a violation of the policy; however, it does not exempt the employee from any testing required under company or federal testing authority.
- C. **Drug and Alcohol Related Legal Actions:** If an employee incurs outside legal action related to a drug or alcohol offense that impacts work responsibilities such as driving a vehicle, LACMTA will follow the same process detailed in paragraph B above.

In most cases the employee will be removed from duty until the SAP process and return-to-duty testing have been successfully completed; however, management, in collaboration with the DADRC, has the discretion to allow the employee to work during this process if safety will not be compromised. The employee will be permitted to take accrued sick leave or administrative leave to participate in the SAP prescribed treatment program. If the employee has insufficient accrued leave, the employee will be placed on leave without pay until the SAP has determined that the employee has successfully completed the required treatment program and releases him/her to return to duty. LACMTA leave policies will apply, including the Medical Disability Leave (HR 44) policy and Family Medical Leave (HR 33) policy.



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#### 8.0 CONFIDENTIALITY AND ACCESS TO FACILITIES AND RECORDS

Employees have a right to examine their own drug and alcohol testing records, provide information to dispute the results, and have access to any pertinent data such as EBT calibration or drug testing laboratory certification. They also have a right to obtain a copy of their own test results by submitting a written request to the Drug and Alcohol Program Manager identified in Section 3.0 of this policy.

LACMTA will maintain the confidentiality of the testing records to protect the privacy of the individuals tested. Individual test results or medical information will be released to third parties (including unions) only with the employee's specific written consent, or to those parties authorized by the DOT, FTA, or other agency authorized by law or regulation to receive such information without the employee's consent.

The employee's written consent is not required in administrative or legal proceedings such as:

- A. A lawsuit, grievance, or administrative proceeding brought by, or on behalf of the employee, resulting from a positive test or a refusal to test; or
- B. A criminal or civil action resulting from an employee's performance of safety-sensitive duties where the alcohol or drug test information is deemed relevant.

#### 9.0 FEDERAL DRUG-FREE WORKPLACE ACT of 1988 (DFWA) REQUIREMENTS

*Under the DFWA, employees are prohibited from the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace. Employees are required to notify management in writing of any criminal drug statute convictions received for a violation occurring in the workplace, no later than five calendar days after such a conviction. Within 10 calendar days of receiving such notice, LACMTA will provide written notification of the conviction to the FTA. Within 30 calendar days of receiving notice of the conviction, LACMTA will take appropriate disciplinary action, or require the employee to participate and successfully complete a drug rehabilitation program. All LACMTA employees must abide by the requirements of this statement as a condition of employment.*

**Law enforcement shall be notified, as appropriate, where criminal activity is suspected.**

#### 10.0 PREEMPTION OF STATE AND LOCAL LAWS OR LABOR AGREEMENTS

If a conflict occurs between state and local laws or labor agreements and any federal regulation, the federal regulation prevails. Federal regulations do not preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol





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misuse, whether the provisions apply specifically to transportation employees, employers, or the public in general.

### 11.0 DEFINITIONS

Accident Triggering a Drug and Alcohol Test: An occurrence associated with the operation of a vehicle, if as a result:

- A. An individual dies;
- B. An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident;
- C. The mass transit vehicle involved is a bus, van or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
- D. The mass transit vehicle involved is a rail car and the vehicle is removed from revenue service.

Adulterated Specimen: A urine specimen that has been altered, as evidenced by test results showing a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an expected substance.

Alcohol Concentration: The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

Alcohol Use: The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol. For purposes of this policy, alcohol is alcohol regardless of source.

Breath Alcohol Technician (BAT): An individual who instructs and assists employees or applicants in the alcohol testing process and operates an EBT device.

Canceled Test: A drug or alcohol test with an identified problem that cannot be or has not been corrected, or which CFR 49 Part 40 requires to be canceled. A canceled test is neither a positive nor a negative test.

Collector: A person who instructs and assists individuals at a collection site, who receives and makes an initial inspection of the specimen provided by the individual, and who initiates and completes the Custody and Control Form (CCF).



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Controlled Substances: Any drug classified by the U.S. Drug Enforcement Agency (DEA) into the five schedules or classes on the basis of their potential for abuse, accepted medical use, and accepted safety for use under medical supervision.

Designated Employer Representative (DER): An employee designated to administer LACMTA's Drug and Alcohol Program and authorized by LACMTA to take immediate action(s) to remove employees from safety-sensitive duties and make required decisions in the testing and evaluation processes. The DER also receives test results and other communications on behalf of LACMTA, consistent with the requirements of 49 CFR Part 40.

Disabling Damage: Damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. This includes damage to a motor vehicle, where the vehicle could have been driven, but would have sustained further damage if so driven. It does not include:

- A. Damage that can be remedied temporarily at the scene of the accident without special tools or parts;
- B. Tire disablement without other damage even if no spare tire is available;
- C. Headlamp, mirror or tail light damage; or
- D. Damage to turn signals, horn, or windshield wipers that make them inoperative.

DOT: United States Department of Transportation.

Drug Abuse: Use of any illegal drug or controlled substance without a valid prescription, misuse of legally prescribed drugs, or use of illegally obtained prescription drugs. This includes use of prescription drugs legally prescribed to another individual.

Evidential Breath Testing (EBT) Device: A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the 0.02 and 0.04 alcohol concentrations and placed on the NHTSA's Conforming Products List.

FTA: Federal Transit Administration; an agency in the U.S. Department of Transportation.

Invalid Drug Test: The result reported by a HHS-certified laboratory, in accordance with HHS Mandatory Guidelines, when a positive, negative, adulterated or substituted result cannot be established for a specific drug or specimen validity test.

LACMTA Property: For the purpose and application of this policy, LACMTA property includes all facilities where employees are assigned and their respective employee parking areas and LACMTA vehicles and facilities used for public transit. It does not include the public facilities



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and spaces at Union Station, nor does it include LACMTA property used for authorized commercial activities.

Mass Transit Vehicles: Vehicles used for mass transportation or ancillary services.

Medical Prescriptions: A medication prescription written by a physician which indicates the employee's name, date, substance, dosage (quantity or amount to be taken), and period of authorization. It is a violation of this policy to use any controlled substance that is inconsistent with the prescription. Please note that the legality of a prescribed medication is based on U.S. federal law; for example, a prescription for "medical marijuana" under California code is not recognized by the DOT/FTA.

Medical Review Officer (MRO): A licensed physician who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program. He or she must have knowledge of substance abuse disorders and possess the appropriate medical training to interpret and evaluate medical explanations for certain drug test results.

Mitigating Circumstances: Individual circumstances that, when taken collectively, may be considered in assessing appropriate discipline for policy violations. Examples are: nature or consequence of the violation, job functions, employment history, length of service and performance record of the employee.

Negative Drug Test: The result reported by an HHS-certified laboratory to an MRO, when the specimen contains no drug or the concentration of the drug is less than the cutoff and the sample is a valid specimen.

Off-duty: The status of an employee who is not presently working or required to report to work.

On Call: See Subject to Duty.

Positive Alcohol Test: The presence of alcohol in the body at a concentration of 0.02 or greater as measured by an EBT device.

Positive Drug Test: The result reported when the specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations and is verified by the MRO. Effective October 1, 2010, the confirmatory cut-off (ng/mL) for the prohibited controlled substances is as follows:

|                 |      |
|-----------------|------|
| A. Marijuana    | 15   |
| B. Cocaine      | 100  |
| C. Opiates      | 2000 |
| D. Amphetamines | 250  |



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E. Phencyclidine (PCP)

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Reconfirmed: The result reported for a split specimen when the secondary laboratory is able to corroborate the original result reported for the primary specimen.

Refusal to Test:

- A. Failure to appear at the collection site within a reasonable time, as determined by the employer, after being directed to do so by the employer representative (except for pre-employment test).
- B. Failure to remain at the collection site until the testing process is completed, except in pre-employment situations where leaving the site before the testing process begins is not deemed to be a test refusal.
- C. Failure to provide a urine, breath, or saliva specimen as required by 49 CFR Part 40.
- D. Failure to permit the observation or monitoring of specimen collection when it is required.
- E. Failure to provide a sufficient amount of urine or breath specimen without a valid medical explanation (see Shy Bladder Procedure below).
- F. Failure or refusal to take a second test when required.
- G. Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the “shy bladder” or “shy lung” procedures of 49 CFR Part 40.
- H. Failure to cooperate with any part of the testing process (for example, refusing to empty pockets or wash hands when so directed by the collector, behaving in a confrontational way that disrupts the collection process, refusing to sign Step 2 of the alcohol testing forms when required, etc).
- I. Failure to remain readily available for post-accident testing, including failure to notify LACMTA management of employee’s location if employee leaves the scene of the accident prior to undergoing a post-accident test.
- J. A verified adulterated or substituted test result.
- K. For an observed collection, failure to follow the observer’s instructions to raise or lower clothing and turn around.
- L. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection.
- M. Admitting to the collector or MRO to having adulterated or substituted the specimen.

NOTE: - A refusal to test is equivalent to a positive test result.

- **Employees are responsible for complying with the protocol required during the drug and alcohol testing process. In**



**Metro**

## HUMAN RESOURCES Drug and Alcohol Free Work Environment

(HR 46)

certain circumstances, while failure to comply may not be deemed a “refusal to test,” the employee may nevertheless be disciplined for not cooperating or complying in full with the procedures set forth in this policy.

Safety-Sensitive Employee: An employee who performs a safety-sensitive function. This includes any period in which he or she is actually performing, ready to perform, or immediately available to perform any one of the following safety-sensitive functions:

- A. Operating a revenue service vehicle, even when it is not in revenue service;
- B. Operating a non-revenue service vehicle when required to be operated by a Commercial Driver’s License (CDL) holder;
- C. Controlling dispatch or movement of a revenue service vehicle;
- D. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or
- E. Carrying a firearm for security purposes.

“Shy Bladder” Procedures: Protocol for handling situations when a donor has difficulties in providing a sufficient urine sample (45 ml) in a single bladder void, within the maximum time allowed. If the donor is ultimately unsuccessful, a medical examination is conducted to determine if the failure to provide is the result of a legitimate medical condition.

Split Specimen: In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second HHS-certified laboratory for testing upon employee request following a verified positive, adulterated or substituted test result from the primary specimen.

Subject-to-Duty: The status of an employee who is scheduled to report for work at an assigned time and or who has not been finally and completely released from the responsibility of performing further work that day. Subject-to-duty also means any employee who is responsible for being available to perform work on an emergency basis when called to do so, i.e. in an “on-call” status, if the employee is guaranteed extra compensation because of his/her “on-call” status. An employee who is simply responsible for responding, if available, when the employee is not within either definition above, is not considered to be subject-to-duty for the purposes of this policy.

Substance Abuse Professional (SAP): A licensed or certified professional with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, and follow-up testing.



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## HUMAN RESOURCES Drug and Alcohol Free Work Environment

(HR 46)

Substituted Specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Vehicles Used by LACMTA: Buses, vans, automobiles, rail cars, non-revenue commercial motor vehicles, and vehicles used by armed security personnel.

### 12.0 RESPONSIBILITIES

All LACMTA employees, at all levels, must abide by the requirements of this policy as a condition of employment. Each employee must receive and sign for a copy of this policy and is responsible for reading, understanding and meeting its specific standards and obligations.

Managers and supervisors are strictly accountable for the consistent application and enforcement of this policy, as well as maintaining confidentiality at all times. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, is subject to disciplinary action, up to and including discharge.

### 13.0 FLOW CHART

Not Applicable

### 14.0 REFERENCES

The following references are available at <http://mymetro/hr/Programs/DnA.asp>

#### Regulations

Omnibus Transportation Employee Testing Act of 1991

49 CFR Part 655

49 CFR Part 40

Federal Drug Free Workplace Act of 1988 (41 U.S.C. Sections 701-707)

49 CFR 391.41 - 391.49

#### Resources

Discipline (HR 47)

Fitness for Duty (HR 29)

Employee Assistance Program (HR 40)



**Metro**

## HUMAN RESOURCES Drug and Alcohol Free Work Environment

(HR 46)

What Employees Need To Know

Prohibited Behaviors

Drug Collection Procedures

Alcohol Testing Procedures

Facts About Random Testing

The Role of the Medical Review Officer

The Role of the Substance Abuse Professional

Looking For Help? (Resource & Referral Listing)

Contact List

### **Drug and Alcohol Free Work Environment Policy Update Bulletins:**

01-14-2000 Drug & Alcohol Policy Bulletin  
07-31-2001 Upcoming Drug & Alcohol Policy Revision  
12-01-2001 Notification of Regulatory Changes to the Drug and Alcohol Policy  
07-20-2003 Major Revision to the Safety-Sensitive Job Classification List  
03-08-2004 Notification of Changes to the Drug and Alcohol Program  
08-15-2008 Federal Regulatory Changes, Effective August 25, 2008  
09-12-2008 Additional Requirements under the Drug-Free Workplace Act  
09-20-2010 Federal Regulatory Changes, Effective October 1, 2010

## **15.0 ATTACHMENTS**

Appendix A - Listing of Safety-Sensitive Job Classifications

## **16.0 PROCEDURE HISTORY**

02/03/93 Former LACTC and former SCRTD interim procedures board-adopted  
01/01/95 New procedure  
07/01/97 Revised to be in conformance with mandated regulatory changes  
09/21/99 Revised to be in conformance with mandated regulatory changes  
03/28/02 Revised to be in conformance with mandated regulatory changes  
05/26/05 To reflect policy changes made under LACMTA authority  
05/06/11 Revised to be in conformance with mandated federal regulatory revisions and changes made under LACMTA authority  
03/25/14 Biennial review: no changes at this time  
01/27/16 Biennial review: no changes at this time



**LISTING OF SAFETY-SENSITIVE JOB CLASSIFICATIONS BY TITLE**  
**(Revised August 4, 2011)**

| <u><b>JOB CODE</b></u> | <u><b>TITLE</b></u>                               | <u><b>REASON CODE</b></u> |
|------------------------|---------------------------------------------------|---------------------------|
| 9597                   | Assistant Operations Control Manager              | C                         |
| 7204                   | Assistant Manager, Rail Division Transportation   | C, O                      |
| 9657#                  | Assistant Transportation Operations Manager       | C, O                      |
| 0782                   | Body Repairer "A"                                 | M, O                      |
| 0786                   | Body Repairer "A" Leader                          | M, O                      |
| 0850                   | Bus Operator Full Time                            | O                         |
| 0999                   | Bus Operator Part Time                            | O                         |
| 0991                   | Bus Operator Part Time (BDOF)                     | O                         |
| 0848                   | Bus Operator Trainee Full Time                    | O                         |
| 0998                   | Bus Operator Trainee Part Time                    | O                         |
| 0990                   | Bus Operator Trainee Part Time (BDOF)             | O                         |
| 0851                   | Bus Operator/Acting Transit Operations Supervisor | O                         |
| 0856                   | Bus Operator/Extra Schedule Checker               | O                         |
| 0884                   | Cash Clerk/Relief Vault Truck Driver              | L                         |
| 8041                   | Collision Investigations Manager                  | O                         |
| 8040                   | Collision Investigations Specialist               | O                         |
| 7009                   | Director, Rail Transportation Operations          | C, O                      |
| 9635                   | Director of Operations Control                    | C, O                      |
| 0803                   | Electronic Communications Technician              | M, O                      |
| 0815                   | Electronic Communications Technician Leader       | M, O                      |
| 4011                   | Equipment Maintenance Instructor                  | M, O                      |
| 4007                   | Equipment Maintenance Supervisor (EMS)            | M                         |
| 0789                   | Facilities Systems Technician                     | M                         |
| 0790                   | Facilities Systems Technician Leader              | M                         |
| 4009                   | Field Equipment Technician                        | M                         |
| 0830                   | Laborer "A"                                       | L                         |
| 0779                   | Machinist                                         | M                         |
| 0780                   | Machinist Leader                                  | M                         |
| 0762                   | Maintenance Specialist                            | M, L                      |
| 0769                   | Maintenance Specialist Leader                     | M, L                      |
| 0745                   | Maintenance Specialist Leader – Temp              | M, L                      |
| 0752                   | Master Mechanic                                   | M                         |
| 0753                   | Master Mechanic Leader                            | M                         |
| 0817                   | Mechanic "A"                                      | M, O, L                   |
| 0814                   | Mechanic "A" Leader                               | M, O, L                   |
| 0781                   | Mechanic "A" Leader - Temp                        | M, O, L                   |
| 0812                   | Mechanic "AA"                                     | M, O, L                   |
| 0810                   | Mechanic "AA" Leader                              | M, O, L                   |
| 0820                   | Mechanic "B"                                      | M, O, L                   |
| 0818                   | Mechanic "B" Leader                               | M, O, L                   |
| 0822                   | Mechanic "C"                                      | M, O, L                   |



**Appendix A**


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|       |                                                |         |
|-------|------------------------------------------------|---------|
| 0821  | Mechanic "C" Trainee                           | M, O, L |
| 0754  | Mechanic "D"                                   | M       |
| 0775  | Non-Revenue Rail Equipment Mechanic            | M       |
| 0776  | Non-Revenue Rail Equipment Mechanic Leader     | M       |
| 9640  | Operations Assistant Instruction Manager       | C, O    |
| 9607  | Operations Control Center Manager              | C, O    |
| 0784  | Painter "A"                                    | O, M    |
| 0787  | Painter "A" Leader                             | O, M    |
| 0767  | Rail Body/Paint Repairer                       | M       |
| 0747  | Rail Body/Paint Repairer Leader                | M       |
| 4605  | Rail Communications Supervisor                 | M       |
| 0763  | Rail Electronic Communication Inspector        | M       |
| 7203  | Rail Division Transportation Manager           | C, O    |
| 0758  | Rail Electronic Communication Inspector Leader | M       |
| 7007  | Rail Equipment Maintenance Instructor          | M       |
| 7005  | Rail Equipment Maintenance Supervisor          | M       |
| 7212  | Rail Integration and Instruction Manager       | C, O    |
| 0743  | Rail Warranty Equipment Specialist             | M       |
| 0849  | Rail Warranty Equipment Specialist Leader      | M       |
| 4609  | Rail Signal Supervisor                         | M, C    |
| 4608  | Rail Track Supervisor                          | M, C    |
| 4610  | Rail Traction Supervisor                       | M, C    |
| 7205  | Rail Transit Operations Supervisor             | C, O    |
| 0882# | Revenue Collector                              | L       |
| 0912# | Revenue Collector Leader                       | L       |
| 0363  | Security Officer II                            | F       |
| 0423  | Security Officer/Canine Handler                | F       |
| 0422  | Sr. Security Officer                           | F       |
| 0829  | Service Attendant                              | O, M    |
| 0827  | Service Attendant Leader                       | O, M    |
| 0785  | Service Attendant Leader - Temp                | O, M    |
| 0744  | Sr. Service Attendant                          | O, M    |
| 0764  | Signal Inspector                               | M       |
| 0757  | Signal Inspector Leader                        | M       |
| 0823# | Tools & Materials Technician                   | L       |
| 0765  | Track Inspector                                | M       |
| 0756  | Track Inspector Leader                         | M       |
| 0766  | Traction Power Inspector                       | M       |
| 0755  | Traction Power Inspector Leader                | M       |
| 0859  | Train Operator Full Time                       | O       |
| 0997  | Train Operator Part Time                       | O       |
| 0858  | Train Operator Trainee Full Time               | O       |
| 0996  | Train Operator Trainee Part Time               | O       |
| 9646  | Transit Operations Supervisor, Instruction     | C, O    |
| 9647  | Transit Operations Supervisor, Control Center  | C       |

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**Appendix A**


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|       |                                                    |      |
|-------|----------------------------------------------------|------|
| 9648  | Transit Operations Supervisor, Division Operations | O    |
| 9649  | Transit Operations Supervisor, Vehicle Operations  | C, O |
| 8817  | Transit Security Lieutenant                        | F    |
| 8816  | Transit Security Sergeant                          | F    |
| 9654# | Transportation Operations Manager                  | C, O |
| 0931  | Truck Driver/Clerk                                 | L    |
| 0930  | Sr. Truck Driver/Clerk                             | L    |
| 0826  | Utility "A"                                        | M, O |
| 0824  | Utility "A" Leader                                 | M, O |
| 0783  | Utility "A" Leader - Temp                          | M, O |
| 0974  | Vault Truck Driver                                 | L    |
| 9658# | Vehicle Operations Manager                         | C    |
| 0807  | Warranty Equipment Mechanic                        | M, O |
| 0792  | Warranty Equipment Mechanic Leader                 | M, O |

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**SAFETY-SENSITIVE REASON CODES**

- O - Operates a revenue service vehicle, even when not in revenue service.
- M - Performs repair/maintenance of revenue service vehicles or equipment used in revenue service.
- C - Controls the movement of revenue service vehicles.
- L - Operates a non-revenue service vehicle requiring a Commercial Driver's License (CDL).
- F - Carries a firearm for security purposes.

**IMPORTANT NOTES:**

1. Individual employees in other classifications/positions who obtain a CDL, at management's request, and operate a revenue vehicle for ANY reason, will be considered safety-sensitive and subject to:
  - a. Federal pre-employment drug and alcohol testing, prior to obtaining the CDL.
  - b. Inclusion in the random testing pool and testing when selected.
2. List is subject to change as job classification titles are amended, added or deleted.
3. Classifications marked with "#" have been added to the list since the last formal revision, dated August 15, 2008.

## **PLEASE POST**



**Metro**

### **DRUG AND ALCOHOL PROGRAM BULLETIN** **Clarification to Drug and Alcohol Free Work Environment Policy**

Date: April 20, 2015  
To: All Employees  
From: Carmen Sison Mayor, DEO, Human Resources  
Subj: Drug and Alcohol Policy Clarification – Effective Immediately

#### **Managers and supervisors are urged to read and post this bulletin**

The Federal Transit Administration (FTA) recently conducted a formal audit of Metro's Drug and Alcohol Program. As a result of the audit, updates to Metro's Drug & Alcohol Free Work Environment Policy HR 46 were recommended in order to further clarify Metro's current policy practice and procedures. Please see the attached Summary of Changes to view the list of the recommended clarification items.

Please note that these updates do not change or affect Metro's current policy practice or procedures, which have been in effect since 2002.

The updates listed in the Summary of Changes are effective immediately and will be reflected in the next policy revision.



**Summary of Changes**  
**Drug and Alcohol Free Work Environment (HR 46)**

| Policy Section                                             | Revision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Reason                                                                                                                                                                                 |
|------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Application, Item B                                        | <b>Added:</b> “the vehicle is” in Part B, so that the sentence reads: “B. Operating a non-revenue service vehicle when the vehicle is required to be operated by a Commercial Driver’s License (CDL) holder.”                                                                                                                                                                                                                                                                                                 | Clarification of FTA regulations                                                                                                                                                       |
| 1.2 Alcohol, Item C                                        | <b>Added:</b> Item C, “An alcohol test result with a concentration of a 0.04 or greater is considered a positive test as defined by the FTA. However, an alcohol test result with a concentration of 0.02 - 0.039 shall be considered a policy violation under Metro’s own authority and therefore carries the same consequences as a positive test.”                                                                                                                                                         | Clarification of FTA regulations                                                                                                                                                       |
| 2.0 Consequences of Positive Drug and/or Alcohol Tests, #1 | <b>Added:</b> “safety-sensitive”, so that the sentence reads: “1. Immediate removal from safety-sensitive duty.”                                                                                                                                                                                                                                                                                                                                                                                              | Clarification of FTA regulations                                                                                                                                                       |
| 2.0 Consequences of Positive Drug and/or Alcohol Tests, #2 | <b>Added:</b> “or substance abuse counselor” so that the sentence reads: “2. Referral to a Substance Abuse Professional (SAP) or substance abuse counselor for evaluation, education and/or treatment.”                                                                                                                                                                                                                                                                                                       | Clarification of FTA regulations. The term Substance Abuse Professional is used only for FTA violations. Therefore, the term Substance Abuse Counselor is used for non-DOT violations. |
| 2.0 Consequences of Positive Drug and/or Alcohol Tests, #4 | <b>Removed:</b> “responsibility for”, so that the sentence reads: “4. The cost of any treatment or rehabilitation services will be paid directly by the employee or through his/her insurance provider.”                                                                                                                                                                                                                                                                                                      | Clarification of Metro policy                                                                                                                                                          |
| 4.1 Pre-Employment Testing, 3 <sup>rd</sup> paragraph      | <b>Removed:</b> “or more” and “and have”<br><br><b>Added:</b> “Or more consecutive”, “during that absence”, “DOT pre-employment”, “with a verified”, “were”, and “or more consecutive”, so that the paragraph reads: “In instances where a safety-sensitive employee is on extended leave, regardless of the reason, for a period of 90 or more consecutive days and is removed from the random testing pool during that absence, the employee will be required to take a DOT pre-employment drug test with a | Clarification of FTA regulations                                                                                                                                                       |



**Summary of Changes  
Drug and Alcohol Free Work Environment (HR 46)**

| Policy Section                                              | Revision                                                                                                                                                                                                                                                                                                                                                                                                               | Reason                                      |
|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
|                                                             | verified negative result prior to performing any safety-sensitive functions. This requirement also includes employees who have been working in non-safety-sensitive positions and were removed from the random testing pool for 90 or more consecutive days."                                                                                                                                                          |                                             |
| 4.1 Pre-Employment Testing, 4 <sup>th</sup> paragraph       | Added: "If a covered employee or applicant has previously failed or refused a pre-employment drug or alcohol test administered under any DOT agency regulation, the employee must provide proof of having successfully completed a SAP referral, evaluation and treatment plan as described in Section 40.25."                                                                                                         | Clarification of DOT regulations            |
| 4.2 Reasonable Suspicion Testing, 3 <sup>rd</sup> paragraph | Added: "non-DOT", so that the sentence reads: "However, under LACMTA authority, all employees may be subject to non-DOT reasonable suspicion testing for alcohol at any time while on duty."                                                                                                                                                                                                                           | Clarification of Metro policy               |
| 4.2 Reasonable Suspicion Testing, 4 <sup>th</sup> paragraph | Added: "non-DOT", so that the sentence reads: "The following circumstances are also grounds for a non-DOT reasonable suspicion testing referral"                                                                                                                                                                                                                                                                       | Clarification of Metro policy               |
| 4.2 Reasonable Suspicion Testing, 5 <sup>th</sup> paragraph | Added: "alcohol" and "the", so that the sentence reads: "If alcohol testing is not conducted within two hours, the reason for the delay must be documented and forwarded to the LACMTA Drug and Alcohol Program Manager, along with other documentation on the decision to test."                                                                                                                                      | Clarification of FTA regulations            |
| 4.3 Post-Accident Testing, 1 <sup>st</sup> paragraph        | Removed: "a traffic" and "while operating a mass transit vehicle"<br><br>Added: "an" and "as defined in Part 655 and Section 11.0 of this policy", so that the sentence reads: "All safety sensitive employees who are involved in an accident as defined in Part 655 and Section 11.0 of this policy will be required to submit to drug and alcohol tests as soon as practicable after the accident, if as a result:" | Clarification of FTA regulations            |
| 4.3 Post-Accident Testing, Item C                           | Removed: "mass transit"<br><br>Added: "public transportation" so that the sentence                                                                                                                                                                                                                                                                                                                                     | FTA revised the definition of post-accident |



## Summary of Changes Drug and Alcohol Free Work Environment (HR 46)

| Policy Section                                                            | Revision                                                                                                                                                                                                                                                                                                                                                                                                                   | Reason                                      |
|---------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
|                                                                           | reads: "The public transportation vehicle (bus, truck, van, or automobile) or any other vehicle involved in the accident suffers disabling damage as a result of the accident and is transported away from the scene by a tow truck or other vehicle."                                                                                                                                                                     |                                             |
| 4.3 Post-Accident Testing, Item D                                         | <p>Removed: "mass transit"</p> <p>Added: "public transportation" so that the sentence reads: "The public transportation vehicle is a rail car and is removed from revenue service."</p>                                                                                                                                                                                                                                    | FTA revised the definition of post-accident |
| 4.3 Post-Accident Testing, 2 <sup>nd</sup> paragraph                      | <p>Removed: "this", "applies", and "the"</p> <p>Added: "Under LACMTA authority, non-DOT post-accident testing", "apply", and "an", so that the sentence reads: "Under LACMTA authority, non-DOT post-accident testing requirements also apply to any employee who is operating any other LACMTA vehicle at any time, or who is driving a private vehicle while conducting LACMTA business at the time of an accident."</p> | Clarification of Metro policy               |
| 4.3.3 Other Post-Accident Testing Requirements, 1 <sup>st</sup> paragraph | Added: "any delay that causes the alcohol test to be conducted more than two hours after the accident will be documented and this record will be maintained in the file. All attempts to conduct the alcohol test shall cease after 8 hours."                                                                                                                                                                              | Clarification of FTA regulations            |
| 4.4 Random Testing, 3 <sup>rd</sup> paragraph                             | <p>Removed: "shall" and "the"</p> <p>Added: "may" and "A covered", so that the paragraph reads: "A covered employee may only be randomly tested for alcohol immediately before, during, or immediately after performance of any safety-sensitive function. A covered employee may be randomly tested for drugs anytime while on duty."</p>                                                                                 | Clarification of FTA regulations            |
| 4.8 Rail Safety-Incident Testing, 1 <sup>st</sup> paragraph               | Added: "non-DOT", so that the sentence reads: "Any employee directly involved in, or who contributed to, a rail incident compromising the safety of employees, passengers, the general public or that could have potentially resulted in loss of life, injury                                                                                                                                                              | Clarification of Metro policy               |



**Summary of Changes  
Drug and Alcohol Free Work Environment (HR 46)**

| Policy Section                                                             | Revision                                                                                                                                                                                                                                                                                                                                                                                                | Reason                                            |
|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
|                                                                            | or significant damage to property due to non-compliance with LACMTA safety rule(s) and/or LACMTA Standard Operating Procedures, shall be required to submit to non-DOT drug and alcohol testing as soon as practicable after the incident."                                                                                                                                                             |                                                   |
| 5.2 Drug Testing Procedures, 2 <sup>nd</sup> paragraph                     | Added: "unless the MRO requires direct observation", so that the sentence reads: "If the MRO reports a "negative-dilute" test result from a pre-employment test, the candidate or employee will be required to immediately take a second test, unobserved, unless the MRO requires direct observation."                                                                                                 | Clarification of FTA regulations                  |
| 5.2 Drug Testing Procedures, 5 <sup>th</sup> paragraph                     | Removed: "without regard to the cut off concentration."                                                                                                                                                                                                                                                                                                                                                 | Clarification of FTA regulations                  |
| 5.2 Drug Testing Procedures, 6 <sup>th</sup> paragraph                     | Removed: "was"<br><br>Added: "is", so that the sentence reads: "The employee or the union will be reimbursed if the second test invalidates the original test or if the test is canceled."                                                                                                                                                                                                              | Clarification of Metro policy                     |
| 5.3 Directly Observed Urine Specimen Collection, 2 <sup>nd</sup> paragraph | Added: "that could be used to tamper with the collection process", so that the sentence reads: "The observer must request the employee to raise his/her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer, by turning around, that they do not have a prosthetic device that could be used to tamper with the collection process." | Clarification of FTA regulations                  |
| 6.0 Education and Training, 2 <sup>nd</sup> paragraph                      | Removed: "and alcohol misuse"<br><br>Added: "Additional training may be included to cover the signs and symptoms of alcohol misuse."                                                                                                                                                                                                                                                                    | Clarification of FTA regulations and Metro policy |
| 7.0 Rehabilitation, Item B                                                 | Removed: "SAP", "the", and "as determined by the SAP"<br><br>Added: "substance abuse counselor" and "non-DOT", so that Item B reads: <u>Self Disclosure to Management</u> : When an employee admits alcohol                                                                                                                                                                                             | Clarification of FTA regulations and Metro policy |



**Metro**

**Summary of Changes**  
**Drug and Alcohol Free Work Environment (HR 46)**

| Policy Section                                        | Revision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Reason                                            |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
|                                                       | misuse or drug abuse to a supervisor or a manager, LACMTA has a responsibility to act on this information to protect the safety of the employee, his or her coworkers and the public. Therefore, the employee will be referred to a substance abuse counselor for an assessment. The employee must successfully complete the rehabilitation, treatment and/or education that are prescribed by the substance abuse counselor and pass a non-DOT return-to-duty test. The employee will also be subject to non-DOT follow-up testing as prescribed by the substance abuse counselor. Self-disclosure, on its own, would not be considered a violation of the policy; however, it does not exempt the employee from any testing required under company or federal testing authority."                                                                                                                                                                                                                                                                    |                                                   |
| 7.0 Rehabilitation, Item C, 2 <sup>nd</sup> paragraph | <p><b>Removed:</b> "SAP"</p> <p><b>Added:</b> "Assessment, education, and treatment", "any", and "substance abuse counselor", so that the paragraph reads: "In most cases the employee will be removed from duty until the assessment, education, and treatment process and return-to-duty testing have been successfully completed; however, management, in collaboration with the DADRC, has the discretion to allow the employee to work during this process if safety will not be compromised. The employee will be permitted to take accrued sick leave or administrative leave to participate in any prescribed treatment program. If the employee has insufficient accrued leave, the employee will be placed on leave without pay until the substance abuse counselor has determined that the employee has successfully completed the required treatment program and releases him/her to return to duty. LACMTA leave policies will apply, including the Medical Disability Leave (HR 44) policy and Family Medical Leave (HR 33) policy."</p> | Clarification of FTA regulations and Metro policy |





## Summary of Changes Drug and Alcohol Free Work Environment (HR 46)

| Policy Section                                                | Revision                                                                                                                                                                                                                                                                                                                                                                  | Reason                                      |
|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| 11.0 Definitions, Accident Triggering a Drug and Alcohol Test | Wherever the term “mass transit” was used, it was replaced with the term “public transportation”                                                                                                                                                                                                                                                                          | FTA revised the definition of post-accident |
| 11.0 Definitions, Aggravating Circumstances                   | <b>Added definition: Aggravating Circumstances:</b> “Individual circumstances that, when taken collectively, may be considered in assessing appropriate discipline for policy violations. Examples are: nature or consequence of the violation, job functions, employment history, accident record, length of service and performance record of the employee.”            | Clarification of Metro policy               |
| 11.0 Definitions, Canceled Test                               | <b>Corrected to read:</b> 49 CFR Part 40, instead of “CFR 49 Part 40”.                                                                                                                                                                                                                                                                                                    | Clarification of FTA regulations            |
| 11.0 Definitions, Controlled Substances                       | <b>Corrected:</b> Changed the word Agency to Administration, so it reads: U.S. Drug Enforcement Administration.                                                                                                                                                                                                                                                           | Corrected                                   |
| 11.0 Definitions, Mass Transit Vehicles                       | <b>Terminology changed to:</b> Public Transportation Vehicles<br><br><b>Removed:</b> “mass”<br><br><b>Added:</b> “public”, so that the definition reads: “ <u>Public Transportation Vehicles:</u> Vehicles used for public transportation or ancillary services.”                                                                                                         | FTA revised the definition of post-accident |
| 11.0 Definitions, Mitigating Circumstances                    | <b>Added:</b> “accident record”, so that the definition reads: “Individual circumstances that, when taken collectively, may be considered in assessing appropriate discipline for policy violations. Examples are: nature or consequence of the violation, job functions, employment history, accident record, length of service and performance record of the employee.” | Clarification of Metro policy               |
| 11.0 Definitions, Policy Violation Alcohol Test               | <b>Added definition:</b> “The presence of alcohol in the body at a concentration of 0.02 – 0.039 as measured by an EBT device.”                                                                                                                                                                                                                                           | Clarification of Metro policy               |
| 11.0 Definitions, Positive Alcohol Test                       | <b>Corrected:</b> 0.04 instead of 0.02, so that the definition reads: “The presence of alcohol in the body at a concentration of 0.04 or greater as measured by an EBT device.”                                                                                                                                                                                           | Clarification of FTA regulations            |



## Summary of Changes Drug and Alcohol Free Work Environment (HR 46)

| Policy Section                                      | Revision                                                                                                                                                                           | Reason                           |
|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
|                                                     | Added: FTA, so that the terminology is: "Positive Alcohol Test (FTA)"                                                                                                              |                                  |
| 11.0 Definitions, Refusal to Test, Item J           | Removed: "a verified"<br><br>Added: "Verification by the MRO of an", so that the definition reads: "Verification by the MRO of an adulterated or substituted test result."         | Clarification of FTA regulations |
| 11.0 Definitions, Refusal to Test, Item N           | Removed example from Item H and created Item N: Failure to sign Step 2 of the Alcohol Testing Form                                                                                 | Clarification of FTA regulations |
| 11.0 Definitions, Refusal to Test, NOTE             | Removed: "is equivalent to"<br><br>Added: "has the same consequences as", so that the sentence reads "A refusal to test has the same consequences as a positive test result."      | Clarification of FTA regulations |
| 11.0 Definitions, Safety-Sensitive Employee, Item B | Added: "The vehicle is" so that Item B reads: "Operating a non-revenue service vehicle when the vehicle is required to be operated by a Commercial Driver's License (CDL) holder." | Clarification of FTA regulations |

**NOTE:** THIS SUMMARY COVER SHEET IS INTENDED FOR REVIEW PURPOSES ONLY. IT IS NOT INTENDED FOR INTERPRETATION OF POLICY GUIDELINES. REFER TO POLICY DOCUMENT FOR ACTUAL GUIDELINES AND PROCEDURES.

## **EXHIBIT R – PUBLIC CONTRACT CODE 9204**

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## State of California

### PUBLIC CONTRACT CODE

#### Section 9204

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9204. (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) “Claim” means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) “Public entity” means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) “Public entity” shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on

an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date.

(Amended by Stats. 2019, Ch. 489, Sec. 1. (AB 456) Effective January 1, 2020. Repealed as of January 1, 2027, by its own provisions. )

## **PCC SECTION 20104**

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**PUBLIC CONTRACT CODE - PCC****DIVISION 2. GENERAL PROVISIONS [1100 - 22355]** ( *Division 2 enacted by Stats. 1981, Ch. 306. )***PART 3. CONTRACTING BY LOCAL AGENCIES [20100 - 22178]** ( *Part 3 added by Stats. 1982, Ch. 465, Sec. 11. )***CHAPTER 1. Local Agency Public Construction Act [20100 - 20929]** ( *Chapter 1 added by Stats. 1982, Ch. 465, Sec. 11. )***ARTICLE 1.5. Resolution of Construction Claims [20104 - 20104.6]** ( *Article 1.5 added by Stats. 1994, Ch. 726, Sec. 22. )*

**20104.** (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

(Amended by Stats. 2010, Ch. 697, Sec. 47. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697.)

**20104.2.** For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) 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.

(e) 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.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by 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.

*(Added by Stats. 1994, Ch. 726, Sec. 22. Effective September 22, 1994.)*

**20104.4.** The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

*(Amended by Stats. 2004, Ch. 182, Sec. 54. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**20104.6.** (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

*(Added by Stats. 1994, Ch. 726, Sec. 22. Effective September 22, 1994.)*