



Metropolitan Transit System

STANDARD CONSTRUCTION AGREEMENT

FOR

MTS DOC. NO. [Subject]

[Title]

THIS AGREEMENT is entered into this ____ day of ____ 2025, 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.) Email: _____

Telephone: _____

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:

[Title]

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 _____ (\$_____). 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	CONTRACTOR NAME
By: _____	
Sharon Cooney, Chief Executive Officer	By _____
Approved as to form:	
By: _____	Title: _____
Karen Landers, General Counsel	

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 are listed in the Contracts Documents Section of this IFB. 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.
 - i. 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.
 - ii. 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.

- iii. 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:

- A. Change Orders
- B. Addenda
- C. Federal Requirements (Federal Transit Administration)
- D. Special Conditions
- E. Project-Specific Technical Specifications, if applicable
- F. Plans (Contract Drawings)
- G. Contract
- H. General Conditions
- I. Instructions to Bidders
- J. IFB
- K. Contractor’s Bid Forms
- L. Caltrans Standard Specifications 2010 Standard Drawings
- M. Reference Documents
- N. Technical Specifications prepared by Click to write name of Point Person, dated Click to enter date
- O. Standard Specifications (Excluding sections 1-9 in their entirety)

P. 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:

Q. Figures govern over scaled dimensions

R. Detail drawings govern over general Drawings

S. Addenda or Change Order drawings govern over Contract Drawings

T. Contract Drawings govern over Standard Drawings

U. 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 IFB 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. 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.
- B. 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.

- C. 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.
- D. 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 shall obtain coverage for the Project under the State Water Resources Control Board (State Board) Water Quality Order No. 2022-0057-DWQ, National Pollutant Discharge Elimination

System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity, NPDES Permit No. CAS000002 (Construction General Permit) or 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.

For projects that disturb less than one acre of land, Contractor shall implement pollution prevention measures to control runoff, including but not limited to controls for erosion, sediment, dewatering pollution, source, and run-on and runoff; soil stabilization, protection of riparian and wetland vegetation and habitat, preventing non-stormwater discharges, final site stabilization, and other measures appropriate to control pollutants on a dynamic and changing site.

Contractor shall implement and comply with all aspects of the Construction General Permit, including but not limited to all discharge prohibitions and limitations, effluent limitations, receiving water limitations, revising permit coverage information, preparing, implementing and updating a Storm Water Pollution Prevention Plan (SWPPP) and best management practices (“BMPs”), conducting or causing to be conducted all inspections and monitoring activities, and terminating permit coverage.

Contractor shall employ or otherwise retain a qualified SWPPP developer (QSD) and qualified SWPPP practitioner (QSP) from the beginning of the Work through the notice of termination approval. Contractor shall ensure that all persons implementing the requirements of the Construction General Permit are licensed or certified in accordance with the requirements of the Construction General Permit. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of 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 shall submit all documents required by this Article to MTS for review and approval prior to submission of the documents to any regulatory agency, including but not limited to any notice of intent, notice of termination, site maps, photos, SWPPP, monitoring reports, and annual reports. Contractor shall confirm with MTS that the appropriate post-construction design standards are implemented and shall consult MTS’s Post Construction Stormwater Management Manual before finalizing any post construction stormwater measures.

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

MTS retains the right to procure and maintain coverage under the Construction General Permit or other required permits for the Project site if the Contractor fails to obtain coverage or to proceed in a manner that is satisfactory to MTS. Whether Contractor has adequately maintained compliance with this section shall be 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 or other requirement of this section shall be paid by the Contractor.

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.

Failure to comply with the Construction General Permit may be 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 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.

It shall be Contractor's responsibility to evaluate and include in the Contract amount the cost of complying with this section. Contractor shall 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. COMPLIANCE WITH CALIFORNIA AIR RESOURCES BOARD REGULATIONS

Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the California Air Resources Board ("CARB") regulations including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation").

Throughout the Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and subcontractors' fleet including, without limitation, Certificates of Reported Compliance ("CRC"), fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from MTS.

Contractor shall be solely liable for any and all costs associated with complying with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation. Contractor shall defend, indemnify and hold harmless MTS, its officials, officers, 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 Regulation.

3.27. 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.

3.28. 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.

3.29. 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:

- A. Enclose the working area with a substantial barricade and arrange work to cause minimum amount of inconvenience and danger to the public.
- B. Provide substantial barricades around any shrubs or trees indicated to be preserved.
- C. Deliver materials to the Project site over a route designated by MTS.
- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H. 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.
- I. At the completion of work each day, leave the Project site in a clean, safe condition.
- J. 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.

3.30. 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.

3.31. 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. 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 ensure 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.

Project Labor Agreement (PLA) Requirements:

The Contractor and all subcontractors agree to be bound by the PLA (see Attachment). As a condition of contract award, the Contractor shall submit its Letter of Assent to MTS's Project Labor Coordinator and all subcontractors shall submit their Letter of Assent before commencing any Work on the Project.

MTS reserves the right to reject as nonresponsive a Bid that is not accompanied by a completed Commitment to Comply with PLA Requirements Form attached to this IFB at the time of bid submittal.

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.

3.32. INSURANCE

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.

A. COVERAGE REQUIRED - ALL CONTRACTS (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.

B. **ADDITIONAL COVERAGES REQUIRED (AS INDICATED)**

- i. 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.

- ii. Railroad Protective Liability and CG 24 17 or Endorsement for CGL Policy - REQUIRED

The CGL policy must contain the following endorsement: Contractual Liability Railroads ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage). Furthermore, Contractor shall maintain a Railroad Protective Liability coverage with limits shown below, and name MTS as the named insured on the policy.

- iii. 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.

- iv. 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.

v. 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.

vi. 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.

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

viii. 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

ix. 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.

x. 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).

C. MINIMUM POLICY LIMITS REQUIRED

Combined Single Limit (CSL)

Commercial General Liability (Per Occurrence):	\$3,000,000
(General Aggregate)	\$6,000,000
(Completed Operations & Products Aggregate)	\$2,000,000
Automobile Liability: (Combined Single Limit)	\$2,000,000
Worker's Compensation:	Statutory Limits
Employer's Liability per Accident /or Disease:	\$1,000,000

Additional Coverages (as indicated under Section B, Additional Coverages Required):

<input type="checkbox"/> B. (1) Builder's Risk	Replacement Cost
<input checked="" type="checkbox"/> B. (2) Railroad Protective (Per Occurrence):	\$5,000,000
Railroad Protective (General Aggregate):	\$10,000,000
<input type="checkbox"/> B. (3) Professional Liability	\$
<input type="checkbox"/> B. (4) Pollution Liability	\$
<input type="checkbox"/> B. (5) Contractor Equipment	Replacement Cost
<input type="checkbox"/> B. (6) Installation Floater	Replacement Cost
<input type="checkbox"/> B. (7) Garage Keeper's Legal Liability	\$
<input type="checkbox"/> (Combined Single Limit (CSL) Per Occurrence)	_____
<input type="checkbox"/> B. (8) Crime Fidelity Insurance	\$
<input checked="" type="checkbox"/> B. (9) Umbrella or Excess Liability (if required to meet liability limits above)	\$
<input checked="" type="checkbox"/> B. (10) Primary and Non-Contributory Insurance	Primary
<input type="checkbox"/> B. (11) Cyber Security Liability Insurance	\$

D. 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.

E. FLOOD INSURANCE

As applicable, Contractor shall comply with flood insurance laws and guidance as follows: (1) it will have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before accessing federal assistance to acquire, construct, reconstruct, repair, or improve that building; (2) each such building and its contents will be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001, et seq., whichever is less; and (3) it will follow FTA guidance, except to the extent FTA determines otherwise in writing.

3.33. TIME FOR COMPLETION AND 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.

3.34. 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 **ten (10)** 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:

- A. Obtaining and paying for all bonds, insurance, and permits.
- B. Moving on to the Project site of all Contractor's plant and equipment required for the first month's operations.
- C. Installing temporary construction power, wiring, and lighting facilities, as applicable.
- D. Establishing fire protection system, as applicable.
- E. Developing and installing a construction water supply, if applicable.
- F. 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.
- G. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
- H. 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.
- I. Arranging for and erection of Contractor's work and storage yard.
- J. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
- K. 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 IFB. 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:

- A. 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.
- B. Defective work not remedied.
- C. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.
- D. Damage to another contractor or a third party.
- E. Amounts which may be due MTS for claims against Contractor.
- F. Failure of Contractor to keep the record ("as-built") drawings up to date.
- G. Failure to provide update on construction schedule as required herein.
- H. Site cleanup.
- I. Failure to comply with Contract Documents.
- J. Liquidated damages.
- K. Legally permitted penalties.
- L. 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 and Retention:

- A. Prompt Progress Payment.** Contractor shall pay each subcontractor participating on the contract for satisfactory completion of accepted work no later than seven (7) calendar days from the receipt of each progress payment the Contractor receives from MTS in accordance with Section 7108.5 of California Business and Professions Code. Any subcontractor will also be required to pay any lower-tier subcontractors for satisfactory completion of accepted work no later than seven (7) calendar days from the receipt of each progress payment from the prime contractor. Any delay or postponement of payment over 30 calendar days may occur only for good cause following written approval of MTS. This clause applies to both DBE and non-DBE subcontractors.
- B. Retention.** MTS shall hold retainage of 5% from the Contractor for any public works contract over \$5,000. MTS shall make prompt and regular incremental acceptances of portions of contract work as determined by MTS and retain 5% of the contract price until final completion and acceptance of performance. Contractor shall make prompt and full payment of any retainage owed to subcontractors for satisfactory completion of the subcontractors work within seven (7) calendar days of receiving retention proceeds from MTS in accordance with Sections 7107 and 7201 of Public Contract Code. Subcontractors will also be required to make prompt and full payment of any retainage owed to any lower-tier subcontractors, for satisfactory completion of lower-tier subcontractors work, no later than seven (7) calendar days from receiving retention proceeds from the prime contractor. Any delay or postponement of payment over 30 calendar days may occur only for good cause following written approval of MTS. This clause applies to both DBE and non-DBE subcontractors.
- C. Monitoring.** If subcontractors, Contractor must submit a completed MTS Prompt Payment Certification Form to MTS with each invoice, within one (1) month following final acceptance of contract work, and as requested by MTS. The MTS Prompt Payment Certification Form may be downloaded at www.sdmts.com/business-center/procurement.
- D. Record Retention.** Contractor and Subcontractors must maintain records of payments to DBE and non-DBE subcontractors for a minimum of three (3) years.
- E. Penalties for Noncompliance.** Failure of Contractor or subcontractor to comply with this provision will constitute noncompliance, which may result in the application of legal and contract remedies, including, but not limited to, Contractor will not be reimbursed for work performed by subcontractors unless and until the Contractor ensures that the subcontractors are promptly paid for the work they have performed, contract termination and/or other remedies as deemed appropriate by MTS. In addition, any violation of Section 7108.5 of

California Business and Professions Code or Sections 7107 and 7201 of California Public Contract Code may subject Contractor or subcontractor to the penalties, sanctions, and other remedies of those Sections. 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 or nonpayment by the Contractor, deficient Subcontractor performance, or noncompliance by a Subcontractor.

F. Subcontracts. Contractor must include this clause in its subcontracts and lower-tier subcontracts related to the performance of this Agreement.

Invoices:

Invoices must be sent to the MTS Accounting Department, via email, at ap@sdmts.com. All invoices must have the Purchase Order and contract number clearly displayed to ensure timely payment. MTS will not pay on packing slips, receiving documents, delivery documents, or other similar documents. Invoices must be submitted for payment.

Payment terms shall be net 30 days from invoice date.

Contractors must also indicate if any of the invoiced amount(s) is for service or work provided by a subcontractor and indicate the amount that will be paid to the subcontractor. Contractors must also comply with the prompt payment requirements in the Prompt Progress Payments and Retention Section of the Standard Conditions.

3.35. CHANGES AND EXTRA WORK PAYMENT

A. 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 this IFB. 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.

B. Process for Determining Adjustments in Contract Price:

i. 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.

ii. 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.

iii. Requirements for Change Order Proposal:

Contractor shall include material, labor, and equipment separately priced for each element of Work. Proposals must be accompanied by sufficiently detailed supporting backup documentation to permit verification by MTS, including but not limited to estimates and quotations from the Contractor, its subcontractors or material suppliers. Allowable Overhead and Profit may be added to the total of these costs if allowed by the Contract Documents and must be shown as separate lines.

NOTE: As general guidance, all change order documentation shall be tabulated into a detailed spreadsheet which must be submitted with the change order proposal to MTS. MTS will provide Contractor with the Change Order spreadsheet template.

The spreadsheet must identify the type of change order (unit price, lumpsum or time and materials), identify labor costs, materials, equipment, overhead and/or profit, and any other costs. Failure to submit the required documents may result in change order processing delays.

- 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.

C. Types of Change Orders:

i. 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.

ii. 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.

iii. 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.

D. Calculation of Overhead and Profit

In accordance with the Profit Calculation Matrix sample attached in General Conditions Referenced Forms. 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.

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.

E. 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.

F. 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.

3.36. FINAL ACCEPTANCE AND PAYMENT

Final Inspection:

Upon written notice from Contractor that 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.

3.37. 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.

3.38. 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.

3.39. 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:

- A. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made.
- B. Chronology of events and correspondence.
- C. Analysis of claim merit.
- D. Analysis of claim cost.
- E. Analysis of Contract Time
- F. 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:

- A. Deny the Claim in whole or in part;
- B. Approve the Claim; or
- C. 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 invokes 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.

3.40. 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.

3.41. 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.

3.42. 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. EEO PROGRAM

A. MTS's EEO Program:

MTS is an EEO Employer. As such, MTS agrees to comply with all applicable laws and implementing regulations. MTS' EEO Program for Employees and Contractors, MTS Board Policy No. 25, is part of this Agreement. The policies are located here: <https://www.sdmts.com/about-mts-reports-records-and-policies/policies-and-procedures>.

B. Workforce Utilization Report:

A Workforce Utilization Report form signed by the Contractor is a condition for the award of this contract.

C. Contractor's EEO Plan:

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, age or status as a parent. 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 following Contractors are required to have an Equal Employment Opportunity Plan that complies with FTA requirements:

- i. 50-99 Transit Employees. Each Contractor who provides MTS labor, equipment, materials and/or services of \$1,000,000 or more of federal capital or operating assistance, or \$250,000 or more of federal planning assistance, per federal fiscal year

with 50-99 transit-related employees shall maintain for each year of the Contract an Abbreviated Equal Employment Opportunity Program as required by interpreting guidance at FTA Circular 4704.1A.

- ii. Over 100 Transit Employees. Each Contractor who provides MTS labor, equipment, materials and/or services of \$1,000,000 or more of federal capital or operating assistance, or \$250,000 or more of federal planning assistance, per federal fiscal year, with 100 or more transit-related employees shall maintain for each year of the Contract, and submit a copy to MTS, a Full Equal Employment Opportunity Program as required by interpreting guidance at FTA Circular 4704.1A.

D. Compliance with Regulations:

Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; comply with federal transit law, specifically 49 U.S.C. § 5332; FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients": U.S. DOT Regulations (49 CFR Part 21) as applicable; U.S. DOL regulations (41 CR chapter 60) as applicable; .,."; and follow any other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination.

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

- i. 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.
- ii. 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.
- iii. 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.

- iv. 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.
- v. 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.
- vi. 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.
- vii. 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.
- viii. 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

A. 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 IFB 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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. DBE PARTICIPATION AND OTHER SMALL BUSINESS PARTICIPATION

This project is subject to 49 CFR Part 26 entitled “Participation by DBEs in DOT Financial Assistance Programs.” MTS’s DBE program has an aspirational goal of 5.6% participation by certified DBE’s over FFY 2025 to 2027 (October 1, 2024 – September 30, 2027).

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:

- i. DBE Program – Information for MTS’s Bidder List Form

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. 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, which means the DBE 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 and reason of decertification and the Contractor shall provide such information promptly to MTS. If a subcontractor becomes a newly certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification and provide such information promptly to MTS.
- 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, small businesses, minority owned business, woman owned businesses, disabled veteran owned businesses, persons with disabilities owned businesses, and lesbian gay bisexual and transgender owned businesses for any potential subcontracting opportunities on this project.

Contractor is also encouraged to use services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals. Resources to identify these firms, as well as bonding and financial assistance resources, may be found at www.sdmts.com/business-center/procurement/DBE.

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:

- A. Registered sex offenders are ineligible.
- B. Espionage or conspiracy to commit espionage.
- C. Sedition or conspiracy to commit sedition.
- D. Treason or conspiracy to commit treason.
- E. A federal crime of terrorism as defined in 18 U.S.C. 2332b(g), or comparable State law, or conspiracy to commit such crime.
- F. A crime involving a transportation security incident (TSI). Note: A TSI 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.
- G. Improper transportation of a hazardous material under 49 U.S.C. 5124 or a comparable state law.
- H. 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).
- I. Murder.
- J. 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.

- K. 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.
- L. Attempt to commit the crimes in items (B)-(E) of this Section.
- M. Conspiracy or attempt to commit the crimes in items (F)-(K) of this Section.
- N. 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):

- A. 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. 5 845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.
- B. Extortion.
- C. 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).
- D. Bribery.
- E. Smuggling.
- F. Immigration violations.
- G. Distribution, possession w/ intent to distribute, or importation of a controlled substance.
- H. Arson.
- I. Kidnapping or hostage taking.
- J. Rape or aggravated sexual abuse.
- K. Assault with intent to kill.
- L. Robbery.
- M. Fraudulent entry into a seaport as described in 18 U.S.C. 1036, or a comparable State law.
- N. 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.
- O. Voluntary manslaughter.
- P. Conspiracy or attempt to commit crimes in this Section.
- Q. 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 Contractor's 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.

3.49. COST PRINCIPLES

Contractor and any subcontractors agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual project cost items.

Contractor and its subcontractors shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of Contractor and its subcontractors shall conform to Generally Accepted Accounting Principles (GAAP) and enable the determination of incurred costs at interim points of completion.

Any costs for which payment has been made that are determined by a subsequent audit to be unallowable under the provisions above are subject to repayment by the Contractor to MTS.

3.50. RECORDS RETENTION AND ACCESS TO SITES OF PERFORMANCE (APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

- A. Types of Records. Contractor and any Subcontractor shall retain, complete and make readily accessible records related in whole or in part to the performance of the Contract, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- B. Retention Period. The Contractor and any Subcontractor 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.
- C. Access to Records and Sites of Performance. Contractor and any Subcontractor shall:
 - i. Provide sufficient access to inspect, copy and audit records and information, related to the performance of the Contract, upon receipt of a request made by the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, to the Comptroller General of the United States, the Comptroller General's duly authorized representatives, State of California or its duly authorized representatives, the California State Auditor, and/or MTS;
 - ii. Permit those individuals listed above access to all records of employment, employment advertisements, employment application forms, and other pertinent data related to the performance of the Contract;
 - iii. Permit those individuals listed above to have access to the sites of performance of the Contract and to make site visits as needed in compliance with the U.S. DOT Common Rules, as applicable.
 - iv. Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the U.S. DOT Common Rules, as applicable.

3.51. [NOT APPLICABLE] BUILD AMERICA, BUY AMERICA

This scope of work may trigger Build America, Buy America requirements, which apply to construction materials. The below list of definitions and examples is not exhaustive and is only to be used as illustrative and a guidance tool for Contractor compliance.

A. CONSTRUCTION MATERIALS

- i. Per Infrastructure Investment and Jobs Act (IIJA) Sec. 70912 (2)(C), all construction materials must be manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.
- ii. "Construction materials" **includes** an article, material, or supply that is or consists primarily of:
 - a) non-ferrous metals;

- b) plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - c) glass (including optic glass);
 - d) lumber; or
 - e) drywall.
 - Exception: “Construction Materials” **does not include** an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.
- iii. According to the Office of Management and Budget (OMB) Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure M-22-11, April 18, 2022, a Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computers.

3.52. [NOT APPLICABLE] BUY AMERICA / BUILD AMERICA, BUY AMERICA

This scope of work may trigger Buy America and/or Build America, Buy America requirements, which apply to construction materials, manufactured products, rolling stock, iron and steel. The below list of definitions and examples is not exhaustive and is only to be used as illustrative and a guidance tool for Contractor compliance.

A. CONSTRUCTION MATERIALS

- i. Per Infrastructure Investment and Jobs Act (IIJA) Sec. 70912 (2)(C), all construction materials must be manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.
- ii. “Construction materials” **includes** an article, material, or supply that is or consists primarily of:
 - a) non-ferrous metals;
 - b) plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - c) glass (including optic glass);
 - d) lumber; or
 - e) drywall.
 - Exception: “Construction Materials” **does not include** an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.
- iii. According to the Office of Management and Budget (OMB) Initial Implementation Guidance on Application of Buy America Preference in Federal Financial

Assistance Programs for Infrastructure M-22-11, April 18, 2022, a Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computers.

B. MANUFACTURED PRODUCT

Per IIJA Section 70912 (2)(B), all manufactured products used in the project must be produced in the United States. Examples for manufactured products provided per Appendix A to 49 CFR 661.3 include: Infrastructure projects not made primarily of steel or iron, including structures (terminals, depots, garages, and bus shelters), ties and ballast; contact rail not made primarily of steel or iron; fare collection systems; computers; information systems; security systems; data processing systems; and mobile lifts, hoists, and elevators.

C. [NOT APPLICABLE] ROLLING STOCK

Examples provided per Appendix A to 49 CFR 661.3 include: buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, as well as vehicles used for support services); train control, communication, and traction power equipment that meets the definition of end product.

D. IRON OR STEEL

Per IIJA Section 70912 (2)(A), all iron and steel used in the project must be produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Examples of iron and steel provided per Appendix A to 49 CFR 661.3 include: Items made primarily of steel or iron such as structures, bridges, and track work, including running rail, contact rail, and turnouts.

3.53. GENERAL CONDITIONS REFERENCED FORMS

A. SAMPLE PROMPT PAYMENT CERTIFICATION FORM

SAN DIEGO METROPOLITAN TRANSIT SYSTEM PROMPT PAYMENT CERTIFICATION FORM

PURPOSE: This certification is used to monitor compliance by prime contractors to promptly pay its subcontractors. In accordance with DOT's DBE Regulations and MTS's DBE Program, prime contractors must pay its subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS. Any delay or postponement of payment over thirty (30) days must be for good cause and after receipt of prior written approval from a MTS Project Manager.

INSTRUCTIONS: Please complete the below Prompt Payment Certification Form and return to MTS within **14 days** after receipt of payment from MTS at the following email address: ContractAdmin@sdmts.com. If there is more than one subcontractor on the contract, please complete a separate Prompt Payment Certification Form for each subcontractor.

1. CONTRACTOR INFORMATION

Contractor Name: _____ Contract No. _____ Work Order No. _____
Telephone No. _____ Email Address _____

2. PAYMENT INFORMATION

- a) Name of Subcontractor: _____
- b) Type of Services or Materials Provided by Subcontractor (state NAICS code if known)? _____

- c) Date Last Payment Received from MTS?: _____
- d) Was any of that payment for services/materials provided by the subcontractor? _____
* If YES, please answer questions e-h. If NO, proceed to Part 3 Certification.
- e) Payment Amount: _____
- f) Payment Date: _____
* Prime contractors must pay their subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS
- g) If payment was delayed or postponed over thirty (30) days, who at MTS pre-authorized the delay or postponement and when was such pre-authorization given?: _____

- h) If payment was delayed or postponed over thirty (30) days, was the reason for good cause? (Explain): _____

3. CERTIFICATION

The contractor hereby certifies that the foregoing Prompt Payment Certification Form is true and correct.

Signature _____ Title _____ Date _____

*** FOR MTS USE ONLY ***
Date Certification Received _____ Contractor Compliant _____

B. SAMPLE CONSTRUCTION CHANGE ORDER

CONSTRUCTION CHANGE ORDER

Project Name:	<input type="text"/>	Date:	<input type="text"/>
To:	San Diego Metropolitan Transit System	Amendment Number	<input type="text"/>
From (Contractor):	<input type="text"/>	Contract Number:	<input type="text"/>
		MTS CCO Number	<input type="text"/>

SUBCONTRACTORS AND OTHER THIRD PARTY CONTRACTORS

Any time there is a change to a Subcontractor or Other Third Party Contractors resubmit Attachment: SUBCONTRACTORS and THIRD PARTY CONTRACTORS. Any change to these forms after bid submittal must be made in accordance with Public Contract Code sections 4100 et seq., as applicable, and as permitted by MTS.

OVERALL DESCRIPTION OF WORK

This CCO is prepared in accordance with and incorporates Section Changes and Extra Work Payment of the Contract Documents and consists of the following:

A. FOR UNIT PRICE CCOS ONLY (AS APPLICABLE)

Contractor REF#	Description	Bid Item	Quantity	QTY Change	Amount
Subtotal A:					\$ -

B. FOR LUMP SUM CCOS ONLY (AS APPLICABLE)

Contractor REF#	Description	Amount
Subtotal B:		\$ -

C. FOR TIME & MATERIALS CCOS ONLY (AS APPLICABLE)

Contractor REF#	Description	Bid Item	Amount
		<i>Payroll Costs:</i>	
		<i>Equipment Costs</i>	
		<i>Materials Costs</i>	
		<i>Consultant Costs</i>	
		<i>Supplemental Costs</i>	
		<i>Consultant Costs</i>	
		<i>Other - Describe Services</i>	
		<i>Bonds & Insurance total:</i>	
		<i>Contractor Overhead & Profit on Subcontractors:</i>	
		<i>Contractor Overhead & Profit total:</i>	
Subtotal C:			\$ -

Total = (A+B+C)	\$ -
------------------------	------

Original Contract value:	\$ -
Adjustment by Previous Amendment(s)	\$ -
Adjustment by this Change Order	\$ -
New Contract Amount	\$ -

The Contract Time due to this Change Order will be (Increased or Unchanged):		by		days
Original Completion Date:				
Adjustment to Completion Date by Previous Change Order(s) (Number of Calendar Days):			0	
New Completion Date adjusted by this Change Order:			1/0/1900	

Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising out of or related to the subject of this Change Order and acknowledges that the compensation (time and cost) set forth herein comprises the total compensation due for the work or change defined in the Change Order, including all impact on any unchanged work. By signing this Change Order, the Contractor acknowledges and agrees that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for any acceleration or interruption of schedules, extended overhead costs, delay, and all impact or cumulative impact on all Work under this Contract. The signing of this Change Order acknowledges full mutual accord and satisfaction for the change and that the stated time and/or cost constitute the total equitable adjustment owed the Contractor as a result of the change. The Contractor hereby releases and agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause that shall arise out of, or as a result of, this Change Order and/or its impact on the remainder of the Work under the Contract.

Contractor _____ Date: _____ MTS Chief Executive Officer _____ Date: _____

Follow all applicable procedures and provide all appropriate documentation as required by the Contract Documents.

C. PROFIT CALCULATION MATRIX

This form is prepared in accordance with and incorporates “CHANGES AND EXTRA WORK PAYMENTS” section of the Contract Documents.

Profit Calculation Matrix			
Contract No.: X###.0-##		Prepared By: XXXXXX	
Factor	Rate	Weight (variable)	Value
Degree of Risk	30		0.00
Subcontracting	10		0.00
Complexity of Work	25		0.00
Value of Job	20		0.00
Contractor Investment	15		0.00
Total Profit (%) 100	100		0.00

Based on the circumstances of the Change Order, each of the above factors shall be weighted from .03 to .15 as indicated below. The value shall be obtained by multiplying the rate by the weight. The fair and reasonable profit for NPP Items of work shall be determined from the value column when totaled. The maximum percent profit shall not exceed 15%.

Degree of Risk: Where the work involves no risk, or the degree of risk is very small, the weighting shall be .03; as the degree of risk increases, the weighting shall be increased up to a maximum of .15. Factors considered include but are not limited to: the nature of the work, method specification or performance specification, where work is to be performed, working conditions, coordination, shop drawings, long lead items, limited work windows, time constraints, amount of labor included, and degree of scope definition.

Subcontracting: When the Contractor uses subcontractors to perform work, the weighting value shall be inversely proportional to the portion of the work performed by subcontractors. Where 80% or more of the work is to be subcontracted, the weighting shall be .03. Such weighting shall increase proportionally to .15 when all the work is performed by the Contractor’s own forces.

Complexity of Work: When the work is most difficult and complex the weighting shall be .15. This shall be proportionately reduced to .03 for the simplest of jobs. Factors MTS shall consider include but are not limited to: the nature of the work, coordination, shop drawings, by whom the work is performed, the location of the work, and time constraints of the work.

Value of Job: Each item in excess of \$100,000 shall be weighted at .15. Work estimated between \$100,000 and \$25,000 shall be proportionately weighed from .15 to .05. Work from \$24,999 to \$5,000 shall be weighted at .04. Work less than \$5,000 shall be weighted at .03.

Contractor Investment: Contractor investment shall be weighted proportionately from .03 to .15. Factors MTS shall consider, include but are not limited to, mobilization costs, and contractor advanced funding for materials, shop drawings, fabrication and quality control testing.

4. SCOPE OF WORK/MINIMUM TECHNICAL SPECIFICATIONS

ATTACHMENT 1

SAMPLE

5. SPECIAL CONDITIONS

5.1. LIQUIDATED DAMAGES

It is agreed that the Contractor will pay MTS the sum of \$Click to enter dollar amount for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees MTS may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents.

5.2. WORKING DAYS

Working days are defined as Monday through Friday, excepting MTS holidays. The following days are MTS holidays:

- A. New Year's Day – January 1
- B. Martin Luther King, Jr. Day – Third Monday in January
- C. President's Day – Third Monday in February
- D. Memorial Day – Last Monday in May
- E. Independence Day – July 4
- F. Labor Day – First Monday in September
- G. Veteran's Day – November 11
- H. Thanksgiving Day – Fourth Thursday in November
- I. Day after Thanksgiving – Friday after Thanksgiving Day
- J. Christmas Day – December 25

When one of the above holidays falls on a Saturday, the Friday preceding will be observed as a holiday. When one of the above holidays falls on a Sunday, the Monday following will be observed as a holiday. When December 25 falls on a Tuesday, December 24 will additionally be observed as a holiday. When December 25 falls on a Thursday, December 26 will additionally be observed as a holiday.

5.3. WORKING HOURS

Normal working hours shall be between 7:00 a.m. and 3:30 p.m. unless otherwise noted within these specifications or on the Drawings, or as otherwise required by any governmental entity within whose jurisdiction the Work is performed. Alternate working hours may be arranged, subject to the permission of MTS, to accommodate time restricting schedules imposed on the Contractor by other agencies. MTS shall receive written notice 48 hours prior to any proposed changes in working hours. In no case shall any work be performed outside the normal working hours indicated above or alternate working hours otherwise noted within these specifications or on the Drawings without prior approval of MTS.

5.4. PRE-CONSTRUCTION CONFERENCE

MTS shall schedule a pre-construction conference immediately after the Award by MTS's Board of Directors. The Contractor and all subcontractors whose portion of the Work accounts for 5% or more of the contract bid price are required to attend. Contractor shall, at minimum, submit the following listed items at the pre-construction conference. Additional submittals shall be provided by Contractor at the pre-construction conference if required by MTS.

- A. Tentative construction schedule detailing the major items of work and indicating project completion within the contract time limit specified herein.
- B. Shoring plan and Cal/OSHA trench/excavation permit.
- C. Contact addresses, telephone and FAX numbers, e-mail addresses and 24-hour contact numbers for all key project personnel.
- D. A Submittal Log (including all critical dates) shall be submitted at the preconstruction conference. The Submittal Log shall be in accordance with the procedures outlined in the Specifications, and materials shall be listed in the Approved Materials list contained therein.
- E. Substitution requests, if any.
- F. Contractor's Schedule of Values.

5.5. QUALIFICATIONS OF SITE SUPERINTENDENT

The Contractor shall employ a construction superintendent or foreman, who shall be present onsite during normal working hours for the duration of the project. The Contractor shall not substitute another construction superintendent or foreman without written authorization from MTS. The construction superintendent or foreman shall have full authority to act for the Contractor. The construction superintendent or foreman shall have at least five (5) years' experience in Click to add requirement construction, including Click to add requirement. The construction superintendent or foreman shall also have successfully and competently worked as the construction superintendent or foreman on at least one similar size Click to add requirement project within the past five (5) years. Prior to issuance of the Notice to Proceed, the Contractor shall submit evidence that the proposed construction superintendent or foreman has the above qualifications. Such evidence shall include project names, project owners with reference contact information, a brief description of the project, and constructed cost.

5.6. PROGRESS MEETINGS

- A. MTS will schedule and administer meetings throughout progress of the Work at a maximum interval of every two (2) weeks.
- B. MTS will make arrangements for meetings, prepare agenda with copies for participants, and preside at meetings.
- C. Attendance Required: Job superintendent, major subcontractors and suppliers, MTS, Engineer, as appropriate to agenda topics for each meeting.
- D. The scheduled progress meetings may include but are not limited to the following agenda items:
 - i. Review minutes of previous meetings.
 - ii. Review of submittals schedule and status of submittals.

- iii. Review of off-site fabrication and delivery schedules.
 - iv. Field observations, problems, and decisions.
 - v. Non-compliant Work.
 - vi. Maintenance of quality and work standards.
 - vii. Safety and job cleanliness.
 - viii. Review of Work progress and schedule.
 - ix. Planned progress during succeeding work period (i.e. “Look-Ahead Schedules”).
 - x. Corrective measures to regain projected schedules.
 - xi. Shutdowns.
 - xii. Requests for Information.
 - xiii. Change Orders.
 - xiv. Other business relating to the Work.
- E. MTS will record minutes and distribute copies after meeting to participants and those affected by decisions made.
- F. Facility shutdown planning meetings will be conducted in addition to regularly scheduled progress meetings.

5.7. CONSTRUCTION SEQUENCE

Work to be done requires specific installation sequencing to maintain service to customers during all phases of construction. Contractor and MTS shall closely coordinate the necessary shutdowns, which shall be performed by MTS crews. Contractor shall submit for approval the sequence of work.

ADD construction sequence special requirements here, if applicable

5.8. DOCUMENTATION OF EXISTING CONDITIONS

Prior to construction, Contractor shall prepare a video recording, complete with verbal commentary, showing the pre-construction conditions in and near the work locations contemplated by this contract. The video recording shall note, at a minimum, the appearance, condition and location of existing pavements and surface features, other public or private improvements, and utility markouts. Contractor shall provide a copy of the video recording to MTS prior to the start of construction.

5.9. SAFETY DATA SHEET (SDS)

Upon award, Contractors shall email the SDS for materials/ chemicals that will be used or stored at the construction site during the duration of the project, attention Ngan Nguyen, MTS Environmental Health and Safety Specialist at Ngan.Nguyen@sdmts.com for review or comment if needed. The Contractor shall notify the MTS Environmental Health and Safety Specialist if there are changes or updates to the SDS during the term of the contract to ensure the MTS recordkeeping is kept updated throughout the contract.

5.10. ENVIRONMENTAL PROTECTIONS

Contractor shall promptly supply MTS with copies of all notices, reports, correspondence, and submissions made by Contractor to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, California Department of Toxic Substances Control, San Diego Regional Water Quality Control Board, or any other local, state, or federal authority which requires submission of any information concerning environmental matters.

5.11. WATER QUALITY MANAGEMENT AND COMPLIANCE

- A. Contractor must recover and legally dispose of all wastewaters created while providing Services. Contractor assumes any and all risks and liabilities arising from the failure to properly recover and legally dispose of wastewater. Contractor must implement best management practices set forth in any storm water pollution prevention plan relevant to the provision of the Services.
- B. Compliance with Water Quality Laws, Ordinances and Regulations. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of 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 shall additionally comply with the lawful requirements of the San Diego Regional Water Quality Control Board, any municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges and shall implement best management practices, consistent with the requirements of any board, municipality, drainage district or other local agency appropriate for the control of discharges related to the Services.
- C. Standard of Care. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors have or will receive adequate training, as determined by MTS, regarding these requirements as they may relate to the Services.
- D. Liability for Non-compliance.
 - i. Indemnity:

Failure to comply with laws, regulations, and ordinances listed in this Section may constitute a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Contractor agrees to indemnify, defend and hold harmless MTS, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which MTS, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, including but not

limited to any failure by Contractor to implement best management practices set forth in any stormwater pollution prevention plan, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of MTS, its officials, officers, agents, employees or authorized volunteers. Contractor is solely liable for any administrative or civil enforcement action arising from Contractor's failure to comply with the laws, regulations, and ordinances listed in this Section and must pay any monetary penalty, fine, or damages associated with such action.

ii. Defense

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 the relevant enforcement entity.

iii. Damages

MTS may seek damages from Contractor for delay in completing the Services caused by Contractor's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

5.12. [NOT APPLICABLE] ROADWAY WORKERS PROTECTION

Prior to entering the MTS railroad operating corridor, all workers of Contractor, sub-Contractors, and any other third-party contractor under Contractor's control working on MTS property shall have taken and passed a four (4) hour "Roadway Workers Protection" training course as required by the Federal Railroad Administration (FRA) California Public Utilities Commission (CPUC). Training courses are valid for one year from date issued. Contractor should allow at least two weeks to schedule training prior to commencement of services on the right of way (ROW). Registration for the course can be found online at: <http://www.sdmts.com/Business/RAILSAFETYTRAINING.htm>. Any costs related to RWP training courses shall be at the sole expense of the Contractor.

5.13. [NOT APPLICABLE] FLAGGING

Any work within fifteen (15) feet of active rail, or as otherwise identified by MTS, shall require a MTS flagger. An MTS Flagger Request form must be submitted to FlagRequest@sdmts.com no later than 72 hours prior to the commencement of the work. The MTS Flagger Request shall include: the specific location, time(s) and date(s) for when a MTS flagger(s) will be necessary. The MTS Flagger will be provided at the expense of the party requesting the work. The requester will be responsible to contact SDTI Assignment Office at (619) 595-4956 no later than 24 hours prior to beginning of work for all cancellations and may be subject to SDTI labor reporting costs.

5.14. [NOT APPLICABLE] SIGNALING

Contractor shall be required identify railroad utilities prior to any prior to any excavation and/or digging within MTS's rail right-of-way. Contractor shall be responsible for coordinating with MTS

personnel to ensure MTS personnel are present when marking out Trolley facilities/property. If Contractor does not have authorized personnel capable of identifying railroad utilities on the right of way (ROW), Contractor can contact Cable Pipe and Leak ("CPL"), at (619) 574-0171 to locate said utilities prior to excavation or digging. The utility mark-out will be provided at the expense of the Contractor.

5.15. [NOT APPLICABLE] BRAND OR TRADE NAMES

As described in IFB and pursuant to Public Contract Code section 3400(b) MTS has made the following findings as they relate to need for the use of specific materials, products, methods or services must be utilized for the Project:

[INSERT FINDINGS OR ATTACH BOARD RESOLUTION]

Based on the findings described herein, MTS requires that the following specific product(s), thing(s), and /or service(s) be utilized for the Project:

[INSERT SPECIFICATIONS OR BRAND NAMES OF MATERIALS, PRODUCTS, METHODS, THINGS OR SERVICES REQUIRED BY MTS]

5.16. [NOT APPLICABLE] PROJECT RETENTION, SUBSTANTIAL

MTS has made the following findings such that the project is substantially complex and therefore requires a retention amount that exceeds 5 percent pursuant to the provisions of Public Contract Code section 7201.

5.17. FEDERAL REQUIREMENTS

The Project is funded in whole or in part with FTA funds. The Contractor shall comply with the Federal Funding Requirements set forth in the Contract Documents, and all other applicable requirements of MTS grant agreement with the FTA.

6. ATTACHMENTS/DRAWINGS

ATTACHMENT 2 BID PRICE FORM

ATTACHMENT 3 SUBCONTRACTORS

ATTACHMENT 4 PROJECT LABOR AGREEMENT (PLA)

ATTACHMENT 5 DAVIS BACON WAGE DETERMINATIONS

DRAWING 1 XXX

SAMPLE

7. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

As a Federal Transit Administration (FTA) grantee, the San Diego Metropolitan Transit System (MTS), a California Public Agency, is required to inform the Contractor and any Subcontractor of the following information:

7.1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

7.2. FEDERAL CHANGES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between MTS and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor shall also ensure compliance by subcontractors at any tier of any applicable change to federal requirements.

7.3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

7.4. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or

causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

7.5. FALSE CLAIMS ACT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor and any Subcontractor acknowledges that the False Claims Act, 31 U.S.C. 3729 et seq., pertains to the underlying contract or the FTA assisted project for which this contract work is performed. If the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance, the Contractor must notify MTS, U.S. DOT Inspector General, and the FTA Chief Counsel or FTA Region 9 Counsel. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

7.6. NOTICE TO FTA ON LEGAL MATTERS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$25,000)

The Contractor and any Subcontractor shall notify MTS and the FTA Chief Counsel or FTA Region 9 Counsel if a current or prospective legal matter that may affect the Federal Government emerges. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in an award of federal funding, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

7.7. DEBARMENT AND SUSPENSION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$25,000)

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: a) Debarred from participation in any federally assisted Award; b) Suspended from participation in any federally assisted Award; c) Proposed for debarment from participation in any federally assisted Award; d) Declared ineligible to participate in any federally assisted Award; e) Voluntarily excluded from participation in any federally assisted Award; or f) Disqualified from participation in any federally assisted Award. The Contractor agrees to include a provision requiring compliance to this section in its lower tier covered transactions.

7.8. RESTRICTIONS ON LOBBYING

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$100,000)

The Contractor and their subcontracts at every tier certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended; U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature. The Contractor and their subcontracts at every tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

7.9. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$150,000)

The Contractor and any Subcontractor agrees: 1) It will not use any violating facilities; 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;" 3) It will report violations of use of prohibited facilities to FTA; and 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

7.10. ENERGY CONSERVATION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor and any Subcontractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq and 49 C.F.R. part 622, subpart C.

7.11. RECOVERED MATERIALS AND SOLID WASTE

(APPLICABLE TO OPERATIONS, CONSTRUCTION AND GOODS CONTRACTS AND SUBCONTRACTS INVOLVING ITEMS DESIGNATED BY THE EPA, WHERE THE PURCHASE

PRICE OF THE ITEM EXCEEDS \$10,000 OR THE VALUE OF THE QUANTITY ACQUIRED DURING THE PRECEDING FISCAL YEAR EXCEEDED \$10,000)

The Contractor and any Subcontractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the State Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247. The requirements of Section 6002 include procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

7.12. ENVIRONMENTAL PROTECTIONS

(APPLICABLE TO ALL CONTRACTS)

- A. General. Contractor agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, requirements, and orders and directives issued by federal, state, or local agencies, and follow applicable guidance.
- B. National Environmental Policy Act. An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Contractor agrees that it will: (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139, (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508, (c) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622, (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and (e) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto. (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (a) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013, (b) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006, and (c) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- C. Environmental Justice. Contractor agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority

Populations and Low-Income Populations,” 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

- D. Other Environmental Federal Laws. Contractor agrees that it will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order Nos. 11988 and 13690 relating to “Floodplain Management.”
- E. Hazardous Substances.
- i. As used in this section, the term “Hazardous Substances” means:
 - a) Any substance designated pursuant to Section 1321(b)(2)(A) of Title 33 of the United States Code;
 - b) Any element, compound, mixture, solution, or substance designated pursuant to 42 U.S.C. § 9602;
 - c) Any hazardous waste having the characteristics identified under or listed pursuant to 42 U.S.C. § 6921;
 - d) Any toxic pollutant listed under 33 U.S.C. § 1317(a);
 - e) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to 15 U.S.C. § 2606;
 - f) Any hazardous waste or extremely hazardous waste as defined by California Health and Safety Code sections 25117 and 25115, respectively.
 - ii. Contractor shall promptly notify MTS of any release, spill, leak, emission, discharge, escape, leaching, dumping, or disposal of Hazardous Substances on, at, or near MTS property.
 - iii. Contractor shall conduct and complete all investigations, studies, sampling, testing procedures, remediation, removals, and other actions necessary to clean up and remove Hazardous Substances on, from, or affecting MTS property as a result of Contractor’s use of Hazardous Substances or noncompliance with Sections 5.10, 7.12.A. or 7.12.D. herein.
 - iv. Contractor shall promptly supply MTS with copies of all notices, reports, correspondence, and submissions made by Contractor to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, California Department of Toxic Substances Control, San Diego Regional Water Quality Control Board, or any other local, state, or federal authority which requires submission of any information concerning Hazardous Substances.
 - v. Contractor shall be liable for all costs, expenses, losses, damages, injuries, claims, cleanup costs, penalties, assessments, or fines arising from Contractor’s use of Hazardous Substances or noncompliance with Sections 5.10, 7.12.A. or 7.12.D. herein.

- vi. Contractor and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend, reimburse, and hold harmless MTS and its officers, employees, and agents from any costs, expenses, losses, damages, injuries, claims, cleanup costs, penalties, assessments, or fines arising from Contractor's use of Hazardous Substances or noncompliance with Sections 5.10, 7.12.A. or 7.12.D. herein.
- F. Use of Certain Public Lands. Contractor agrees it will comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
- G. Historic Preservation. The Contractor agrees that it will: (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places. (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108. (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq. (4) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800. (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- H. Indian Sacred Sites. The Contractor agrees that it will facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.

7.13. ADA ACCESS

(APPLICABLE TO ALL CONTRACTS)

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d)., which prohibit discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act.

7.14. CIVIL RIGHTS

(APPLICABLE TO ALL CONTRACTS)

- A. Subcontract. The Contractor shall include these requirements in each subcontract entered into as part thereof.

- B. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment or a business opportunity as defined at 49 U.S.C. 5332 because of race, color, religion, national origin, sex, gender identity, sexual orientation, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- C. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- D. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- E. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

7.15. EEO IN CONSTRUCTION WORK

(APPLICABLE TO ALL CONSTRUCTION CONTRACTS EXCEEDING \$10,000)

Contractor agrees to comply with DOL regulations, Executive Order No. 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. part 1964-1965 Comp., p. 339), as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" for all construction work, as defined in 41 C.F.R. Part 60-1.3.

The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area of San Diego, County of San Diego, State of California, are as follows:

Timetables	Goals For Minority Participation for Each Trade	Goals for Female Participation in Each Trade
Goals	16.9%	6.9%

These goals are applicable to all Contractor's construction work (whether or not that portion is Federal or federally assisted) performed in the covered area. Although a contractor is required to make good faith efforts to meet their goals, the goals are not quotas, and no sanctions are imposed solely for failure to meet them.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training shall be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project, for the sole purpose of meeting the Contractor's goals, shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director OFCCP, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of subcontract; and the geographical area in which the subcontract is to be performed.

7.16. CONTRACTOR ASSURANCE

(APPLICABLE TO ALL CONTRACTS)

The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTS deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph.

7.17. SEISMIC SAFETY

(APPLICABLE TO ALL CONSTRUCTION AND ARCHITECTURAL & ENGINEERING CONTRACTS AND SUBCONTRACTS FOR NEW BUILDINGS OR ADDITIONS TO EXISTING BUILDINGS)

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

7.18. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(APPLICABLE TO ALL CONSTRUCTION CONTRACTS OVER \$2,000)

Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." In accordance with 18 U.S.C. § 874, the Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

7.19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(APPLICABLE TO ALL CONSTRUCTION CONTRACTS THAT EMPLOY LABORERS OR MECHANICS OVER \$ 100,000)

A. Overtime requirements. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this Section.
- C. Withholding for unpaid wages and liquidated damages. FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this Section.
- D. Construction Site Safety. Contractor shall comply with Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq.; and U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 CFR Part 1904; "Occupational Safety and Health Standards," 29 CFR Part 1910; and "Safety and Health Regulations for Construction," 29 CFR Part 1926.
- E. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth above in paragraph (A) through (D) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this Section.

7.20. CARGO PREFERENCE – USE OF UNITED STATES - FLAG VESSELS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS INVOLVING EQUIPMENT, MATERIALS, OR COMMODITIES WHICH MAY BE TRANSPORTED BY OCEAN VESSELS)

- A. 46 U.S.C. 55305 and 46 C.F.R. Part 381 which imposes U.S. cargo preference requirements on the shipment of foreign made goods shall apply to this procurement. The Contractor shall utilize privately owned United States-flagged commercial vessels to ship at least 50 percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels.

- B. The Contractor shall furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (A) above to MTS (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.
- C. The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

7.21. FLY AMERICA REQUIREMENTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS TRANSPORTING PERSONS OR PROPERTY BY AIR OUTSIDE THE U.S.)

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

7.22. SAFE OPERATION OF MOTOR VEHICLES

(APPLICABLE TO ALL CONTRACTS)

- A. Seat Belt Use. The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or MTS.
- B. Distracted Driving. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

7.23. VETERANS PREFERENCE / EMPLOYMENT

(APPLICABLE TO ALL CONSTRUCTION CONTRACTS)

Per MAP-21 at 49 USC 5325 (k), the Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC 2108) who have the requisite skills and abilities to perform the construction work required under the Contract. This provision shall not be understood, construed or enforced in any manner that would require the Contractor to give a preference to any veteran over any equally qualified applicant who is not a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

7.24. DOMESTIC PREFERENCES FOR PROCUREMENTS

(APPLICABLE TO ALL CONSTRUCTION CONTRACTS)

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.25. BUILD AMERICA, BUY AMERICA

(APPLICABLE TO PURCHASE OF CONSTRUCTION MATERIALS)

Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184 and by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. Contractor shall submit to MTS with its Bid/Proposal the Build America, Buy America Certification included as part of the Bid/Proposal Documents and Forms, except those subject to a general waiver. MTS will reject as nonresponsive Bids/Proposals or offers that are not accompanied by a completed Build America, Buy America certification.

7.26. BUY AMERICA / BUILD AMERICA, BUY AMERICA

(APPLICABLE TO PURCHASE OF MORE THAN \$150,000 OF IRON, STEEL, MANUFACTURED GOODS OR ROLLING STOCK, OR CONSTRUCTION MATERIALS)

The Contractor's attention is directed to the "Buy America" requirements set forth in Section 165 of the federal Surface Transportation Act of 1982, Section 70914 of the Infrastructure Investment Jobs Act, Pub. L. No. 117-58, which includes the "Build America, Buy America Act" Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184., and the FTA regulations implementing Section 165 (49 C.F.R. Part 661). Information on Buy America requirements is available for review upon request. Contractor agrees to comply with 49 U.S.C. 5323(j), as amended by the FAST Act, FTA regulations 49 C.F.R. Part 661, and Section 70914 of the Infrastructure Investment Jobs Act, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. See 49 C.F.R. 661.7 and Section 70914 of the Infrastructure Investment Jobs Act regarding general waivers. Separate requirements for rolling

stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 70 percent domestic content. Contractor shall submit to MTS with its Bid/Proposal the appropriate Buy America certification included as part of the Bid/Proposal Documents and Forms, except those subject to a general waiver. MTS will reject as nonresponsive Bids/Proposals or offers that are not accompanied by a completed Buy America certification. This requirement does not apply to lower tier subcontractors.

7.27. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(APPLICABLE TO ALL CONTRACTS)

In accordance with 2 CFR part 200.216, Contractor and its subcontractors are prohibited from expending funds under this Contract to: procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). This includes: for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); telecommunications or video surveillance services provided by such entities or using such equipment; and telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

7.28. SENSITIVE SECURITY INFORMATION

(APPLICABLE TO ALL CONTRACTS)

The Contractor shall take measures to ensure that any of its subcontractors at each tier protect, "sensitive security information" made available during the administration of this Agreement to ensure compliance with 49 U.S.C. 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

7.29. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

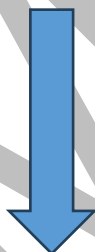
(APPLICABLE TO ALL CONTRACTS)

If Contractor is a private corporation, partnership, trust, joint-stock company, sole proprietorship or other business association, Contractor must certify that it A) does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and B) was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. Contractor shall submit to MTS with its Bid/Proposal the Federal Tax Liability and Recent Felony Conviction Certification

included as part of the Bid/Proposal Documents and Forms. MTS will reject as nonresponsive Bids/Proposals or offers that are not accompanied by a completed Federal Tax Liability and Recent Felony Conviction Certification. The Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

SAMPLE

**BIDDERS: RETURN ALL THESE
FORMS WITH YOUR BID**



8. FORMS

The following forms/information are required to be submitted with your bid as a matter of responsiveness.

All bids (and accompanying information) must be received by MTS' Procurement Department prior to the scheduled time and date as specified in the Calendar of Events.

The submitted bid must follow instructions as specified in Submission Requirements Section.

As part of the submittal, Bidder to include copies of Prime and all subcontractors:

- A. License copies or printouts from <https://www.cslb.ca.gov/>
- B. Public Works & Prevailing Wage Contractor Registration from <https://cadir.my.salesforce-sites.com/ContractorSearch>.

Please note that there are several forms that not only must be completed by the bidder (i.e. prime contractor) but also should be completed by all subcontractor/s.

The bid forms that must be completed by both the bidder and proposed subcontractors include:

- A. MTS DBE Program – Information for Bidder List and Commercial Useful Function; and
- B. Certification Regarding Debarment, Suspension and Other Ineligible and Voluntary Exclusions Lower Than Tier Covered Transactions

CONTACT INFORMATION

Company Information:

The Official, Legal Name of Bidding Firm: _____

Doing Business As: _____

Legal Structure
(Corp./Partner/Proprietor): _____

Company Mailing Address: _____

Street

City

State

Zip

Person Authorized to sign:

Point of Contact: _____

Title: _____

E-Mail Address: _____

Phone Number: _____

Accounts Receivable

Point of Contact: _____

Title: _____

E-Mail Address: _____

Phone Number: _____

Labor Compliance

Point of Contact: _____

Title: _____

E-Mail Address: _____

Phone Number: _____



EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity. In this packet, the bidder shall identify the point of contact that will fulfil the *Supervision and Superintendence* Clause in the General Conditions.

The Bidder may provide a current resume for each key personnel that is fully responsive to each question below:

- A. List each person's name and job title to be assigned to this project:
- B. Summarize each person's specialized education and/or experience:
- C. List each person's years of construction experience relevant to the project:

Bidder agrees that personnel named in this Bid will remain on this project in their designated capacities until completion of all relevant Work, unless replaced by personnel of equivalent experience and qualifications approved in advance by MTS.

Additional Bidder's Statements:

If Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked.

By submitting this sheet as a cover sheet along with the required documentation as stated above I certify this documentation is accurate and correct.

BIDDER INFORMATION AND EXPERIENCE FORM

*****Indicate not applicable (“N/A”) where appropriate*****

1. Information about Bidder:

Failure to complete all information may render your bid non-responsive.

NOTE: Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

How many years has Bidder’s organization been in business as a Contractor? _____

How many years has Bidder’s organization been in business under its present name? _____

Under what other or former names has Bidder’s organization operated? _____

If Bidder’s organization is a corporation, answer the following:

Date of Incorporation: _____

State of Incorporation: _____

President’s Name: _____

Vice-President’s Name(s): _____

Secretary’s Name: _____

Treasurer’s Name: _____

2. If an individual or a partnership, answer the following:

A. Date of Organization: _____

B. Name and address of all partners (state whether general or limited partnership):

Name	Address

RETURN THIS FORM WITH YOUR BID

3. If other than a corporation or partnership, describe organization and name principals:

Not Applicable – is classified as a corporation/partnership.

Applicable, see explanation below:

4. What type of work does the Bidder normally perform with its own forces?

5. Has Bidder ever failed to complete any work awarded to it? If so, in a separate attachment note when, where, and why:

Yes, attached separately as file name or page numbers reference below:

Not Applicable

6. Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

Yes, attached separately as file name or page numbers reference below:

Not Applicable

7. Name of Bonding Company and Name and Address of Agent:

Bonding Company Name _____

Agent Address: _____

RETURN THIS FORM WITH YOUR BID

8. List a minimum of three Industry References:

Company Name	Point of Contact	Email	Phone Number

9. As a separate attachment list completed and current projects over the last three years. Include only projects that are similar in size/scope and complexity to the work. Indicate the contact name, email and phone number of the point of contact for each project.

Yes, attached separately as file name or page numbers reference below:

SAMPLE

BID PRICE FORM

Refer to Attachment 2 - Bid Form.

Read attached General Provisions carefully. They are a part of your bid.

Unit prices will prevail regardless of extensions submitted by the Bidder.

All bidders must complete bid forms as provided, failure to do so will deem the bid non-responsive.

Bidder shall submit pricing to provide the services for all the work described in Technical Specifications/Scope of work using the bid forms.

This all-inclusive pricing must include the costs for the bid bond, performance & payment bonds, and insurance. MTS will not pay additional costs, or separate costs for these.

Bidder accepts responsibility for accuracy and presentation of the numbers included in the cost/price form.

SAMPLE

DESIGNATION OF SUBCONTRACTORS

Refer to Attachment 3 – Subcontractors.

Any time there is a change to a Subcontractor, Contractor shall resubmit this attachment.

Any change to these forms after bid submittal must be made in accordance with Public Contract Code sections 4100 et seq., as applicable, and as permitted by MTS.

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, sections 4100 et seq., each bidder shall specify each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (1/2%) of the Grand Total Basis of Award.

In addition, pursuant to Labor Code sections 1725.5 and 1771.1, each bidder shall specify the Department of Industrial Relations registration number of each subcontractor. No bid will be accepted, nor any contract entered into without proof of the subcontractors' current registration with the Department of Industrial Relations to perform public work.

As part of the submittal, Bidder to include copies of all subcontractors:

- A. License copies or printouts from <https://www.cslb.ca.gov/>
- B. Public Works & Prevailing Wage Contractor Registration from <https://cadir.my.salesforce-sites.com/ContractorSearch>.

MTS DBE PROGRAM - INFORMATION FOR BIDDER LIST & COMMERCIAL USEFUL FUNCTION

MTS is required by Disadvantaged Business Enterprise (DBE) Regulations at 49 CFR Part 26 to collect and report data about DBE and non-DBE contractors and subcontractors who seek to work on MTS's projects. MTS may also use this data to set MTS's overall DBE goals and to assist in monitoring commercial useful function in order to count DBE participation toward meeting MTS's overall DBE goals.

INSTRUCTIONS: Each prime contractor and each subcontractor bidding/submitting a proposal is **required** to complete this form as part of their bid or proposal. If multiple subcontractors, copy this form.

1. Firm Name:	
2. Firm's Full Address (street, city, state, and zip code):	
3. NAICS code for work seeking to perform:	
4. If applicable, please check any certification that your firm currently maintains:	<input type="checkbox"/> DBE <input type="checkbox"/> SB – Small Business <input type="checkbox"/> DVBE – Disabled Veteran Owned Business <input type="checkbox"/> LGBTBE – LGBT Owned Business <input type="checkbox"/> MBE – Minority Owned Business <input type="checkbox"/> PDBE – Persons with Disability Owned Business <input type="checkbox"/> WBE – Woman Owned Business
5. Only if DBE certified firm, please check one (1) type of work your firm is seeking to perform on this bid/proposal (as defined at enclosed MTS DBE Program: Commercial Useful Function – Guidance for DBE Contractors):	<input type="checkbox"/> Construction/Maintenance Services <input type="checkbox"/> Professional Services <input type="checkbox"/> Other Services – e.g. broker <input type="checkbox"/> Manufacturer of Materials/Supplies <input type="checkbox"/> Regular Dealer of Materials/Supplies <input type="checkbox"/> Distributer of Materials/Supplies <input type="checkbox"/> Other (not listed above) Material Supplier <input type="checkbox"/> Trucking
6. Race of majority owner of firm:	
7. Gender of majority owner of firm:	
8. Year firm was established:	
9. Please check your firm's applicable annual gross receipt range:	<input type="checkbox"/> Less than \$1,000,000 <input type="checkbox"/> \$1,000,001 - \$15,000,000 <input type="checkbox"/> \$15,000,001 - \$30,720,000 <input type="checkbox"/> \$30,720,001 - \$50,000,000 <input type="checkbox"/> Greater than \$50,000,000

SIGNATURE ACKNOWLEDGES AND AFFIRMS ACCURACY OF COMPLETED FORM

SUBCONTRACTOR

PRIME CONTRACTOR

Signature: _____

Signature: _____

Date: _____

Date: _____

MTS DBE PROGRAM
Commercial Useful Function (CUF) – Guidance for DBE Contractors

Per FTA DBE Regulations at 49 CFR Part 26, to meet Commercial Useful Function requirements in order for MTS to count the participation of a DBE prime or DBE subcontractor towards its DBE Overall Goal, the **DBE prime or DBE subcontractor must:**

- 1) Be responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved;
- 2) Not be an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation;
- 3) Perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force; and
- 4) Depending on the type of work being performed, meet the definitions of the Table below.

Type of Work Performed	Definitions	Counting Rules of DBE Prime or DBE Subcontract Dollar Value
1a. <u>Construction /Maintenance Services – Supplies</u> purchased or leased equipment from a third-party	Responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (if applicable) and paying for the material itself	Count 100%
1b. <u>Construction /Maintenance Services – Supplies</u> purchased or leased equipment from a prime contractor		Count only labor costs (exclude cost of material, supplies, equipment purchased/leased from prime or its affiliates)
2a. <u>Professional Services – Bona Fide Services</u>	E.g. professional, technical, architectural and engineering, managerial, providing bonds, or insurance	Count 100%
2b. <u>Services – Other</u>	E.g. brokers, packagers, manufacturer's reps., (arrange or expedite the procurement of goods and services)	Count fees or commissions related to assistance only (exclude cost of service itself)

RETURN THIS FORM WITH YOUR BID

Type of Work Performed	Definitions	Counting Rules of DBE Prime or DBE Subcontract Dollar Value
3a. <u>Materials and Supplies</u> – Manufacturer	Owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. Not a manufacturer if only does minor modifications to materials.	Count 100%
3b. <u>Materials and Supplies</u> – Regular Dealer	<p>Owns (or leases) and operates, a store, warehouse or other establishment in which materials, supplies, articles or equipment of the “general character” required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business. Items kept and regularly sold by the DBE are of the “general character” when they share the same material characteristics and application as the items specified by the contract.</p> <p>Engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. At least 51% of the items on the contract are provided from its inventory, and when necessary, any minor quantities delivered from and by other sources are of the “general character” as those provided from the DBE’s inventory.</p> <p>Both owns and operates distribution equipment used to deliver the products for bulk items (e.g. as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt) without owning, operating, or maintaining a place of business. Any supplementing of own distribution equipment must be by a long-term operating lease.</p> <p>Includes a supplier of items that are not typically stocked due to their unique characteristics (e.g. limited shelf life or items ordered to specification)</p>	Count 60% of cost of materials or supplies (including transportation costs)
3c. <u>Materials and Supplies</u> – Distributor	Neither maintains sufficient inventory nor uses its own distribution equipment for the products in question. Engages in the regular sale or lease of items specified by the contract. Assumes responsibility for the items it purchases once they leave the point of origin (e.g. a manufacturer’s facility) making it liable for any loss or damage not covered by the carrier’s insurance	Count 40% of the cost of materials or supplies (including transportation costs)
3d. <u>Materials and Supplies</u> – Other	Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions	Count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation

RETURN THIS FORM WITH YOUR BID

Type of Work Performed	Definitions	Counting Rules of DBE Prime or DBE Subcontract Dollar Value
		charges for the delivery of materials or supplies required on a job site (exclude cost of the materials and supplies themselves)
4a. <u>Trucking</u> = Owned and Operated	Responsible for management and supervision of entire trucking operation on the contract. Owns and operate at least 1 fully licensed, insured, and operational truck used on the contract, using drivers it employs.	Count credit for the total value of the transportation services provided on the contract.
4b. <u>Trucking</u> = Leased Trucks from another DBE firm	Owned and operates leased trucks from another DBE firm, including an owner-operator who is a DBE. Lease must indicate that the DBE has exclusive use of and control over the truck. Does not preclude the leased truck from working for others during the lease with the consent of the DBE, so long as lease gives the DBE absolute priority	Count credit for the total value of the transportation services the lessee provided on the contract.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS

CONTRACTOR AND SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

(Bidder to provide one completed Form for the Prime Contractor and any Subcontractors)

MTS may not permit a contractor or subcontractor to bid on, be awarded, or perform work on a public works project if the contractor or subcontractor is ineligible to bid on, be awarded or perform work on a public works project pursuant to California Labor Code sections 1777.1 or 1777.7.

In addition, MTS may not award any federally funded contract over \$25,000 to a contractor or subcontractor that is excluded or disqualified pursuant to 2 CFR Part 180 Subpart C.

The prime/subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification.

QUESTIONNAIRE

Has the Contractor, or any officer, principal, affiliates or employee of the Contractor ever been debarred, suspended, proposed for debarment, declared ineligible or otherwise prevented from bidding on, or completing a federal, state, or local government project? Yes No

If the answer is yes, or where the prime/subcontractor is unable to certify any of the statements in the above certifications, such prime/subcontractor shall attach an explanation (i.e. date, background, resolution) with this form.

Note: Failure to provide this form at the time of Bid will not result in a finding of a non-responsive bid. Submittal of this form for The Prime Contractor and all Subcontractors is required for a Bidder to be deemed "Responsible." MTS encourages Bidders to complete and submit all forms at the time of bid.

SUBCONTRACTOR

(Copy this form if needed for additional subcontractors)

Business Name: _____
License No. (if applicable): _____
DUNS No.: _____

PRIME CONTRACTOR

Business Name: _____
License No. (if applicable): _____
DUNS No.: _____

ACKNOWLEDGED AND AGREED

Print Name: _____
Title: _____
Signature: _____
Date: _____

Print Name: _____
Title: _____
Signature: _____
Date: _____

EEO PROGRAM WORKFORCE REPORT

MTS enforces an EEO program established under MTS policies and procedures No. 25 (Equal Employment Opportunity Program For Employees and Contractors). This program prohibits discrimination in employment and requires MTS Contractors to be equal opportunity employers.

You may submit a copy of the **Employer Information Report, EEO-1**, in lieu of this form.

The undersigned hereby certifies that the foregoing data contained herein is true and correct:

COMPLETE ALL SECTIONS OF THIS FORM:

1. The Official, Legal Name of Bidding Firm: _____
2. Doing Business As: _____
3. Legal Structure (Corp./Partner/Proprietor): _____
4. Address of Establishment in San Diego County: _____

5. If there is no office in San Diego County, or if there are less than 15 employees in that office, include an address for your regional office that will oversee the work under MTS' contract: _____

Employment Data - Include the employees located in San Diego County only unless your firm employs fewer than fifteen (15) people locally. In the event, you should list the workforce of the regional office that will oversee the work under MTS' contract. Report all permanent full-time and part-time employees including apprentices and on-the-job trainees. Blank spaces will be considered as zeros.

ACKNOWLEDGED AND AGREED

6. Name, Address, and Phone Number of Person to Contact Regarding this Report:

Name of Signee: _____
Title: _____
Phone Number: _____
Address: _____

Authorized Signature: _____

Date: _____

EEO PROGRAM WORKFORCE REPORT CONTINUED

OCCUPATIONAL CATEGORY	African American		Hispanic		Asian or Pacific Islander		Native American		Other		Overall Total	
	M	F	M	F	M	F	M	F	M	F	M	F
Executive/Managerial												
Engineers/Architects/ Surveyors												
Professionals (N.E.C.)												
Technicians												
Sales												
Administrative Support												
Protective Services												
Services (N.E.C.)												
Craft Workers (Skilled)												
Machine Operators, Assemblers & Inspectors												
Transportation and Material Moving												
Laborers (Unskilled)												
TOTALS FOR EACH COLUMN												

Indicate by gender and ethnic code the number of the above workforce, which are persons with disabilities:

DISABLED													
----------	--	--	--	--	--	--	--	--	--	--	--	--	--

ETHNIC IDENTIFICATION

African American: (NOT OF HISPANIC ORIGIN): All persons having origins in any of the black racial groups of Africa.

Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, China, Japan, Korea, the Philippine Islands, and Samoa.

Native American: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

Other: Caucasian and others not falling into one of the designated categories.

DISABLED DEFINITION

Any person who 1) has a physical or mental condition which limits one or more of such person's major life activities, 2) has a history of such a condition, or 3) is regarded as having such a condition. For purposes of this definition, "major life activity" means any mental or physical function or activity, which if impaired, creates a substantial barrier to employment.

OCCUPATIONAL CATEGORY LIST

Executive/Managerial

Executive, Management Related

Engineers/Architects/Surveyors

Professionals (N.E.C.)*

Mathematical and Computer Scientists

Natural Scientists

Health Diagnosing

Health Assessment and Treating

Teachers, Postsecondary

Teachers, except Postsecondary

Counselors, Educational and Vocational

Librarians, Archivists, Curators

Social Scientists and Urban Planners

Social, Recreation and Religious Workers

Lawyers and Judges

Writers, Artists Entertainers & Athletes

Technicians

Health Technologists and Technicians

Engineering and Related Technologists and Technicians

Science Technicians

Technicians, Except Health, Engineering, and Service

Sales

Supervisors and Proprietors

Sales Representatives, Finance, and Business

Services

Sales Representatives, Commodities except Retail

Sales Workers, Retail, and Personal Services

Other Sales Related

Administrative Support

Supervisors of Administrative Support

Computer Equipment Operators

Secretaries, Stenographers, Typists

Information Clerks

Records Processing, Except Financial

Financial Records Processing

Duplicating and Other Office Machine Operators

Communications Equipment Operators

Mail and Message Distributing

Material Recording and Distributing Clerks

Adjusters and Investigators

Other Office/Clerical

*N.E.C.: Not Elsewhere Classified

Protective Services

Supervisors of Protective Services

Firefighting and Fire Prevention

Police and Detectives

Guards & Other Protective Services

Services (N.E.C.)*

Private Households

Food Preparation and Services

Health Services

Cleaning and Building Services

Personal Services

Craft Workers (Skilled)

Supervisors of Mechanics and Repairers

Vehicle and Mobile Equipment Mechanics and Repairers

Heating, Air Conditioning, Refrigeration, Mechanics

Other Mechanics and Repairers

Supervisors of Construction Trades

Construction Trades, Except Supervisors

Extractive Occupations

Precision Production Occupations

Machine Operators, Assemblers & Inspectors

Metalworking and Plastic Working Machine Operator

Metal and Plastic Processing Machine Operators

Woodworking Machine Operators

Printing Machine operators

Textile, Apparel, and furnishing Machine Operators

Machine Operators, Assorted Materials

Fabricators, Assembler and Hand Working Occupations

Production Inspector, Tester, Sampler, Weigher

Transportation and Material Moving

Motor Vehicle Operators

Rail Transportation Occupations

Water Transportation Occupations

Material Moving Equipment Operators

Laborers (Unskilled)

Handlers

Equipment Cleaners

Helpers & Laborers

FINANCIAL QUESTIONNAIRE FORM

1. This organization is organized under the laws of the State of: _____

2. Principal Financial institution. The information bellow will be used to assess financial responsibility.

Name of Bank: _____

Address: _____

Street

City State Zip

Telephone: _____

Officer Familiar with Bidder's Account: _____

3. Business License

NOTE: The representations regarding the Bidder's license are made under penalty of perjury.

Contractor's License No.: _____

Original Date Issued: _____

Expiration Date: _____

Bidder's DUNS No.: _____

Expiration Date: _____

Bidder's System for Award
Management (SAM) No.: _____

Expiration Date: _____



RETURN THIS FORM WITH YOUR BID

4. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this bid are as follows:

Not Applicable – is classified as a corporation/partnership.

Applicable, see explanation below:

Date

5. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this bid are as follows:

Not Applicable – is classified as a corporation/partnership.

Applicable, see explanation below:

6. Has Bidder ever failed to complete any work awarded to it? If so, when, where, and why?

Not Applicable – is classified as a corporation/partnership.

Applicable, see explanation below:

7. Identify any conditions bankruptcy, pending litigation, planned office closures, impending merger:

Not Applicable – is classified as a corporation/partnership.

Applicable, see explanation below:

CALIFORNIA PUBLIC RECORD ACT (PRA) ACKNOWLEDGEMENT

I/We hereby represent, acknowledge, and agree as follows:

1. MTS is a California public agency established by California Public Utilities Code, Section 120000. et. seq., and is subject to the California Public Records Act (Government Code sec. 6250 et seq.) which provides generally that all records relating to a public agency's business are open to public inspection unless exempted from disclosure by law.
2. The bid I/we have submitted to MTS is open to public inspection under the PRA unless it is exempted from disclosure by law.
3. To the extent the bid includes materials that I/we believe are exempt from disclosure under PRA, I/we understand that I/we must provide a letter identifying the materials that I/we believe are exempt from disclosure and explaining the basis for exemption.
4. Any materials not identified as exempt from disclosure are open to public inspection, and I/we waive any right to subsequently claim exemption from disclosure for such materials.
5. MTS at all times retains the right to make the final determination regarding what, if any, portion of a bid is subject to disclosure under PRA.
6. Use of headers/footers bearing designations such as "confidential", "proprietary", or "trade secret" on all or nearly all of a bid which would prohibit or limit public inspection is not acceptable and may deem the bid non-responsive and may be rejected; labeling a page as such does not prohibit MTS from disclosing the page in response to a PRA response or in the ordinary course of business if MTS concludes it is obligated to so by applicable law.
7. To defend and indemnify MTS in any action on a PRA request for any of the contents of a Bid marked trade secret, confidential or proprietary.
8. Marking a document as "trade secret", "confidential" or "proprietary" without the express written permission of MTS does not exempt a document from disclosure to third parties under state or federal law, or in the normal course of MTS's business operations. MTS has no obligation to get a respondent's permission before producing such documents.
9. The bid I/we have submitted (*check one of the following*) materials that we believe are exempt from disclosure under the PRA. INCLUDES
DOES NOT INCLUDE

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

NONCOLLUSION DECLARATION

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH OFFER

(23 U.S.C. § 112(c) and California Public Contract Code § 7106)

The undersigned declares:

I am the _____ of _____, the party making the foregoing offer.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____(date), at _____(city), _____(state).

ACKNOWLEDGED AND AGREED

Name of Contractor: _____

Signature: _____

Date: _____

FLEET COMPLIANCE CERTIFICATION

Bidder hereby acknowledges that they have reviewed the California Air Resources Board's policies, rules and regulations and are familiar with the requirements of Title 13, California Code of Regulations, Division 3, Chapter 9, effective on January 1, 2024 (the "Regulation"). Bidder hereby certifies, subject to penalty for perjury, that the option checked below relating to the Bidder's fleet, and/or that of their subcontractor(s) ("Fleet") is true and correct:

- The Fleet is subject to the requirements of the Regulation, **and the appropriate Certificate(s) of Reported Compliance have been attached hereto.**
- The Fleet is exempt from the Regulation under section 2449.1(f)(2), and a signed description of the subject vehicles, and reasoning for exemption has been attached hereto.
- Bidder and/or their subcontractor is unable to procure R99 or R100 renewable diesel fuel as defined in the Regulation pursuant to section 2449.1(f)(3). Bidder shall keep detailed records describing the normal refueling methods, their attempts to procure renewable diesel fuel and proof that shows they were not able to procure renewable diesel (i.e. third-party correspondence or vendor bids).
- The Fleet is exempt from the requirements of the Regulation pursuant to section 2449(i)(4) because this Project has been deemed an Emergency, as defined under section 2449(c)(18). Bidder shall only operate the exempted vehicles in the emergency situation and records of the exempted vehicles must be maintained, pursuant to section 2449(i)(4).
- The Fleet does not fall under the Regulation or are otherwise exempted, and a detailed reasoning is attached hereto.

Did you attach the appropriate Certificate(s) of Reported Compliance? Yes No

Name of Bidder: _____

Signature: _____

Name: _____

Title: _____

Date: _____

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code Section 2200 *et seq.*)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

1. The Contractor is not:
 - a. identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
 - b. a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

2. MTS has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, MTS will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

3. The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTION CERTIFICATION

As required by applicable federal law, the Contractor certifies that it:

- A. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- B. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES

FOR CONTRACTORS SAFETY AND HEALTH REQUIREMENTS

(SAF 016-03)

January 2003

SAF 016-03

Purpose: To establish environmental, safety and health requirements for the San Diego Metropolitan Transit System (MTS) Contractors.

Background: MTS is committed in providing and maintaining a safe workplace, safe plant and equipment, and a safe and competent workforce as required by legislation and best industrial practice for our employees, customers, visitors, and general public.

To support this commitment, we require our Contractors to provide adequate leadership and safety training for their employees and require the same of their sub-Contractors.

Objectives: This SOP requires all MTS Contractors to:

- Comply with the environmental, safety and health requirements of the contract as per FTA, OSHA, Cal OSHA, and MTS.
- Assign a competent person the responsibility for the implementation of the safety regulations, personal protective equipment usage, and compliance with hazardous materials/environmental policies, and drug and alcohol program.
- Ensure that all Contractor employees and sub-Contractors are trained and educated in safety and support on-site Contractors on safe work and MTS safety programs.
- Sign the MTS Contractual Agreement with Outside Agencies (Safety Rules).

MTS Representatives are required to:

- Pro-actively monitor the Contractors' workplace to identify all occupational health and safety hazards – Departmental/Safety representative.
- Safety and contract requirements compliance – Audit/Inspection conducted and documented (schedule and spot check) by Quality Assurance Department.

NOTE: Copies of both MTS Illness and Injury Prevention Program (IIPP) and the MTS Maintenance Department Code of Safe Practices are available in the Safety Department's office. MTS handles the Engineering/Construction site safety plans.

SAFETY DEPARTMENT SAFETY RULES

MTS Contractual Agreement with Outside Agencies

Work on MTS Premises

A. Safety Rules

These safety rules apply specifically to Contractors, Contractor's employees, or sub-Contractors working on MTS property. Any loss or damage, including death, resulting from Contractors, Contractor's employees, or subcontractor's negligence shall hold MTS management and employees harmless from any such loss. No work shall be performed on MTS property without approval and proper permits, when required. Requirements:

1. Comply with Cal OSHA, state, local and MTS' safety, and environmental policies.
2. Observe and follow all posted facilities safety regulations.
3. Use the proper Personal Protective Equipment required for the job.
4. No illegal drugs or alcohol will be consumed on site or off the premises while working for MTS.

B. Use of Tools and Equipment (when required)

1. Required Tools and Equipment must be in good condition, safe for use and calibrated (if required).
2. Follow safe engineering work practices/procedures.
3. Wear the required personal protective equipment when using tools.

C. Machinery and Vehicles (when required)

1. Do not attempt to operate MTS machinery or equipment without special permission.
2. Only licensed operators may operate Forklift Trucks and other equipment on MTS occupied spaces.

D. Contractor Requirements (when required)

1. Valid Contractor's license number.

ACKNOWLEDGED AND AGREED

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

Date: _____

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION FORM

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted, nor any contract entered into without proof of the contractor's current registration with the Department of Industrial Relations to perform public work.

The Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and it, along with its subcontractors are currently registered as a contractor with the Department of Industrial Relations.

Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

PRIME CONTRACTOR

Business Name: _____

DIR Registration No.: _____

Print Name: _____

Title: _____

Signature _____

Date: _____

COMMITMENT TO COMPLY WITH PROJECT LABOR AGREEMENT (PLA) REQUIREMENTS

Bidder, on behalf of itself and its subcontractor(s) at every tier, hereby commits to comply with MTS's Project Labor Agreement for all work on the Project. As a condition of contract award, the Contractor shall submit its Letter of Assent to MTS's Project Labor Coordinator and all subcontractors shall submit their Letter of Assent before commencing any Work on the Project.

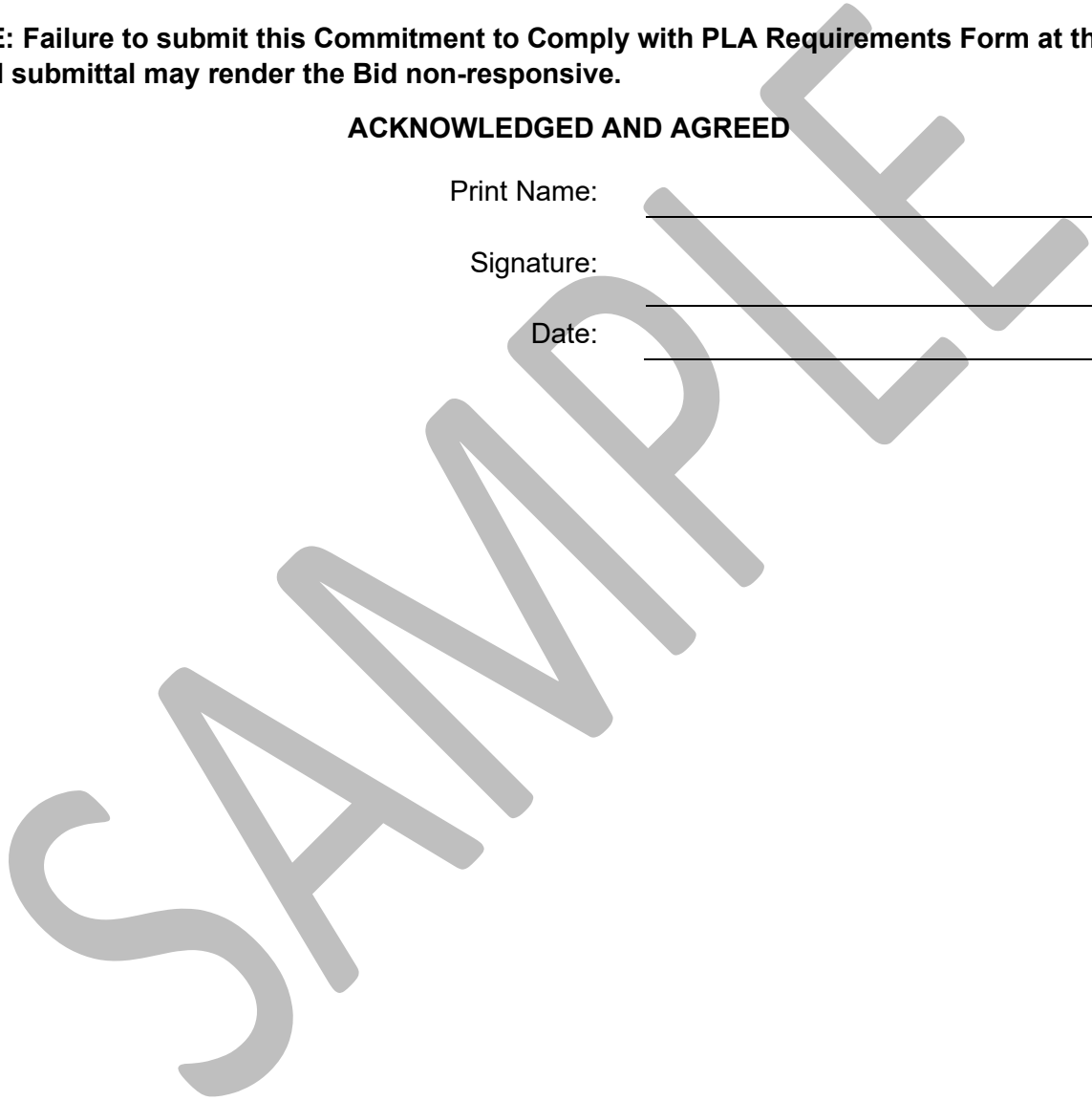
NOTE: Failure to submit this Commitment to Comply with PLA Requirements Form at the time of bid submittal may render the Bid non-responsive.

ACKNOWLEDGED AND AGREED

Print Name: _____

Signature: _____

Date: _____



BUILD AMERICA, BUY AMERICA (CONSTRUCTION MATERIALS)

CERTIFICATE OF COMPLIANCE WITH BUILD AMERICA, BUY AMERICA REQUIREMENTS

The Proposer/Bidder hereby certifies that it will comply with the requirements domestic preference requirement of the Build America, Buy America Act in the Infrastructure Investment and Jobs Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented at 2 CFR Part 184 and by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA.

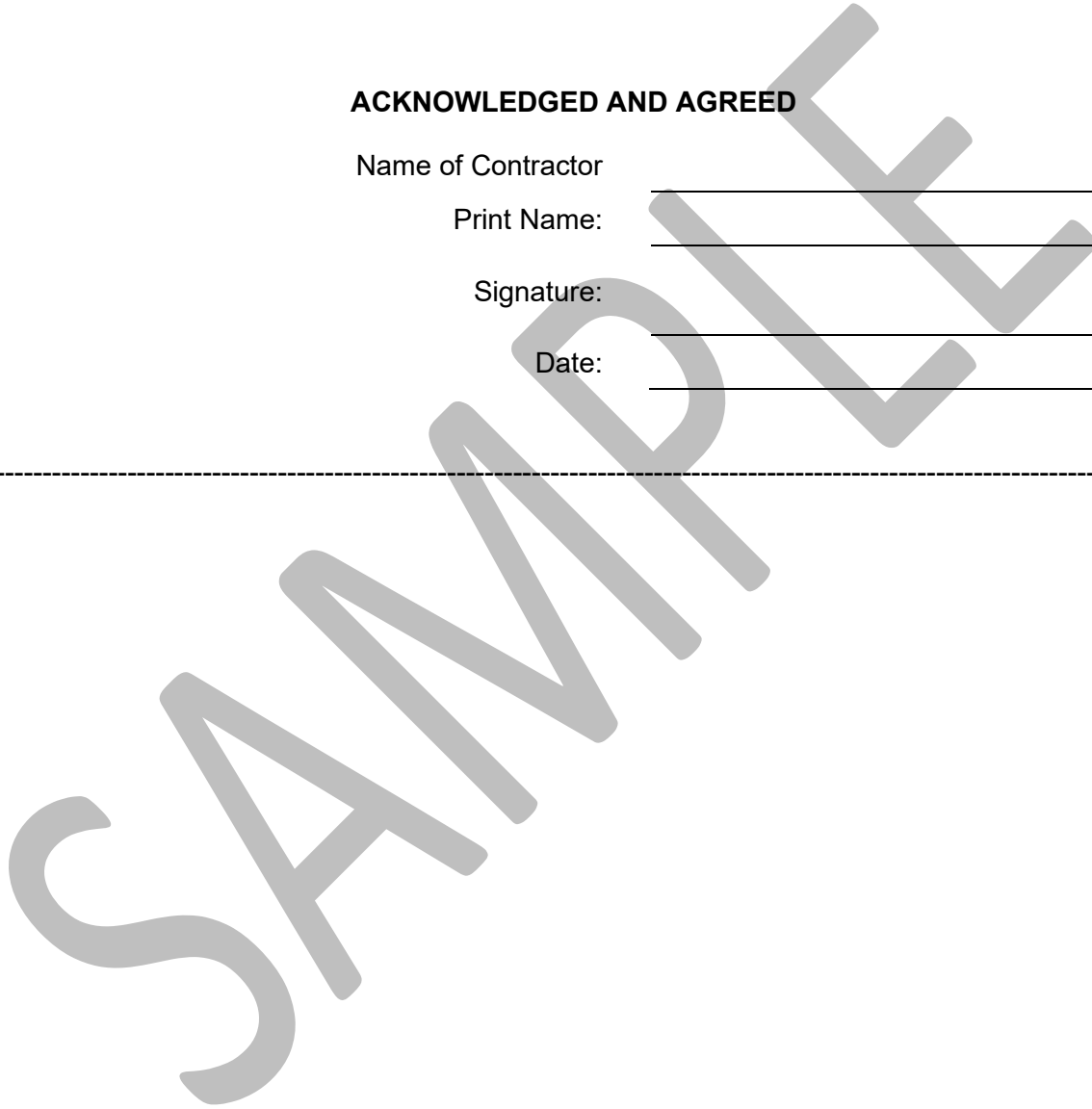
ACKNOWLEDGED AND AGREED

Name of Contractor

Print Name:

Signature:

Date:



**BUY AMERICA (IRON, STEEL, MANUFACTURED PRODUCTS,
CONSTRUCTION MATERIALS)**

ALTERNATIVE A

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The Proposer/Bidder hereby certifies that it will comply with the requirements of Section 49 U.S.C. 5323 (j)(1), the applicable regulations in 49 C.F.R. 661, and Section 70914 of the Infrastructure Investment Jobs Act.

ACKNOWLEDGED AND AGREED

Name of Contractor _____
Print Name: _____
Signature: _____
Date: _____

CERTIFICATE FOR NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS

ALTERNATIVE B

The Proposer/Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j)(1) or Section 70914 of the Infrastructure Investment Jobs Act but it may qualify for an exception to the requirement pursuant to Section 49 U.S.C. 5323 (j)(2), and the applicable regulations in 49 C.F.R. 661.7 or Section 70914 of the Infrastructure Investment Jobs Act

ACKNOWLEDGED AND AGREED

Name of Contractor _____
Print Name: _____
Signature: _____
Date: _____

Complete the form on the next page if you select Alternative B.

NOTE: COMPLETE EITHER ALTERNATIVE A OR B - DO NOT COMPLETE BOTH.

BUY AMERICA (IRON, STEEL, MANUFACTURED PRODUCTS, CONSTRUCTION MATERIALS)

ADDITIONAL INFORMATION FOR BUY AMERICA CERTIFICATE - ALTERNATIVE B

The Proposer/Bidder hereby certifies that it cannot comply with the requirements of Section 49 U.S.C. 5323 (j)(1) or Section 70914 of the Infrastructure Investment Jobs Act, but it may qualify for an exception to the requirement pursuant to Section 49 U.S.C. 5323 (j)(2), and the applicable regulations in 49 C.F.R. 661.7 or Section 70914 of the Infrastructure Investment Jobs Act.

Item No.	Description	Type of Waiver Requested by No. (1)	Indicate Rolling Stock or Nonrolling Stock	Description of Foreign Components of Items	Unit Procurement Cost of Foreign Components of Items

Notes: (1) For "Type of Waiver Requested," See Buy America, Section 7-5.8. List 1, 2, 3 or 4.
 (2) Proposer/Bidder must complete either Alternative A or B, Buy America Certificate.

CERTIFICATE OF RESTRICTIONS ON LOBBYING

The CONTRACTOR hereby certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
3. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Check one of the following boxes.
Does NOT Apply
Applies

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20____.

ACKNOWLEDGED AND AGREED

Name of Contractor: _____

Signature: _____

Date: _____

BID BOND

[Note: Not required when other form of Bidder’s Security, e.g. cash, certified check or cashier’s check, accompanies bid.]

KNOW ALL PERSONS BY THESE PRESENTS that, _____ hereinafter called the Principal, and _____, a corporation duly organized under the laws of the State of _____ and authorized to do business in the State of California, hereinafter call the Surety, are held and firmly bound unto the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, hereinafter called the Obligee, on order, in the sum of _____ Dollars (\$_____) (being at least ten percent (10%) of the total amount of Principal's Bid price) lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH that:

WHEREAS, the Principal has submitted its Bid for the project entitled _____ to the Obligee, the Bid, by reference thereto; being hereby made a part hereof.

NOW, THEREFORE, if Principal's Bid is rejected or, in the alternate, if the Bid is accepted and the Principal signs and delivers a Contract and furnishes a Performance Bond and Payment Bond, and any and all other required documents, all in the form and within the time required by the Bid and the Contract Documents, then this obligation shall become null and void, otherwise the same shall remain in full force and effect and upon default of the Principal shall be forfeited to the Obligee, it being expressly understood and agreed that the liability of the Surety for any and all default of the Principal shall be the amount of this obligation as herein stated, as liquidated damages.

The Surety, for value received, hereby agrees that its obligations and its bond shall not be impaired or affected by any extension of the time within which the Obligee may accept such Proposal, and the Surety hereby waives notice of any such extension.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay, in addition to the sum set forth above, all costs incurred by the Obligee in such suit, including reasonable attorney's fees and expert witness fees, to be fixed by the court, in addition to the penal sum of the Bond.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this _____ day of _____, 20____, the name and corporate seal of each corporation.

BY: SURETY
Attorney-in-Fact

BY: PRINCIPAL

Title

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

 Title(s)
 Partner(s) Limited
 General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:
 Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

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- Individual
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Title(s)

- Partner(s) Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF BID BOND

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, (hereinafter referred to as "MTS") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for _____, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto MTS in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless MTS, its Board, members of the Board, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees incurred by MTS in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by MTS, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect MTS from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit MTS's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by MTS to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at MTS's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and MTS, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by MTS under the Contract and any modification thereto, less any amount previously paid by MTS to the Contractor and any other set offs pursuant to the Contract Documents.
3. Permit MTS to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by MTS under the Contract and any modification thereto, less any amount previously paid by MTS to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that MTS may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if MTS, when declaring the Contractor in default, notifies Surety of MTS's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

CONTRACTOR/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.

(The above must be filled in by corporate attorney.)

THE FOLLOWING INFORMATION IS MANDATORY

Any claims under this bond may be addressed to:

Name and Address of Surety

Name and Address of Agent or Representative for service of process in California, if different from above

Telephone number of Surety and Agent or Representative for service of process in California

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title or Type of Document

- Partner(s) Limited
- General

Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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STATE OF CALIFORNIA
COUNTY OF _____

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WITNESS my hand and official seal.

Signature of Notary Public _____

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- General

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- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:
Name of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.
END OF PERFORMANCE BOND

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the SAN DIEGO METROPOLITAN TRANSIT SYSTEM (hereinafter referred to as the "MTS"), by action taken or a resolution passed _____, 20____, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: _____ (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto MTS in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by MTS in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

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

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or MTS and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal of Principal,
if corporation)

Principal (Contractor)

By _____

(Signature of Contractor)

(Seal of Surety)

Surety

By _____

Attorney in Fact

Notary Acknowledgment

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STATE OF CALIFORNIA
 COUNTY OF _____

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

Individual

Corporate Officer

_____ Title(s)

_____ Title or Type of Document

Partner(s)

Limited

_____ Number of Pages

General

Attorney-In-Fact

Trustee(s)

_____ Date of Document

Guardian/Conservator

Other:

Signer is representing:

Name of Person(s) Or Entity(ies)

_____ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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 Title(s)
 Partner(s) Limited
 General

- Attorney-In-Fact
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Signer is representing:

Name of Person(s) Or Entity(ies)

 Title or Type of Document

 Number of Pages

 Date of Document

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NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND