



Metropolitan Transit System

STANDARD CONSTRUCTION AGREEMENT

FOR
MTS DOC. NO. X###.0-##
PROJECT NAME

THIS AGREEMENT is entered into this \_\_\_ day of \_\_\_ 2022, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Form of Business: \_\_\_\_\_
(Corporation, Partnership, Sole Proprietor, etc.)

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Authorized person to sign contracts \_\_\_\_\_
Name Title

The specified Contract Documents are part of this Agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

Contractor shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, engineering, testing and/or any other act or thing required to diligently and fully perform and complete the Project as specified in accordance with the Standard Agreement and General Conditions (Exhibit A), Scope of Work, Special Conditions and Attachments (Exhibit B), Bid Price Form (Exhibit C), and Federal Requirements (Exhibit D) and Forms (Exhibit E)

SCOPE OF WORK

Contractor, for and in consideration of the payment to be made to Contractor as hereinafter provided, shall furnish all plant, labor, technical and professional services, supervision, materials and equipment, other than such materials and equipment as may be specified to be furnished by MTS, and perform all operations necessary to complete the Work in strict conformance with the Contract Documents (defined below) for the following public work of improvement:

PROJECT NAME

Contractor is an independent contractor and not an agent of MTS. The Contractor and its surety shall be liable to MTS for any damages arising as a result of the Contractor's failure to comply with this obligation.



**CONTRACT TIME.**

Time is of the essence in the performance of the Work. The Work shall be commenced by the date stated in MTS's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within ### calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the Contract Time is adequate and reasonable to complete the Work.

**CONTRACT PRICE.**

MTS shall pay the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Payment shall be made as set forth in the General Conditions.

**PROVISIONS REQUIRED BY LAW.**

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of the California Labor Code applicable to this Project.

**INDEMNIFICATION.**

Contractor shall provide indemnification as set forth in the General Conditions.

**PREVAILING WAGES.**

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at MTS's Administrative Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	COMPANY NAME
By: _____ Sharon Cooney, Chief Executive Officer  Approved as to form:  By: _____ Karen Landers, General Counsel	By _____  Title: _____

## GENERAL CONDITIONS

### 3.1. DEFINITIONS

Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

- A. Act of God is an earthquake in excess of a magnitude of 3.5 on the Richter scale or a tidal wave.
- B. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
- C. Approval means written authorization by Engineer and/or MTS.
- D. Board of Directors, Board means the Board of Directors of MTS.
- E. Claim -- A demand or assertion by MTS or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
- F. Contract -- The entire integrated written agreement between MTS and Contractor concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
- G. Contract Documents -- The documents listed in Section 4.3. Some documents provided by MTS to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions, are not Contract Documents.
- H. Contract Price -- Amount to be paid by MTS to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.
- I. Contract Times -- The number of days or the dates stated in the Contract Documents to: achieve defined Milestones, if any; and to complete the Work so that it is ready for final payment.
- J. Contractor means the person, firm or corporation with whom a contract has been made for the performance of the Work or any part thereof covered by these Specifications. The Contractor shall designate in writing to MTS the name of its authorized representative who shall have sole authority to direct the Work and receive orders from MTS.
- K. Day shall mean calendar day of 24 hours measured from midnight to the next midnight.

- L. Engineer of Record (EOR) is the individual, partnership, corporation, joint venture, or other legal entity who stamped the plans, named as such in the Special Conditions, or any succeeding entity designated by MTS.
- M. Green Book – The current edition, unless otherwise designated, of the Standard Specifications for Public Works Construction promulgated by the Joint Cooperative Committee of the Southern California Chapter American Public Works Association and the Southern California Districts of the Associated General Contractors of California.
- N. Install means the complete installation of any item, equipment, or material.
- O. Material shall include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new unless specified otherwise.
- P. MTS – shall mean the San Diego Metropolitan Transit System, as well as its subsidiary corporations, including San Diego Trolley, Inc. (SDTI); San Diego Transit Corporation (SDTC); and the San Diego & Arizona Eastern (SD&AE) Railway Company.
- Q. Perform shall mean that the Contractor, at Contractor's expense, shall take all actions necessary to complete the Work for the Project, including furnishing of necessary labor, tools, and equipment, and providing and installing Materials that are indicated, specified, or required to complete such performance.
- R. Project is the project planned by MTS as provided in the Contract Documents.
- S. Recyclable Waste Materials – Materials removed from the Project sites which are required to be diverted to a recycling center rather than an area landfill in accordance with the local agency's jurisdiction. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- T. Site -- Lands or areas indicated in the Contract Documents as being furnished by MTS upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by MTS which are designated for the use of Contractor.
- U. Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

### **3.2. TERMINOLOGY**

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
  - a. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  - b. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services,

materials, or equipment complete and ready for intended use. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

- c. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Contractor is implied.
- B. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

### 3.3. CONTRACT DOCUMENTS

The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The contract documents comprise the component parts of the contract. The Contractor shall complete the Work in strict accordance with all of the Contract Documents. This Contract shall supersede any prior agreement of the parties.

**Interpretations.** The Contract Documents are intended to be fully cooperative and complementary. If the Contractor observes that any documents are in conflict, the Contractor shall promptly notify MTS in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

- Change Orders
- Addenda
- **Federal Requirements (Federal Transit Administration)**
- Special Conditions
- Project-Specific Technical Specifications, if applicable
- Plans (Contract Drawings)
- Contract
- General Conditions
- Instructions to Bidders
- Invitation for Bids
- Contractor’s Bid Forms
- Caltrans Standard Specifications 2010 Standard Drawings
- Reference Documents
- Technical Specifications prepared by **Click to write name of Point Person**, dated **Click to enter date**
- Standard Specifications (Excluding sections 1-9 in their entirety)

- Addenda
- Plans prepared by [Click to write name of Point Person](#), dated [Click to enter date](#)

**With reference to the Drawings, the order of precedence shall be as follows:**

- Figures govern over scaled dimensions
- Detail drawings govern over general drawings
- Addenda or Change Order drawings govern over Contract Drawings
- Contract Drawings govern over Standard Drawings
- Contract Drawings govern over Shop Drawings

**Conflicts in Contract Documents:**

Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply Contractor shall comply with all requirements of the Contract Documents. In the case of a conflict between the Federal Requirements (Federal Transit Administration) and the remainder of the Contract Documents, the Federal Requirements shall govern unless otherwise provided in writing by MTS.

**Organization of Contract Documents:**

Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Work among subcontractors or in establishing the extent of Work to be performed by any trade.

**Ownership of Contract Documents:**

All Contract Documents furnished by MTS are MTS property. They are not to be used by Contractor or any subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to MTS on request at completion of the Work.

**3.4. EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK**

**Examination of Contract Documents:**

Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify MTS of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

### **Additional Instructions:**

After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, MTS will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

### **Quality of Parts, Construction and Finish:**

All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with the Work without obtaining first from MTS such Approval may be necessary for the proper performance of Work.

### **Contractor's Variation from Contract Document Requirements:**

If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, MTS may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

## **3.5. LICENSING REQUIREMENTS**

Pursuant to section 7028.15 of the Business and Professions Code and section 3300 of the Public Contract Code, all bidders must possess licenses issued by the State of California Contractors License Board for performance of this Contract. Pursuant to section 7028.15 of the Business and Professions Code, and unless otherwise specified herein, any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents shall be nonresponsive, and MTS shall reject the Bid. MTS shall have the right to request, and Bidders shall provide within five (5) Days, evidence satisfactory to MTS of all valid license(s) currently held by that Bidder before awarding the Contract. Pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

Notwithstanding anything contained in the paragraph above, because the Work involves federal funds, the Contractor shall be properly licensed by the time the Contract is awarded, pursuant to the provisions of Public Contract Code section 20103.5.

## **3.6. EXISTENCE OF UTILITIES AT THE WORK SITE**

### **Existing Utilities**

Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of the Work.

Water service connections may be shown on the Plans showing general locations of such connections. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory

excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities.

Nothing herein shall be deemed to require MTS to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the site of the Project.

It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation or time extensions for work necessary to avoid interferences or for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Section.

### **Relocation of Utilities**

When the Contract Documents provide for Contractor to alter, relocate, or reconstruct a utility, all costs for such Work shall be included in the Contract Price.

Temporary or permanent relocation or alteration of indicated utilities requested by Contractor for Contractor's convenience shall be Contractor's responsibility, and Contractor shall make all arrangements and bear all costs.

After award of the Contract, portions of utilities not indicated in the Contract Documents which are found to interfere with the Work may be relocated, altered, or reconstructed by the utility owner, or MTS may order changes in the Work to avoid interference. Such changes will be paid for in accordance with these General Conditions.

### **Protection of Utilities**

Contractor shall not interrupt the service function or disturb the support of any utility, without authority from MTS or order from the utility owner. All valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff. Where protection is required to ensure support of utilities shown in the Contract Documents, Contractor shall, unless otherwise provided, furnish and place the necessary protection at its expense.

## **3.7. SOILS INVESTIGATIONS**

When a soils investigation report for the Project is known to MTS, such report shall be attached to these Specifications. Any information obtained from such report as to subsurface soil conditions is approximate only and is not guaranteed. Contractor acknowledges that such report was prepared for purposes of information only and Contractor is required to examine the site before submitting its bid and must conduct whatever measures it deems appropriate to determine the underground condition of the soil.



### **3.8. SCHEDULE**

#### **General Requirements**

The schedule shall be prepared in a Critical Path Method (“CPM”) format and in an electronic scheduling program acceptable to MTS. Contractor shall deliver the schedule and all updates to MTS in both paper and electronic form. The electronic versions shall be in the same format and include all data used to prepare the schedule; pdf. copies alone are not acceptable.

#### **Initial Schedule**

Within fourteen (14) calendar days after the issuance of the Notice to Proceed, Contractor shall prepare a Project schedule and shall submit this to MTS for Approval. The receipt or Approval of any schedules by MTS shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor’s failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by MTS.

#### **Schedule Contents**

The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and “float time” for all “slack” or “gaps” in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the Contractor’s judgment are needed to complete the Project within the time specified for completion. The schedule shall include the necessary time for processing submittals, permits, and traffic control plans. The overall Project Schedule duration shall be within the Contract Time.

#### **Schedule Updates**

Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to MTS monthly when requested to do so by Engineer. MTS may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

#### **Recovery Schedule**

Should any of the following conditions exist, MTS may require Contractor to prepare, at no extra cost to MTS, a plan of action and a Recovery Schedule for completing the Work and achieving all contractual milestones within the allotted Contract Time:

- A. The Contractor's monthly progress report indicates delays that are, in the opinion of MTS, of sufficient magnitude that MTS questions the Contractor's ability to complete the Work;

- B. The CPM schedule shows the Contractor to be thirty (30) or more days behind the critical path at any time during construction;
- C. The Contractor desires to make changes in the logic or the planned duration of future activities of the CPM schedule which, in the opinion of MTS, are major in nature.
- D. The recovery schedule shall include proposed revisions to the construction schedule, demonstrating how Contractor intends to achieve all contractual milestones including contract completion within the allotted Contract Time. The submittal shall include a narrative describing the actions planned by the Contractor to recover the schedule.
- E. Contractor shall submit the Recovery Schedule within seven (7) Days of MTS's request.

Contractor is responsible for all costs associated with the preparation and execution of the Recovery Schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.

Regardless of whether MTS directs Contractor to prepare a Recovery Schedule pursuant to this Section, Contractor shall promptly undertake appropriate action at no additional cost to MTS to recover the schedule whenever the current construction schedule shows that the Contractor will not achieve a milestone and/or complete the Work within the allotted Contract Time.

### **3.9. SUBMITTALS**

At the preconstruction meeting, Contractor shall furnish to MTS for approval a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the Contract Documents. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.

Contractor will provide samples and submittals, together with catalogs and supporting data required by MTS, to MTS within a reasonable time period to provide for adequate review and avoid delays in the Work.

These requirements shall not authorize any extension of time for performance of this Contract. Engineer will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

### **3.10. SHOP DRAWINGS**

Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in its own Work or in that of any other contractor, subcontractor, or worker on the Project, six (6) copies of all shop drawings, calculations, schedules, and materials list, and all other provisions required by the Contract Documents. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Engineer. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the transmittal letter of the submittal.

Contractor shall make any corrections required by MTS, and file with MTS six (6) corrected copies each, and furnish such other copies as may be needed for completion of the Work. Engineer's approval of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called Engineer's attention to such deviations at time of submission and has secured MTS's written Approval. Engineer's Approval of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

### **3.11. MATERIALS**

Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.

Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.

No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the Project, to MTS free from any claims, liens, or charges.

Materials shall be stored on the Project site in such manner so as not to interfere with any operations of MTS or any independent contractor.

Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and MTS shall not be liable for Contractor's failure to do so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Form, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications.

MTS shall provide compensation for actual quantities of materials installed in accordance with the Contract Documents and at the price set forth in the Contractor's bid and/or executed change order. MTS is not obligated to pay for materials stored on/off site but not installed in accordance with the Contract Documents.

### **3.12. REQUESTS FOR SUBSTITUTION**

For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.

Pursuant to Public Contract Code section 3400(b), MTS may make a finding that is described in the Invitation for Bids that designates certain products, things, or services by specific brand or trade name.

Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal or better in every respect to that so indicated or specified in the Contract Documents. However, MTS has adopted uniform standards for certain materials, processes, and articles.

The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than the preconstruction meeting. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by MTS, the Contractor shall provide the material, method or service specified herein. MTS shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. MTS has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.

Substantiating data as described above shall include, at a minimum, the following information:

- A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.
- Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.
- A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.
- Information detailing the durability and lifecycle costs of the proposed substitution.

Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. MTS is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.

Time limitations within this Section shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.

The Contractor shall bear the costs of all MTS work associated with the review of substitution requests.

If substitution requests approved by MTS require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

### **3.13. PERMITS AND LICENSES**

MTS will obtain the necessary encroachment permits for work within the public rights-of-way. Contractor shall obtain all other necessary permits and licenses for the construction of the project, shall pay all fees required by law and shall comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of public health and safety. Before acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to MTS.

Each bidder shall be a licensed contractor pursuant to sections 7000 et seq. of the Business and Professions Code in the following classification(s): [Click to enter required license](#) for the duration of the Contract.

### **3.14. POWER MATERIALS**

Contractor shall provide at its own expense all necessary power required for operations under the contract. The Contractor shall provide and maintain in good order such modern equipment and installations as shall be adequate in the opinion of MTS to perform in a safe and satisfactory manner the work required by the contract.

### **3.15. EXCAVATION**

**Excavations Four (4) Feet or More in Depth:** Per Cal. Pub. Con. Code 7104, if the Work involves excavating trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and before the excavation is further disturbed, notify MTS in writing of any of the following conditions:

- A. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. Subsurface or latent physical conditions at the site differing from those indicated.
- C. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

### **3.16. TRAFFIC CONTROL**

Traffic control plan(s) for the work may be required by the Agency(s) of Jurisdiction. Traffic control plans, if required, shall be prepared at Contractor's expense, and traffic control shall be performed at Contractor's expense in accordance with the requirements of the Agency(s) of Jurisdiction.

All warning signs and safety devices used by the Contractor to perform the work shall conform to the requirements contained in the State of California, Department of Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones." The Contractor shall also be responsible for all traffic control required by the agency having

jurisdiction over the Project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the project for approval within fourteen (14) calendar Days of Contract award. **The approved traffic plan must be submitted to MTS prior to the commencement of work in a public street.**

The Contractor's representative on the site responsible for traffic control shall produce evidence that he/she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of pipe or other material will be allowed in traveled right-of-ways after working hours unless otherwise approved by MTS.

These requirements shall not authorize any extension of time for performance of this Contract.

### **3.17. SUPERVISION AND SUPERINTENDENCE**

Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to MTS except under extraordinary circumstances. Superintendent must be able to proficiently speak, read and write in English.

Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her. Any person in the employ of the Contractor whom MTS may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

### **3.18. CONTRACTOR'S SELF-PERFORMANCE**

Contractor must self-perform a minimum of **thirty percent (30%)** of work on the Project.

### **3.19. SUBCONTRACTORS**

Contractor agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of the Work. Contractor shall be as fully responsible to MTS for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and MTS.

MTS reserves the right to Approve all subcontractors. MTS's Approval of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

Prior to substituting any subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

### **3.20. INDEMNIFICATION**

To the fullest extent allowed by law, Contractor shall defend, indemnify and hold MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees, free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, related to, or in connection with the Work or this Contract, including claims made by subcontractors for nonpayment, and including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of MTS's choosing, any and all such suits, actions or other legal proceedings of every kind that may be brought or instituted against MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees, in any such suit, action or other legal proceeding. Contractor shall reimburse MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

Contractor agrees to pay, or reimburse MTS, SDTI, SDTC, SD&AE, and SD&IV for regulatory agency or court imposed fees, fines, or penalties imposed on MTS, SDTI, SDTC, SD&AE, and SD&IV arising from Contractor's failure to complete the Work in a timely manner and/or in accordance with the Contract Documents and any applicable permits or Applicable Laws. Contractor's responsibility and obligation to pay, or reimburse, MTS for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Work.

### **3.21. COMPLIANCE WITH GENERAL CONSTRUCTION PERMIT FOR CONSTRUCTION ACTIVITY SCHEDULE**

Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

Contractor must comply with all aspects of the State Water Resources Control Board (State Board) Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity, NPDES Permit No. CAS000002 (Construction General Permit) and any amendment, renewal or reissuance thereof, for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.

Contractor must evaluate and include in the Contract amount the cost of procuring coverage under the Construction General Permit, preparing a Storm Water Pollution Prevention Plan (SWPPP) that is acceptable to MTS, if required, and complying with the SWPPP and any revisions to the SWPPP that become necessary during the course of construction.

Contractor must keep itself and all subcontractors, staff, and employees fully informed of, adequately trained, and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all provisions of applicable ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority.

Contractor must file a Notice of Intent and obtain a State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Construction General Permit) for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. The Contractor must also be responsible for implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating work. The Contractor must be solely responsible for implementing and complying with the provisions of the Construction General Permit and the SWPPP, including any monitoring, reporting, and revisions as may be required. Contractor must evaluate and include in the bid the cost of obtaining the Construction General Permit, of preparing the SWPPP, and of complying with the Construction General Permit and the SWPPP, including monitoring, reporting, and revisions as may be required. The Contractor must comply with all requirements of the State Water Resources Control Board. The Contractor must provide copies of all reports and monitoring information to MTS.

Before any NOI, SWPPP, PRDs or other Construction General Permit related document may be submitted to the State Board, Regional Water Quality Control Board, or may be implemented on the Project site, it must first be reviewed and approved by MTS.

MTS retains the right to procure and maintain coverage under the Construction General Permit for the Project site if the Contractor fails to draft a satisfactory NOI, SWPPP, or other PRDs or fails to proceed in a manner that is satisfactory to MTS. Any costs incurred by MTS in procuring and maintaining coverage under the Construction General Permit, or drafting an NOI or SWPPP in the event that Contractor is unwilling or unable to maintain compliance or draft a satisfactory permit related documents, must be paid by the Contractor.

Contractor must be responsible for maintaining compliance with all aspects of the Construction General Permit during the course of the Project. Contractor must provide copies of all reports and monitoring information to MTS. If the Contractor has failed or is unable to maintain compliance with the Construction General Permit, MTS reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately maintained compliance with the Construction General Permit is MTS's sole determination. In the event that Contractor has failed or is unable to maintain compliance with the Construction General Permit, any costs incurred by MTS in drafting and implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit must be paid by the Contractor.



In addition to compliance with the Construction General Permit, Contractor must comply with the lawful requirements of any applicable municipality, MTS, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

Failure to comply with the Construction General Permit is a violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless MTS, its Board, members of the Board, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which MTS, its Board, members of the Board, employees and authorized volunteers may sustain or incur for noncompliance with the Construction General Permit or any other local, state or federal law arising out of or in connection with the Project, except for liability resulting from the sole negligence, willful misconduct or active negligence of MTS, its Board, members of the Board, employees or authorized volunteers. MTS may seek damages from the Contractor for delay in completing the Contract in accordance with the contract requirements herein caused by Contractor's failure to comply with the Construction General Permit, any laws, regulations, and policies described in this Section, or any other relevant water quality law, regulation, or policy.

MTS reserves the right to defend any enforcement action or civil action brought against MTS for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse MTS for the costs associated with, any settlement reached between MTS and any relevant enforcement entity.

Contractor must include the cost to perform this Work in its Bid.

### **3.22. CLEANING UP**

Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. Contractor shall also clean all asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment. The use of water, resulting in mud on streets, will not be permitted as substitute for sweeping or other methods. Dust control may require having a water truck onsite for the duration of the Project, and/or use of temporary hoses and pipelines to convey water.

Contractor shall fully clean up the site at the completion of the Work. If the Contractor fails to immediately clean up at the completion of the Work, MTS may do so and the cost of such clean up shall be charged back to the Contractor.

### **3.23. LAYOUT AND FIELD ENGINEERING**

All field engineering required for laying out the Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense.

### **3.24. EXCESSIVE NOISE**

The Contractor shall use only such equipment on the work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA.

The Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements.

No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

### **3.25. AIR POLLUTION CONTROL**

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of liquids, including, but not limited to, all containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

### **3.26. SANITARY FACILITIES**

Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other Sanitary Facilities required by Cal/OSHA shall be the responsibility of the Contractor.

### **3.27. TESTS AND INSPECTIONS**

Unless otherwise required in the Contract Documents, if the Contract Documents, MTS, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or Approved, Contractor shall provide MTS at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than MTS, Contractor shall promptly inform MTS of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for MTS testing and MTS inspection shall be paid by MTS. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by MTS, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify MTS so that MTS may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of MTS, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

Reexamination of Work may be ordered by MTS. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, MTS shall pay the costs of reexamination and reconstruction. If such Work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

### **3.28. PROTECTION OF WORK AND PROPERTY**

The Contractor shall be responsible for all damages to persons or property that occurs as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by MTS. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from MTS, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by MTS. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by MTS and the Contractor.

All traffic detector loops, fences, walls, culverts, survey monuments, or other obstructions (except survey monuments within the limits of the Work) which are removed, damaged, or destroyed in the course of the Work, shall be replaced or repaired to original condition and to the satisfaction of MTS, by and at the expense of the Contractor, whether or not those obstructions have been shown on the Plans, unless otherwise stated herein. Contractor shall notify MTS at least 2 Days before a survey monument within the limits of the Work will be damaged, and MTS will replace the survey monument at no expense to the Contractor. If MTS is not properly notified, Contractor shall replace the survey monument at its sole expense. It is the Contractor's responsibility to employ at its expense a licensed Land Surveyor to restore all survey monuments outside the limits of the Work, which are destroyed or obliterated.

Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:

Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.

Provide substantial barricades around any shrubs or trees indicated to be preserved.

Deliver materials to the Project site over a route designated by MTS.

Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Contractor does not comply, MTS shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.

Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of MTS. Contractor shall not unreasonably encumber the Project site with its materials.

Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, at no cost to MTS.

Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to MTS.

Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.

At the completion of work each day, leave the Project site in a clean, safe condition.

Comply with any stage construction and traffic control plans. Access to residences and businesses shall be maintained at all times.

These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

Should damage to persons or property occur as a result of the Work, Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. MTS shall be entitled to inspect and copy any such documentation, video, or photographs.

### **3.29. CONTRACTOR'S MEANS AND METHODS**

Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

### **3.30. LABOR**

#### **Hours of Work:**

Eight (8) hours of work shall constitute a legal day's work. Contractor and each subcontractor shall forfeit, as penalty to MTS, twenty-five dollars (\$25) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, section 1810 to section 1815, except as provided in Labor Code section 1815. The Contractor and every 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 in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of MTS and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

#### **Prevailing Rates of Wages:**

The Contractor is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov](http://www.dir.ca.gov). In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at MTS's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold MTS, its Board, members of the Board, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

The Contractor shall forfeit as a penalty to MTS not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate 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.

Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

Because the Project involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its sub-contractors shall pay the higher of the state or federal prevailing wage rates

**Payroll Records:**

Pursuant to Labor Code Section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, 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 them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.

In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations (“DIR”) on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

If not subject to paragraph (a), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement (“DLSE”) of the DIR or shall contain the same information as the forms provided by the DLSE.

In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to MTS for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

**Employment of Apprentices:**

Contractor’s attention is directed to the provisions of sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any subcontractor. Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

**Nondiscrimination:**

Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to

insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

### **Skilled and Trained Workforce Requirements:**

Contractor and its subcontractors at every tier shall use a skilled and trained workforce to perform all work under this Contract that falls within an apprenticeship occupation in the building and construction trades in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. "Skilled and trained workforce" means a workforce that meets all of the following conditions: All the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief.

For work performed on or after January 1, 2021, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

For an apprenticeable occupation in which no apprenticeship program had been approved by the Chief before January 1, 1995, up to one-half of the graduation percentage requirements above may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the Chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

Contractor must submit monthly reports demonstrating compliance with this Section to MTS. A sample monthly report may be found at Section 10.0. If the Contractor fails to provide the monthly reports, MTS shall withhold further payments until a complete report is provided.

### **Labor Certification**

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 code.

### **3.31. INSURANCE**

Insurance Certificates will be in the form provided in Section 6 of the Contract Documents. Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

MTS utilizes the services of a third party insurance monitoring company. As a condition of contract award, Contractor shall submit any required insurance policies to the third party monitoring company of MTS' choosing.

1. COVERAGE REQUIRED - ALL CONTRACTS

a. Liability

- i. Commercial General Liability At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.

All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear. Furthermore, an endorsement will be required demonstrating that the standard railroad exclusionary language has been removed as applicable.

- ii. Automobile Liability at all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.
- iii. Workers' Compensation/Employer Liability At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance, including Occupational Disease, in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

2. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

- (1) Owner-Provided Builder's Risk  
PROVIDED

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MTS, SDTI, SD&AE, SD&IV, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at \$50,000 but is subject to change.



(2) Railroad Protective or Equivalent  
REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted. Option: purchase separate Railroad Protective Liability Policy as required.

(3) Professional Liability  
REQUIRED

At all times during this contract, and for twelve (12) months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this Agreement.

(4) Pollution Legal Liability  
REQUIRED

At all times during this contract, and for twenty four (24) months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to services or operations under this Agreement. The extended discovery period must be no less than twenty four (24) months.

(5) Contractor Equipment  
REQUIRED

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

(6) Installation Floater  
REQUIRED

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

(7) Garage Keeper's Legal Liability & Automobile Portion  
REQUIRED

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are

driving a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

(8) Crime Fidelity Insurance  
REQUIRED

At all times during this contract, Contractor agrees to maintain Crime Fidelity Insurance with respect to services or operations under this agreement. The coverage should include the following:

- Employee dishonesty/theft
- Theft, disappearance and destruction on the premises
- Theft, disappearance and destruction while in transit
- Forgery/alteration

(9) Umbrella or Excess Liability (if required to meet liability limits above)  
REQUIRED

Contractor agrees that any Umbrella or Excess Liability Policy utilized to provide the required limits of liability shall contain coverage at least as broad as that provided by the General Liability Policy, and be written for a term concurrent with the General Liability Policy.

(10) Primary and Non-Contributory Insurance  
REQUIRED

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

3. MINIMUM POLICY LIMITS REQUIRED

Combined Single Limit (CSL)

Commercial General Liability (Per Occurrence):	<u>\$2,000,000</u>
(General Aggregate)	<u>\$4,000,000</u>
(Completed Operations & Products Aggregate)	<u>\$2,000,000</u>
Automobile Liability: (Combined Single Limit)	<u>\$2,000,000</u>
Worker's Compensation:	<u>Statutory Limits</u>
Employer's Liability per Accident /or Disease:	<u>\$1,000,000</u>
Additional Coverages (as indicated under Section B, Additional Coverages Required):	
<input type="checkbox"/> 2. (1) Builder's Risk	<u>Replacement Cost</u>

- |                                     |   |                        |
|-------------------------------------|---|------------------------|
| <input type="checkbox"/>            | 2. (2) Railroad Protective (Per Occurrence):  | \$ _____               |
|                                     | Railroad Protective (General Aggregate):  | \$ _____               |
| <input type="checkbox"/>            | 2. (3) Professional Liability   | \$ _____               |
| <input type="checkbox"/>            | 2. (4) Pollution Liability  | \$ _____               |
| <input type="checkbox"/>            | 2. (5) Contractor Equipment   | Replacement Cost _____ |
| <input type="checkbox"/>            | 2. (6) Installation Floater   | Replacement Cost _____ |
| <input type="checkbox"/>            | 2. (7) Garage Keeper's Legal Liability  | \$ _____               |
| <input type="checkbox"/>            | (Combined Single Limit (CSL) Per Occurrence)  |                        |
| <input type="checkbox"/>            | 2. (8) Crime Fidelity Insurance   | \$ _____               |
| <input type="checkbox"/>            | 2. (9) Umbrella or Excess Liability<br>(if required to meet liability limits above) | \$ _____               |
| <input checked="" type="checkbox"/> | 2. (10) Primary and Non-Contributory Insurance                                      | Primary _____          |

4. NOTICE OF POLICY CHANGES

Contractor shall not amend or cancel the insurance policy and coverage required by this Agreement without providing MTS with at least thirty (30) days prior written notice. Contractor shall notify MTS within ten (10) days of insurer-initiated material amendments or cancellations to the insurance coverage required by this Agreement. Under no circumstances shall these notice provisions be deemed a waiver of the insurance requirements set for herein. Any material changes in or cancellation of the insurance policy on file with MTS pursuant to this Section will result in an immediate stop work order until proof of substitute coverage meeting the requirements of this Agreement is provided to MTS. In the alternative, in MTS' sole discretion, MTS retains the right to declare Contractor in default and immediately terminate this Agreement if the insurance coverage required by this Section is cancelled, otherwise lapses or fails to meet the coverage limits at any time, and for any duration, during the term of this Agreement.

**3.32. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

**Time for Completion/Liquidated Damages:**

The Contract duration shall commence on the date specified in MTS's Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. MTS is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by MTS's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from MTS (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date. If the Work is not completed as stated in

the Contract Documents, it is understood that MTS will suffer damage. As it is impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to MTS as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

**Inclement Weather:**

Contractor shall abide by MTS's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.

**Extension of Time:**

Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) calendar days of identifying any such delay notify MTS in writing of causes of delay. MTS shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.

**No Damages for Reasonable Delay:**

MTS's liability to Contractor for delays for which MTS is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall MTS be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable MTS delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

**3.33. PAYMENT**

**Cost Breakdown**

Contractor shall furnish a detailed Schedule of Values giving an itemized breakdown of the Contract Price within fourteen (14) calendar Days of award of the Contract. The Schedule of Values shall be adjusted as directed by MTS.

**Mobilization/ Demobilization**

When a bid item is included in the Bid Schedule for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate ("Initial Mobilization"). The Initial Mobilization bid item shall be limited to **Click to write number (#)** percent of the Bid Price. When no bid item is provided for "Initial Mobilization," payment for such costs will be deemed to be included in the other items of the Work.

Payment for Initial Mobilization based on the lump sum provided in the Bid shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of MTS. The scope of the Work included under Initial Mobilization shall include, but shall not be limited to, the following principal items:

Obtaining and paying for all bonds, insurance, and permits.

- Moving on to the Project site of all Contractor's plant and equipment required for the first month's operations.
- Installing temporary construction power, wiring, and lighting facilities, as applicable.
- Establishing fire protection system, as applicable.
- Developing and installing a construction water supply, if applicable.

Providing and maintaining the field office trailers for the Contractor, if necessary, and MTS (if specified), complete, with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, fax machine, and copying machine.

Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.

Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.

Arranging for and erection of Contractor's work and storage yard.

Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.

Submittal of Construction Schedule as required by the Contract Documents.

Demobilization shall include the complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel at the Site.

### **Progress Estimates, Payment, And Withholding**

Contractor shall submit to MTS, on forms approved by MTS, a payment request which shall include a monthly itemized estimate of Work done for the purpose of making progress payments. Contractor's payment request shall set forth in detail the Schedule of Values for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include any amount earned for executed Change Orders. In order for MTS to consider and evaluate each progress payment request, Contractor shall submit each payment request no later than the 25th day of each calendar month. Failure to do so may result in a delay of payment.

From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where MTS has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Invitation for Bids. From the remainder a further deduction may be made in accordance with the items below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

MTS may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

- Payments which may be past due and payable for claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
- Defective work not remedied.
- Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.
- Damage to another contractor or a third party.
- Amounts which may be due MTS for claims against Contractor.
- Failure of Contractor to keep the record ("as-built") drawings up to date.
- Failure to provide update on construction schedule as required herein.
- Site cleanup.
- Failure to comply with Contract Documents.
- Liquidated damages.
- Legally permitted penalties.
- Anything required by law to be withheld.

MTS may apply such withheld amount or amounts to payment of such claims or obligations at its discretion, or as required by law.

Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by MTS, for unit price items listed, if any, in the Bid Form. Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

MTS shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Upon receipt, MTS shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable, accompanied by a document setting forth in writing the reasons why the payment request is not proper. MTS shall promptly process the

progress payment after the receipt of an undisputed and properly submitted payment request from Contractor.

**Prompt Progress Payments:**

A prime Contractor or Subcontractor shall pay any subcontractor no later than seven (7) business days from the receipt of each progress payment from MTS in accordance with Cal. Bus. & Prof. Code, 7108.5 concerning prompt payment to subcontractors. Any delay or postponement of payment over 30 calendar days may take place only for good cause and with MTS's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, deficient subcontractor performance, noncompliance by a subcontractor.

Prime Contractor must submit the MTS Prompt Payment Certification Form to the MTS Contracts Administrator if any Subcontractors. The form is available for download at <https://www.sdmts.com/business-center/procurement>. The form certifies that all Subcontractors were paid within seven (7) business days of receiving payment from MTS for work performed during the previous month. The Prime Contractor must submit the completed certification, as required on the form, and the month following final acceptance of the project. In addition, seven (7) business day prompt payment requirement prevails over contract language between a Prime Contractor and a Subcontractor.

**Retention:**

MTS shall hold retainage of 5% from the Prime Contractor for any public works contract over \$5,000. MTS shall make prompt and regular incremental acceptances of portions as determined by MTS of the contract work and retain 5% of the contract price until final completion and acceptance of performance. The Prime Contractor or Subcontractor shall return all monies withheld in retention from a subcontractor within seven (7) business days after receiving retention proceeds from MTS for work satisfactorily completed and accepted. Any delay or postponement of payment over 30 calendar days may take place only for good cause and with MTS's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Cal. Bus. & Prof. Code, 7108.5 and Cal. Pub. Con. Code, 7107. These requirements shall not be construed to limit or impair any contractual, administration, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor deficient subcontract performance, or noncompliance by a subcontractor.

**3.34. CHANGES AND EXTRA WORK PAYMENT**

**1. Contract Change Orders**

MTS, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Contract price and Contract duration shall be adjusted accordingly. Except as otherwise provided herein, all such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. Change Orders shall be issued in the form set

forth in Section 10. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract price or the Contract duration, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

Contractor shall promptly execute changes in the Work as directed in writing by MTS even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Contract price or Contract duration. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the change order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. All claims for additional compensation to the Contractor shall be presented in writing. No claim will be considered after the Work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by Contractor.

Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract.

Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead (direct or indirect), constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify MTS's Change Order form in an attempt to reserve additional rights.

No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

## **2. Process For Determining Adjustments In Contract Price**

### **1. Owner Initiated Change:**

When MTS desires a change in the Work, MTS may issue request for proposal to Contractor. The Contractor must submit a complete cost proposal, including any change in the Contract Price or Contract Time, within seven (7) calendar days after receipt of a request for proposal initiated by MTS, or the time indicated by MTS.

### **2. Contractor Initiated Change**

The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) calendar days of discovery of the facts giving rise to the proposed change order.

### **3. Requirements for Change Order Proposal:**

Contractor shall include material, labor, and equipment separately priced for each element of Work. Proposals shall be accompanied by sufficiently detailed supporting documentation to permit verification by MTS, including but not limited to estimates and quotations from subcontractors or material suppliers, as MTS



may reasonably request. Allowable Overhead and Profit may be added to the total of these costs if allowed by the Contract Documents. As general guidance, all cost documentation shall be tabulated from detailed computerized spreadsheets in a "workbook" which will be compiled into useful summary spreadsheets as directed by MTS.

- a. Unit Price Method: Where the Additional Work involved is covered or is of the same character as the original Contract, Unit Price Work by application of those unit prices to the quantities of the items involved;
- b. Lump Sum Method: By mutual acceptance of a lump sum price negotiated on the basis of the Contractor's itemized estimate of the anticipated costs of the Additional Work.
- c. Time and Materials Method: MTS may direct Contractor to proceed with the Additional Work with payments to be made on the basis of the actual cost of the labor and materials required to complete the Additional Work.

If the Contractor fails to submit a complete cost proposal within the seven (7) calendar day period (or as requested), MTS has the right to order the Contractor in writing to commence the Work immediately on a time and materials basis and/or issue a lump sum change to the Contract price and/or Contract duration in accordance with MTS's estimate. If the change is issued based on MTS's estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) calendar days following completion of the added/deleted work, the Contractor presents written proof that MTS's estimate was in error.

Contract change orders shall reflect "allowable costs," as that term is defined in Part 31 of the Federal Acquisition Regulation (FAR). The Contractor shall show through its cost proposal the reasonableness of any claimed costs and demonstrate how these costs have a causal connection to the change or other action on which the claim is based. MTS will utilize the cost principles set forth in FAR Part 31 currently in effect, and as amended from time to time, to determine the allowableness of any cost submitted as part of the Contractor's cost proposal. MTS will not compensate the Contractor for any unallowable cost submitted as part of the Contractor's cost proposal.

#### **4. Unit Price Change Orders**

When the actual quantity of a Unit Price item varies from the Bid Form, compensation for the change in quantity will be calculated by multiplying the actual quantity by the Unit Price. This calculation may result in either an additive or deductive Final Change Order pursuant to the Contract Documents.

No Mark up for Overhead and Profit. Because the Contract Unit Prices provided in the Bid Schedule include Overhead and Profit as determined by Contractor at the time of Bid submission, no mark up or deduction for Overhead and Profit will be included in Unit Price Change Orders.

Bid items included on the Bid Schedule may be deducted from the Work in their entirety without any negotiated extra costs.

Contractor acknowledges that unit quantities are estimates and agrees that the estimated unit quantities listed on the Bid Schedule will be adjusted to reflect the actual quantities which may result in an adjustment to the Contract Unit Prices. Such an adjustment will be made by execution of an additive or deductive Change Order. Upon notification, Contractor's failure to respond within seven (7) calendar days will result in MTS's issuance of a unit quantity adjustment to the Contract Unit Prices and/or Contract duration in accordance with the Contract Documents.

## **5. Lump Sum Change Orders**

Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work, and shall be segregated as follows:

- a. Labor: The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- b. Materials: The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight, and delivery. Materials costs shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) calendar days of delivery, then MTS shall determine the materials cost, at its sole discretion.
- c. Tool and Equipment Use: Costs for the use of small tools, which are tools that have a replacement value of \$1,000 or less, shall be considered included in the Overhead and Profit mark-ups established below. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

## **6. Time And Materials Change Orders**

- a. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Contractor for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by MTS, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items.

- b. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to MTS for an approval signature each day Additional Work is performed. Failure to get MTS's approval signature each Day shall result in a waiver of Contractor's right to claim these costs. MTS's signature on time sheets only serves as verification that the Work was performed and is not indicative of MTS's agreement to Contractor's entitlement to the cost.
- c. All documentation of incurred costs ("T&M Daily Summary Sheets") shall be submitted by Contractor within three (3) working days of incurring the cost for labor, material, equipment, and special services as Additional Work is performed. Contractor's actual costs shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Each T&M Daily Summary Sheet shall include Contractor's actual costs incurred for the Additional Work performed that day and a cumulative total of Contractor's actual costs incurred for the Additional Work. Contractor's failure to provide a T&M Daily Summary Sheet showing a total cost summary between three (3) and five (5) working days of performance of the Work will result in the Contractor's otherwise allowable overhead and profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Contractor's failure to submit the T&M Daily Summary Sheet within five (5) working days of performance of the Work will result in a total waiver of Contractor's right to claim these costs.
- d. Labor:
- The Contractor will be paid the cost of labor for the workers used in the actual and direct performance of the Work. The cost of labor will be the sum of the actual wages paid (which shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes) substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional Work at the time the Additional Work is done, and the labor surcharge set forth in the Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Contract was executed. The labor surcharge shall constitute full compensation for all payments imposed by Federal, State, or local laws and for all other payments made to, or on behalf of, the workers, other than actual wages.
- i. Equipment Operator Exception: Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.
- ii. Foreman Exception: The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including, without limitation, the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.

e. Materials:

The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.

Trade discounts available to the purchaser shall be credited to MTS notwithstanding the fact that such discounts may not have been taken by Contractor.

For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by MTS.

Payment for materials from sources owned wholly or in part by the Contractor shall not exceed the price paid by the Contractor for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Site, whichever price is lower.

If, in the opinion of MTS, the cost of materials is excessive, or Contractor does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Site less trade discounts.

MTS reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Contractor for costs of such materials or Indirect Costs or profit on MTS furnished materials.

f. Equipment:

Contractor will be paid for the use of equipment at the rental rates listed for that equipment in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the Contract was executed. Such rental rate will be used to compute payments for equipment whether the equipment is under Contractor's control through direct Ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to MTS for the total period of use. If it is deemed necessary by Contractor to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by MTS. Contractor may furnish cost data which might assist MTS in the establishment of the rental rate.

I. Rental Equipment

Rental Time: The rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional 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; except that moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.

Rental Time Not Allowed: Rental time will not be allowed while equipment is inoperative due to breakdowns.

Computation Method: The following shall be used in computing the rental time of equipment on the Site.

When hourly rates are paid, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.

When daily rates are paid, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation, and any part of an hour in excess of 4 hours will be considered one day of operation.

## II. Contractor-Owned Equipment

For Contractor-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month.

For Contractor-owned equipment, the rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation, unless, in the instance of standby time, the equipment could be actively used by Contractor on another project, then MTS shall pay for the entirety of the time the equipment is on Site. It shall be Contractor's burden to demonstrate to MTS that the equipment could be actively used on another project.

All equipment shall, in the opinion of MTS, be in good working condition and suitable for the purpose for which the equipment is to be used.

g. Special Services: Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.

I. Invoices for Special Services: When MTS and Contractor determine that a special service is required which cannot be performed by the forces of Contractor or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be

accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by MTS.

- II. Discount and Allowance: All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit as specified elsewhere in the Contract Documents, a total allowance not to exceed five percent (5%) for Overhead and Profit will be added to invoices for Special Services.
- h. Excluded Costs: The Term Time and Material shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Contractor's allowance for Overhead and Profit.
- I. Overhead Cost: Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Additional Work;
  - II. Office Expenses: Expenses of Contractor's principal and branch offices;
  - III. Capital Expenses: Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;
  - IV. Negligence: Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
  - V. Other: Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents;
  - VI. Small Tools: Cost of small tools valued at less than \$1,000 and that remain the property of Contractor;
  - VII. Administrative Costs: Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
  - VIII. Anticipated Lost Profits: Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

- IX. Home Office Overhead: Costs derived from the computation of a “home office overhead” rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods;
- X. Special Consultants and Attorneys: Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.

**7. Calculation of Overhead and Profit**

- 1. In accordance with the Profit Calculation Matrix sample attached in Section 8. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
  - I. “Net Cost” is defined as consisting of costs of labor, materials, and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up and in no case shall the total costs exceed one and one-half percent (1.5%) of Net Cost. Contractor shall provide MTS with documentation of the costs, including, but not limited to, payroll records, invoices, and such other information as MTS may reasonably request.
  - II. For Work performed by the Contractor’s forces, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Net Cost of the Work.
  - III. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the subcontractor’s Net Cost of the Work to which the Contractor may add five percent (5%) of the subcontractor’s Net Cost.
  - IV. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor’s Net Cost for Work to which the subcontractor and general contractor may each add an additional five percent (5%) of the Net Cost of the lower tier subcontractor.
  - V. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by MTS exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.
- 2. All of the following costs are included in the markups for overhead and profit described above, and Contractor shall not receive any additional compensation for: Submittals, drawings, field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of

project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary On-Site facilities (Offices, Telephones, High Speed Internet Access, Plumbing, Electrical Power, Lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final Cleanup; Other Incidental Work; Related Warranties; insurance and bond premiums.

### **3. Unilateral Change Orders**

If MTS disagrees with the cost proposal submitted by Contractor, it will notify the Contractor and MTS will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with MTS, a Change Order will be issued in accordance with the terms of this Section. If no agreement can be reached, MTS shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to MTS within fifteen (15) Days of the issuance of the unilateral change order, disputing the terms of the unilateral change order and providing such supporting documentation for its position as MTS may reasonably require.

### **4. Change Of Contract Times**

The Contract Times may only be changed by a Change Order.

All changes in the Contract Price and/or adjustments to the Contract Times related to each change shall be included in Contractor's change order proposal. No cost or time will be allowed for cumulative effects of multiple changes. All Change Orders must state that the Contract Time is not changed or is either increased or decreased by a specific number of days. Failure to include a change to time shall waive any change to the time unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the Change Order.

Notice of the amount of the request for adjustment in the Contract Times with supporting data shall be delivered within seven (7) Days after such start of occurrence, unless MTS allows an additional period of time to ascertain more accurate data in support of the request. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed.

MTS may elect, at MTS's sole discretion, to grant an extension in Contract Times, without Contractor's request, because of delays or other factors.

Float is for the benefit of the Project. Float shall not be considered for the exclusive use or benefit of either MTS or the Contractor. Contractor shall not be entitled to compensation, and MTS will not compensate Contractor, for delays which impact early completion. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float.



Contractor's entitlement to an extension of the Contract Times is limited to an MTS-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the MTS-caused delay extends the critical path beyond the previously approved Contract

Time. If approved, the increase in time required to complete the Work shall be added to the Contract Time.

Contractor shall not be entitled to an adjustment in the Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions (as determined by MTS), Acts of God, acts or failures to act of utility owners not under the control of MTS, or other causes not the fault of and beyond control of MTS and Contractor, then Contractor shall be entitled to a time extension when the Work stopped is on the critical path. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays. Contractor must submit a timely request in accordance with the requirements of this Section.

Requests for Contract Extension: Contractor's justification for entitlement shall be clear and complete citing specific Contract Document references and reasons on which Contractor's entitlement is based. At a minimum, each request for a time extension must include:

Each request for an extension of Contract Time must identify the impacting event, in narrative form, providing a description of the delay event and sufficient justification as to why the Contractor is entitled to a time extension. Contractor must demonstrate that the delay arises from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and any Subcontractors or Suppliers, or any other persons or organizations employed by any of them or for whose acts any of them may be liable, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Times, despite Contractor's reasonable and diligent actions to guard against those effects.

Each request for an extension of Contract Time must include a time impact analysis in CPM format, using the Contemporaneous Impacted As-Planned Schedule Analysis to calculate the impact of the delay event.

### **3.35. FINAL ACCEPTANCE AND PAYMENT**

#### Final Inspection.

Upon written notice from Contractor that the entire Work is complete, MTS will promptly make a final inspection and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

### Final Acceptance.

After Contractor has, in the opinion of MTS, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as-builts), and other documents required by the Contract Documents, MTS shall execute and file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

### Final Payment.

Upon execution of the Notice of Completion, Contractor may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied (except as previously delivered) by: all documentation called for in the Contract Documents, including but not limited to a fully completed Conditional Waiver and Release on Final Payment . If, on the basis of MTS's observation of the Work during construction and final inspection, and review of the final application for payment and accompanying documentation as required by the Contract Documents, MTS is satisfied that the Work has been completed and Contractor has satisfied all other requirements for final payment, MTS will process the final payment application. Otherwise, MTS will return the payment application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the application for payment. Within sixty (60) Days after the presentation to MTS of the proper and complete final application for payment and accompanying documentation, the amount recommended by MTS, less any sum MTS is entitled to set off pursuant to the Contract Documents, will become due and will be paid by MTS to Contractor.

### Waiver of Claims.

The making and acceptance of final payment will constitute a waiver of all Claims by Contractor against MTS other than those previously made in accordance with the requirements herein and expressly acknowledged by MTS in writing as still unsettled.

In case of default by the Contractor, any unpaid balance shall be and become the sole and absolute property of MTS to the extent necessary to repay MTS any excess in the cost of the Work above the contract price and all costs required for completion of the Contract.

At MTS's discretion, MTS may require Contractor to submit a release of liens and claims pursuant to Civil Code section 8136 prior to the release of the final payment. MTS's release of the final payment will be contingent on Contractor's submission of such a release.

In the event of incomplete work, punch list work, or a dispute between MTS and the Contractor, MTS may withhold from the final payment an amount not to exceed 150% of the disputed amount.

### **3.36. WARRANTY AND GUARANTEE OF WORK**

Contractor hereby warrants that materials and work shall be completed in conformance with the Contract Documents and that the materials and work provided will fulfill the requirements of this

Warranty. Contractor hereby agrees to repair or replace any or all work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other work which may be damaged or displaced by such defect(s) within a period of one (1) year, or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, from the date of the Notice of Completion of the Project without any expense whatever to MTS, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.

For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as MTS may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) calendar days after being notified in writing of required repairs, to the reasonable satisfaction of MTS, MTS shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse MTS for any expenses incurred hereunder immediately upon demand.

MTS shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) calendar days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; MTS shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.

In addition to the warranty set forth in this Section, Contractor shall obtain for MTS all warranties that would be given in normal commercial practice and assign to MTS any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Section. Contractor shall furnish MTS with all warranty and guarantee documents prior to final Acceptance of the Project by MTS as required.

When specifically indicated in the Contract Documents or when directed, MTS may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by MTS for installation by the Contractor to be voided or reduced, Contractor shall indemnify MTS from and against any cost, expense, or other liability arising therefrom, and shall be responsible to MTS for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.

The Contractor shall remedy at its expense any damage to MTS-owned or controlled real or personal property.

In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, MTS may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.

Nothing in the Warranty or in the Contract Documents shall be construed to limit the rights and remedies available to MTS at law or in equity, including, but not limited to, Code of Civil Procedure Section 337.15.

### **3.37. RECORD ("AS BUILT") DRAWINGS**

Contractor shall prepare and maintain a complete set of record drawings through the course of the Work. The record drawings must show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark the record drawings to show each change, including but not limited to changes to vertical and horizontal alignment; location and station of appurtenance facilities; details of connection tie-in points and complex piping/valve configurations; depth and location of utility crossings; and valve manufacturer and model number. Contractor shall mark whichever area of the drawings is most capable of showing conditions fully. Redline set should be completed in a manner that minimizes excessive and otherwise confusing markings. A separate detail should be used to avoid adding too many notations to a specific area of the drawing. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall organize the record drawings into one drawing set with proper identification as "RECORD DRAWINGS." The suitability of the record drawings will be determined by MTS. If the record drawings are determined unsuitable, the Contractor shall update the record drawings to the satisfaction of the Engineer at no cost to MTS. If requested, Contractor shall provide the record drawings in electronic format.

Record drawings shall be kept up-to-date and available for review by MTS at the job site at all times. MTS will review the record drawings during each month's progress payment review. Failure on the Contractor's part to keep record drawings current could result in withholding partial payment.

### **3.38. CLAIMS; DISPUTE RESOLUTION**

#### **Initiating Claims**

All Claims, except those waived pursuant to the Contract Documents, shall be referred to MTS for decision. Compliance with this Section, including submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by MTS, is a condition precedent to any exercise Contractor pursues of any rights or remedies either may otherwise have under the Contract Documents or by Applicable Laws in respect of such Claims.

If any dispute shall arise between MTS and Contractor regarding performance of the work, or any alleged change in the work, Contractor shall timely perform the disputed work and shall give written notice of a claim ("Notice of Potential Claim" or "NOPC") for additional compensation for the work to MTS within three (3) days after commencement of the disputed work. Contractor's

failure to provide an NOPC within the three (3)-day period constitutes an agreement by Contractor that it will receive no extra compensation for the disputed work.

The responsibility to substantiate a Claim shall rest with the Contractor. A Claim for an adjustment in Contract Price and/or the Contract Times shall be prepared in accordance with the Contract Documents. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event.

At a minimum, a substantiated Claim must include:

1. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made.
2. Chronology of events and correspondence.
3. Analysis of claim merit.
4. Analysis of claim cost.
5. Analysis of Contract Time

Cover letter and Contractor's certification of the claim, including claims from subcontractors of any tier, in accordance with Government Code sections 12650 and following.

MTS will review each Claim and take one of the following actions in writing:

1. deny the Claim in whole or in part;
2. approve the Claim; or

In the event that MTS does not take action on a Claim within the statutory timeframe, or, if none, sixty (60) Days after the receipt of a proper and complete Claim, the Claim shall be deemed denied.

MTS's written action will be final and binding upon MTS and Contractor, unless MTS or Contractor invoke the dispute resolution procedure set forth below.

No Claim for an adjustment in the Contract Price or the Contract Times will be valid if not submitted in accordance with this Section and failure to comply with this Section constitutes a waiver of Contractor's Claims.

#### **Claims Less Than \$375,000**

In accordance with Public Contract Code Sections 20104 et seq. and other applicable law, public works claims of \$375,000 or less which arise between the Contractor and MTS shall be resolved under the following statutory procedure unless MTS has elected to resolve the dispute pursuant to Public Contract Code Section 10240 et seq.

#### **Claims Under \$50,000**

MTS shall respond in writing to the claim within 45 calendar days of receipt of the claim, or, MTS may request, in writing, within 30 calendar days of receipt of the claim, any additional

documentation supporting the claim or relating to defenses or claims MTS may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of MTS and the Contractor. MTS's written response shall be submitted 15 calendar days after receiving the additional documentation, or within the same period of time taken by the Contractor to produce the additional information, whichever is greater.

### **Claims Over \$50,000 But Less Than Or Equal To \$375,000**

MTS shall respond in writing within 60 calendar days of receipt, or, may request in writing within 30 calendar days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims MTS may have against Contractor. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between MTS and the Contractor. MTS response shall be submitted within 30 calendar days after receipt of the further documents, or within the same period of time taken by the Contractor to produce the additional information or documents, whichever is greater. The Contractor shall make these records and documents available at all reasonable times, without any direct charge.

### **All Claims**

Notwithstanding the foregoing, all public works claims between the Contractor and MTS shall be resolved pursuant to the procedures set forth in Public Contract Code Section 9204. MTS will provide a written response to the Contractor identifying what portion of the claim is disputed and what portion is undisputed within 45 days of receipt of the claim, unless the parties mutually agree to extend the time for response. If MTS does not respond within the 45-day time period, or as extended by mutual agreement, the claim shall be deemed rejected in its entirety.

### **Meet And Confer Process**

Contractor and MTS will first attempt to resolve disputes or disagreements at the field level through discussions between field representatives of both parties, which discussions shall conclude within seven (7) Days after MTS's written action, unless MTS and Contractor mutually agree otherwise.

If the claimant disputes MTS's response, or if MTS fails to respond within the statutory time period(s), the claimant may so notify MTS within 15 Days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, MTS shall schedule a meet and confer conference within 30 Days.

### **Mediation And Litigation**

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion thereof remains in dispute, MTS shall provide the Contractor with a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any portion of the claim that remains in dispute shall be submitted to nonbinding mediation. The selection of the mediator shall be in accordance with Public Contract Code section 9204 and MTS and the Contractor shall equally share the associated mediator fees. Each party will be responsible for its own attorney's fees and other costs.

## **Tort Claim Procedures**

In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against MTS. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against MTS.

## **Duty To Continue Performance**

Unless provided to the contrary in the Contract Documents, Contractor shall continue to perform the Work and MTS shall continue to satisfy its payment obligations to Contractor, pending the final resolution of any dispute or disagreement between Contractor and MTS.

### **3.39. TERMINATION**

#### **Termination for Cause by MTS**

MTS may, without prejudice to any other right or remedy, serve written notice upon Contractor of its intention to terminate this Contract in whole or in part if the Contractor: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Contract Time; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of MTS; or (ix) violates any of the provisions of the Contract Documents.

The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within five (5) Days after the service of such notice, Contractor resolves the circumstances giving rise to the Notice of Default to MTS's satisfaction, or makes arrangements acceptable to MTS for the required corrective action, MTS may terminate this Contract. In such case, Contractor shall not be entitled to receive any further payment until the Work has been finished. MTS may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. Contractor and its surety shall be liable to MTS for any excess costs or other damages incurred by MTS to complete the Work. If MTS takes over the Work, MTS may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site.

#### **Termination For Convenience By MTS**

In addition to its right to terminate this Contract for default, MTS may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to Contractor. The Notice of

Termination shall specify that the termination is for the convenience of MTS, the extent of termination, and the effective date of such termination ("Effective Date of Termination").

After receipt of Notice of Termination, and except as directed by MTS, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

- a. Stop Work as specified in the Notice.
- b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
- c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
- d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
- e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
- f. Submit to MTS, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of MTS's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by MTS no later than 30 calendar days after the Effective Date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by MTS's Termination for Convenience."

Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed.

MTS's total liability to Contractor by reason of the termination shall be limited to the total (without duplication of any items) of:

- a. The reasonable cost to the Contractor for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the Cost Breakdown. Deductions shall be made for cost of materials to be retained by the Contractor, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.
- b. When, in MTS's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.



- c. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.
- d. Reasonable costs to the Contractor of handling material returned to vendors, delivered to MTS or otherwise disposed of as directed by MTS.
- e. A reasonable allowance for the Contractor's internal administrative costs in preparing termination claim.
- f. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.

In no event shall MTS be liable for unreasonable costs incurred by the Contractor or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Contractor's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.

Notwithstanding any other provision of this Section, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, MTS may immediately order Contractor to cease Work until such safety or liability issues are addressed to the satisfaction of MTS or the Contract is terminated.

If MTS terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

#### **3.40. OCCUPANCY**

MTS reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

#### **3.41. ACCESS TO RECORDS AND SITES**

The Contractor and Subcontractor shall retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector

General, California State Auditor, MTS or any of their authorized representatives to inspect and audit records pertaining to the performance of this Contract as reasonably may be required. The Contractor shall also permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

#### **3.42. SEPARATE CONTRACTS**

MTS reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.

To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to MTS any problems with the Work in place or discrepancies with the Contract Documents.

Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by MTS in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, MTS shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. MTS shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

#### **3.43. SAFETY**

The Contractor shall comply with all applicable laws and regulations of the federal, state, and local government, including Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.

#### **3.44. AUTHORIZED REPRESENTATIVES**

MTS shall designate representatives, who shall have the right to be present at the Project site at all times. MTS may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

### **3.45. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM**

#### **A. MTS's Equal Employment Opportunity Program:**

MTS is an Equal Opportunity Employer. As such, MTS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, MTS agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. MTS' Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this Agreement (a copy can be obtained from MTS' Clerk of the Board). A Workforce Report form signed by the Contractor is a condition for the award of this contract.

#### **B. Contractor's Equal Employment Opportunity Plan:**

Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract. The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, gender identity, religion, disability or age.

#### **C. Compliance with Regulations:**

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to

instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **3.46. MISCELLANEOUS**

#### **1. Giving Notice**

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Bid Forms. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to MTS shall be addressed to MTS as designated in the Invitation for Bids unless MTS designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) calendar days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

#### **2. Assignment**

Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of MTS. Any assignment or change of Contractor's name of legal entity without the written consent of MTS shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

Pursuant to Public Contract Code Section 7103.5, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to MTS all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC, Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this contract or any subcontract. This assignment shall be made and become effective at the time MTS tenders final payment to the Contractor, without further acknowledgment by the parties.

#### **3. All Legal Provisions Included**

Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify MTS in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to MTS, he shall bear all costs arising therefrom.

Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.

Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

No MTS official or representative who is authorized in such capacity and on behalf of MTS to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by MTS, at no increase in Contract Price or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

**4. Notice Of Third Party Claims**

Pursuant to Public Contract Code Section 9201, MTS shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. MTS is entitled to recover reasonable costs incurred in providing such notification.

**5. State License Board Notice**

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

**6. Notice Of Taxable Possessory Interest**

In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

**7. Patents**

Contractor shall hold and save MTS, MTS's Board of Directors, members of the Board, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this contract.

**8. Change In Name And Nature Of Contractor's Legal Entity**

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify MTS in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect MTS's rights under the Contract, including but not limited to the bonds.

**9. Controlling Law**

Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

**10. Jurisdiction; Venue**

Contractor and any Subcontractor, Supplier, or other person or organization performing any part of the Work agree that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of San Diego County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

**3.47. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION AND OTHER SMALL BUSINESS PARTICIPATION**

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR Part 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation (DOT) Financial Assistance Programs." MTS' DBE program has an aspirational goal of 6.3% participation by certified DBE's over Federal Fiscal years 2021-2024 (October 1, 2021 to September 30, 2024) time period. There is no specific DBE contract goal for this project.

In order to help MTS, achieve its federally mandated overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed, in whole or in part, with federal funds. It is the policy of MTS to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in MTS DOT-assisted contracts. It is also our policy to:

- A. Ensure nondiscrimination in the award and administration of all MTS contracts and subcontracts;
- B. Create a level playing field by which DBEs can compete for and perform in MTS DOT-assisted contracts;
- C. Ensure that the MTS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*;
- D. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;

- E. Help remove procurement and contracting barriers, which impede DBE participation in MTS DOT-assisted contracts;
- F. Monitor and enforce contractors' compliance in meeting established goal objectives and program requirements;
- G. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program;
- H. Ensure MTS contractors and subcontractors take all necessary; and reasonable steps to comply with these policy objectives.

To ascertain whether its overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. Therefore, all bidders and successful Contractors are required to complete:

- DBE Program – Information for MTS's Bidder List Form (Section 10.0)

At the time of contract award, notwithstanding the subcontractors listed within the "Designation of Subcontractors" Form, the successful Contractor will be required to list all other third party contractors. This includes, but is not limited to, truckers, suppliers, manufacturers, and regular dealers. MTS tracks and reports this information to the FTA and the MTS Board of Directors as part of its DBE Program.

- Designation of Other Third Party Contractors (Section 7.0)

Contractor shall be fully informed in respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by this reference (see 49 CFR 26). Contractor's attention is directed to the following matters:

- A. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of materials or supplies, manufacturer, regular dealer or trucking company. DBE participation will be counted toward MTS's overall DBE goal per the DOT Regulations stated in 49 CFR 26.55.
- B. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
- C. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: To view the CUCP statewide DBE Directory, please use the following link: <http://californiaucp.org/>.
- D. If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification.
- E. The contractor must promptly notify MTS whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTS.



MTS encourages the proposer to outreach to DBEs and other small business enterprises for any potential subcontracting opportunities on this project. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. If interested in learning about bonding or financial assistance that may be available for small businesses, visit [www.sba.gov](http://www.sba.gov).

MTS encourages the participation of DBEs, minority owned businesses (MBEs), women owned businesses (WBEs), disabled veteran business enterprises (DVBEs), lesbian gay bisexual transgender owned businesses (LGBTs) and small businesses (SB) in the performance of all of its contracts. MTS encourages the Contractor to outreach to DBEs and other small business enterprises for any potential subcontracting opportunities on this project. If interested in learning about bonding or financial assistance that may be available for small businesses, visit [www.sba.gov](http://www.sba.gov). If interested in learning about the eligibility requirements to become certified as a DBE, MBE, WBE, DVBE, LGBT or SB or how to view a list of certified firms, please contact MTS's DBE Liaison Officer, Samantha Leslie, at [Samantha.Leslie@sdmts.com](mailto:Samantha.Leslie@sdmts.com) for more information.

### **3.48. IDENTIFICATION OF PERSONNEL/SECURITY**

MTS shall provide all Contractor personnel assigned to work under this Agreement with Contractor Identification Badges ("MTS ID Card"). Requests for MTS ID Cards will be made to and processed by the MTS-designated project manager or contracting officer. Approved requests for MTS ID Card(s) will be processed within two business days. All Contractor personnel must obtain MTS ID Cards prior to entering MTS property. Valid MTS ID Cards must be displayed prominently on the uniform of all of Contractor's employees while on MTS property. Contractors are required to provide their employees uniforms prominently bearing the name of the Contractor's business entity. MTS will allow only properly credentialed personnel of the Contractor who are wearing the appropriate uniform on its property. Contractor personnel who enter MTS property without valid MTS ID Cards may be arrested and/or cited by MTS Code Enforcement and/or other law enforcement for trespassing and violation of MTS Ordinance 13. Contractor must collect MTS ID Cards from all Contractor personnel separating from employment with the Contractor and return them to MTS for destruction. Contractor is strictly liable for the use of all MTS ID Cards issued to its employees under this Agreement.

#### **Required Background Checks**

MTS requires that all Contractor personnel assigned to work on MTS property pass comprehensive background checks (Investigative Consumer Report), conducted by the Contractor, prior to beginning work on MTS property or under this Agreement. At a minimum, the background check must, (1) positively establish the employee's identity, (2) search all common databases for criminal offenses (e.g., Federal District Court Databases), (3) verify the social security number or tax ID provided by the employee, (4) search sex offender databases, and (5) search the local criminal databases of every County in which the employee has lived in the last seven years. Contractor must conduct background checks in accordance with applicable law, including but not limited to, the Fair Credit Reporting Act and California Civil Code Sections 1785 and 1786.

Contractor personnel meeting any of the conviction criteria outlined below **are not eligible** for issuance of an MTS ID Card and may not be assigned to work on MTS property:

**Permanent Disqualification:**

1. Registered sex offenders are ineligible.
2. Espionage or conspiracy to commit espionage.
3. Sedition or conspiracy to commit sedition.
4. Treason or conspiracy to commit treason.
5. A federal crime of terrorism as defined in 18 U.S.C. 2332b(g), or comparable State law, or conspiracy to commit such crime.
6. A crime involving a TSI (transportation security incident). Note: A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. The term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute.
7. Improper transportation of a hazardous material under 49 U.S.C. 5124 or a comparable state law.
8. Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes an explosive or explosive material as defined in 18 U.S.C. 232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f).
9. Murder.
10. Threat or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility.
11. Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq., or a comparable State law, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the permanently disqualifying crimes.
12. Attempt to commit the crimes in items (2)-(5) of this Section.
13. Conspiracy or attempt to commit the crimes in items (6)-(11) of this Section.
14. Any offense that is still pending in the courts (without official legal disposition) that will disqualify the individual if they are convicted.

**Disqualification for seven years from the date of the offense or five years from the date of release from prison for the offense (whichever is later):**

1. Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.

2. Extortion.
3. Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering, where the money laundering is related to a crime listed in Parts A or B (except welfare fraud and passing bad checks).
4. Bribery.
5. Smuggling.
6. Immigration violations.
7. Distribution, possession w/ intent to distribute, or importation of a controlled substance.
8. Arson.
9. Kidnapping or hostage taking.
10. Rape or aggravated sexual abuse.
11. Assault with intent to kill.
12. Robbery.
13. Fraudulent entry into a seaport as described in 18 U.S.C. 1036, or a comparable State law.
14. Violations of the Racketeer Influenced and Corrupt Organizations Act under 18 U.S.C. 1961, et seq., or a comparable state law, other than any permanently disqualifying offenses.
15. Voluntary manslaughter.
16. Conspiracy or attempt to commit crimes in this Section.
17. Any offense that is still pending in the courts (without official legal disposition) that will disqualify the individual if they are convicted.

The term conviction includes being found guilty, pleading guilty, pleading no contest, or being found guilty by reason of insanity.

This Section sets forth minimum standards Contractors must uphold through their background checking process, when assigning employees to work on an MTS contract. These disqualifying criteria are minimum standards to promote public safety/security. Contractor may choose to exceed these standards and is otherwise unrestricted in its employment decisions. Contractor may choose to employ individuals who do not meet these standards, as long as they are not assigned to work under this Agreement or on MTS property. Questions regarding the application of MTS's background checking standards should be directed to the MTS Manager of Human Resources.

Upon request of MTS, Contractor will provide sufficient documentation for MTS to audit Contractor's compliance with MTS's background checking standards. MTS reserves the right to delay provision of MTS ID Cards until contractor documents completion of appropriate background checks on employee(s) for whom Contractor is requesting MTS ID Card(s). MTS's oversight of Contractor's background checking process is not intended to replace Contractors

judgment or ability to manage its workforce and operation. MTS's oversight, or lack thereof, shall not limit Contractor's liabilities and/or obligations as set forth in this Agreement.

MTS reserves the right to suspend or revoke the MTS ID Cards of Contractor's employees at its sole and absolute discretion.

If, with MTS's consent, Contractor subcontracts all or part of the services within this Agreement, Contractor will remain directly responsible and liable for ensuring subcontractor(s) adhere to MTS background checking and ID Card standards.

If MTS determines that Contractor has breached its obligations as defined in this Section, MTS may immediately terminate this Agreement by providing written notice to Contractor. If this Agreement is terminated, Contractor will be paid its costs for work performed up to the time of termination.

SAMPLE