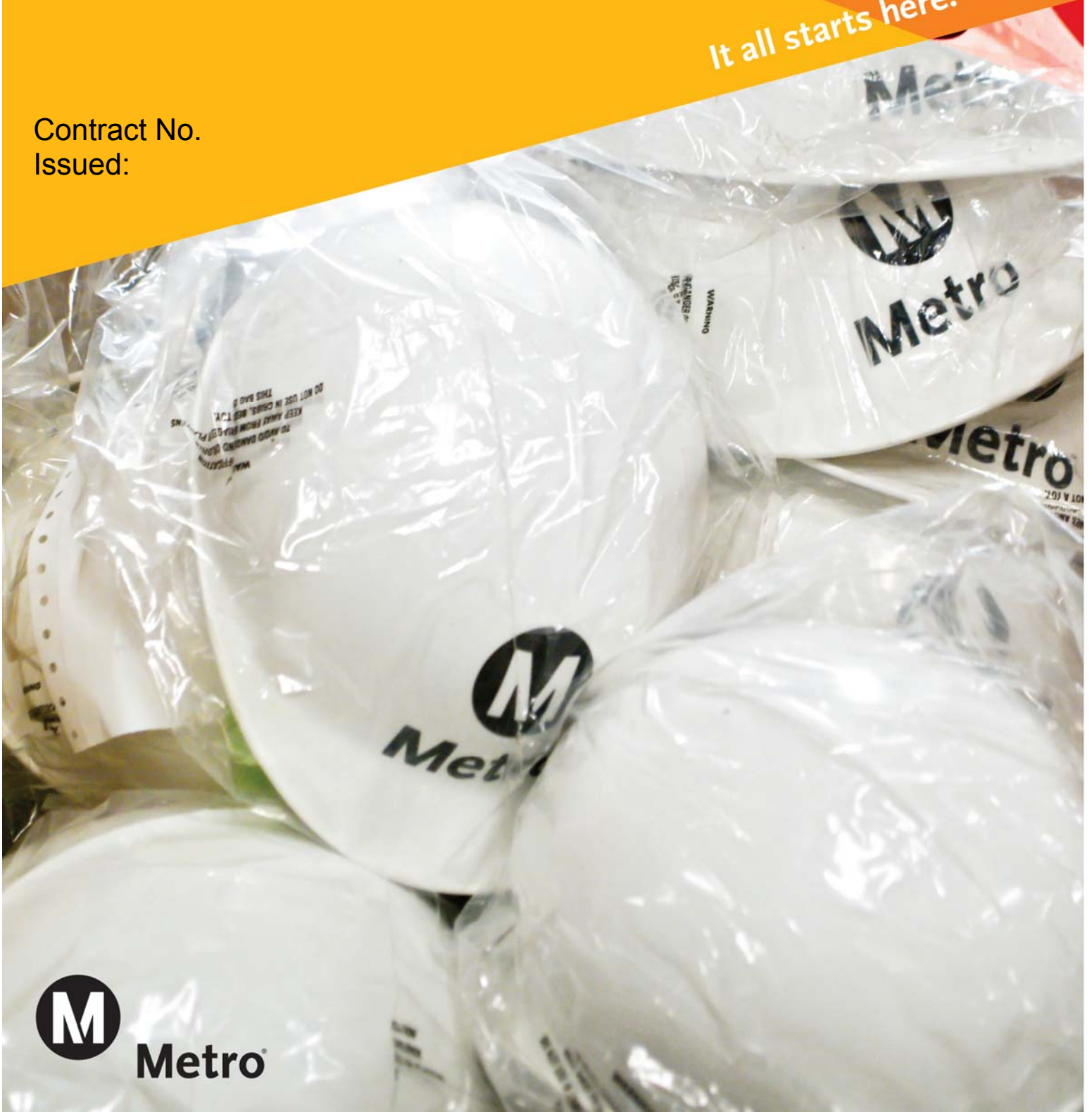


It all starts here.

Contract No.  
Issued:



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## CONTRACT DOCUMENTS

CONTRACT NO. PS60032000

PHOTO ENFORCEMENT PROGRAM

FIRM FIXED PRICE CONTRACT

BETWEEN

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

AND

REDFLEX TRAFFIC SYSTEMS INC

Tuesday, November 5, 2019  
EFFECTIVE DATE

This Contract is entered into by and between the Los Angeles County Metropolitan Transportation Authority (LACMTA) and REDFLEX TRAFFIC SYSTEMS INC (Contractor).

In consideration of the mutual covenants of the Parties as set forth below, the Parties hereby agree as follows:

## **FORM OF CONTRACT**

### **ARTICLE I CONTRACT DOCUMENTS ORDER OF PRECEDENCE**

- A. This Contract consists of the Contract Documents as defined in the General Conditions.
- B. All of the Contract Documents are intended to be complementary with each other, and in the event of any conflict between different provisions of the Contract Documents, the Contract Documents shall be construed in such a manner as to give effect to all of them to the extent reasonably possible. In the event such a conflict cannot be resolved, the provision most favorable to LACMTA, at LACMTA's sole discretion, shall take precedence. In addition, except as otherwise specified in the Contract Documents, in the event of any conflict between the provisions of the Contract Documents, the precedence of the Contract Documents shall be as follows:
  - 1. Form of Contract
  - 2. Special Provisions
  - 3. General Conditions
  - 4. Regulatory Requirements
  - 5. Task Orders (Not Applicable)
  - 6. Scope of Services (Exhibit A, Dated 18-JAN-2019)
  - 7. Other Contract Documents
- C. A Modification or Change Order to this Contract shall take its precedence from the terms it amends. All other documents and terms and conditions shall remain unchanged.
- D. All Articles, Subarticles, or portions of the Contract noted by an asterisk (\*) shall be included in all Subcontracts of any tier.

### **ARTICLE II DEFINITIONS**

Capitalized terms, abbreviations and symbols used in this Contract shall have the meaning ascribed to them in the Contract Documents.

### **ARTICLE III SERVICES TO BE PERFORMED**

Contractor shall perform the Services described in the Scope of Services, including all Services that are reasonably related to, inferable from, customary, or necessary in connection with the performance of the Services (see Exhibit A). In performance of this Contract, Contractor shall comply with all Applicable Laws and all Services shall be performed strictly in accordance with the Contract Documents and the Standard of Performance. The Contractor shall be responsible for the professional quality, technical accuracy,

completeness, and coordination of the Services, it being understood that LACMTA will be relying upon such professional quality, accuracy, completeness, and coordination in utilizing the Services. In performing the Services, Contractor shall cooperate and consult with and advise LACMTA regarding LACMTA's goals and objectives for the end product of the Services for the purpose of assuring that LACMTA's goals and objectives are met, and furnish sufficient staffing, business administration and supervision to meet Contractor's obligations under the Contract Documents.

Any additional Services beyond the Scope of Services herein shall be implemented by means of a written Modification or Change Order. Any such additional Services shall only be authorized upon the issuance by LACMTA of a signed Modification or Change Order, and Contractor shall not be entitled to any payment therefore in the absence thereof. Unless LACMTA agrees to an extension of time at the time it authorized additional Services, all such additional Services shall be completed by the Contract Completion Date.

If permitted or required under other provisions of the Contract Documents, Contractor may contract with Subcontractors and Suppliers. All approved Subcontractors and Suppliers are identified in Exhibit G. Any changes or substitutions of such Subcontractors or Suppliers shall be made strictly in accordance with the Contract Documents.

## **ARTICLE IV COMPENSATION AND PAYMENT**

This Contract is funded in whole or in part with federal funds.

### **A. Total Contract Price**

As full and complete compensation for the Contractor's performance of the Services in accordance with the Contract Documents, LACMTA will pay the Contractor the Firm Fixed Price of \$25,385,196.00 (Contract Price).

Unless otherwise specifically provided in the Contract Documents, the Contract Price includes compensation for all taxes the Contractor is required to pay by Laws in effect on the date the Contractor's Proposal was opened. The Contractor shall pay all federal, state, and local taxes, and duties applicable to and assessable against any Services, including, but not limited to, retail sales and use, transportation, export, import, business, and special taxes. The Contractor shall ascertain and pay the taxes when due. The Contractor will maintain auditable Records, subject to LACMTA reviews, confirming that tax payments are current at all times.

### **B. Applications for Payment**

1. The Contractor will be paid the Total Contract Price by means of progress payments in accordance with all applicable terms and conditions of the Contract Documents. A Progress Payment is a payment of a portion of the Total Contract Price for partial completion of the Services (See Exhibit B).
2. Contractor shall submit an Application for Payment ("Application") to LACMTA no later than the 25th day of the month. All Applications shall be electronically submitted to LACMTA at [accountspayable@metro.net](mailto:accountspayable@metro.net) and contain the following:
  - a. The invoice, dated and identifying the Contract Number (PS60032001);



- b. A description of the Services completed;
- c. Any other documentation LACMTA requires to process the Applications;
- d. The Contractor's signature and certification that the Services have been performed in accordance with the Contract using the form titled Payment Certification (Continuous), Exhibit E-1; and
- e. Signature of LACMTA's Authorized Representative acknowledging that the Services described in the Application have been performed in accordance with the Contract.

C. Payment

LACMTA will make payments within thirty (30) days after its receipt of an undisputed and properly submitted Application. Upon receipt of an Application, LACMTA shall:

- 1. Review the Application to determine if it is complete and meets Contract requirements.
- 2. Return any Application that is not complete or does not meet Contract requirements, setting forth in writing the reasons for the determination.

No payments shall be made for Services not performed in accordance with the Contract Documents.

D. Retention

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

E. Release of Retention

Release of retention shall be in accordance with Subsection H of this Article.

F. Additional Deductions

LACMTA may deduct from each payment any or all of the following:

- 1. Liquidated Damages, if provided for in the Special Provisions, that have accrued as of the date of the Application;
- 2. Deductions from previous payments, due to LACMTA's discovery of deficiencies in the Services or non-compliance with the specifications or any other requirement of the Contract;
- 3. Sums expended by LACMTA in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform; and

4. Other sums that LACMTA is entitled to recover from the Contractor under the terms of the Contract including without limitation insurance deductibles and assessments.

The failure of LACMTA to deduct any of the above-identified sums from payments shall not constitute a waiver of LACMTA's right to such sums or to deduct them from later payments.

#### G. Payments to Subcontractors\*

1. Payments - Contractor shall pay each Subcontractor under this Contract for satisfactory performance of its Subcontract no later than seven (7) days after its receipt of each payment from LACMTA.
2. Final Payment to Subcontractors - The Contractor shall pay to each Subcontractor all amounts it has retained from payments under the Subcontract within seven (7) days after the Subcontractor's Services are satisfactorily completed.
3. Delay in Payment - Contractor shall not delay payment beyond the seven (7) day time limit except for good cause, and only upon the prior written approval of LACMTA.
4. If LACMTA determines that the Contractor has failed to comply with this Article, LACMTA may give written notice to the Contractor describing the default, that the default shall be cured, and if the default is not cured as provided in the Section titled TERMINATION FOR DEFAULT in the General Conditions of this Contract, the Contract may be terminated for default as provided therein, or LACMTA may exercise any other remedy it has under the Contract or Law.

#### H. Final Payment\*

After Acceptance of the Services, as provided in the General Conditions of this Contract, final payment ("Final Payment") will be made as follows:

1. The Application for Final Payment shall be labeled "FINAL" and include the following:
  - a. The proposed total amount due the Contractor, segregated by base Contract amount, Change Orders, Modifications, and other basis for payment;
  - b. Deductions for prior payments;
  - c. Amounts retained; and
  - d. List of pending unsettled Claims, stating claimed amounts.
2. Prior payments shall be subject to correction in LACMTA's review of the Application for Final Payment.
3. LACMTA will review the Contractor's Application for Final Payment and will forward any required changes or corrections to the Contractor. Within ten (10) days after receipt of required changes from LACMTA, the Contractor will make the changes, and shall submit the revised Application. Upon acceptance by LACMTA, the revised Application for final payment will become the approved Application for final payment.
4. If no Claims remain unsettled within thirty (30) days after final Acceptance of the Services by LACMTA, and agreements are reached on all issues regarding the Application for final payment, LACMTA, in exchange for an executed release, satisfactory in form and substance to LACMTA, will pay the entire

sum found due on the approved Application for final payment, including the amount, if any, allowed on settled Claims.

5. The release from the Contractor shall be from any and all Claims arising under the Contract, except for Claims that with the concurrence of LACMTA are specifically reserved, and shall release and waive all unreserved Claims against LACMTA and its officers, directors, employees and Authorized Representatives. Contractor shall provide said release using the Release of Claims form, Exhibit F. Further, the release shall be accompanied by a certification (using Payment Certification (Final), Exhibit E-2) by the Contractor that:
  - a. It has resolved all Subcontractor, Supplier and other Claims that are related to the settled Claims included in the final payment;
  - b. It has no reason to believe that any party has a valid Claim against the Contractor or LACMTA which has not been communicated in writing by the Contractor to LACMTA as of the date of the Certificate;
  - c. All warranties are in full force and effect; and
  - d. The releases and warranties shall survive Final Payment.
6. LACMTA may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the amount of overpayments, offsets and other amounts claimed by LACMTA.

#### I. Discovery of Deficiencies\*

Notwithstanding LACMTA's acceptance of the Application for Final Payment and irrespective of whether it is before or after Final Payment has been made, LACMTA shall not be precluded from subsequently recovering improperly claimed or paid amounts in the event of any the following:

1. The true and correct amount payable for the Services is different from that previously accepted;
2. The previously accepted Services did not conform to the Contract requirements; or
3. A previous payment, or portion thereof, for Services was improperly made.

LACMTA shall not be estopped from demanding and recovering damages from the Contractor, as appropriate, under any of the foregoing circumstances as permitted under the Contract or applicable Law.

- J. LACMTA issues payment of invoices via Electronic Funds Transfer (EFT) which guarantees faster payments and is a more secure and efficient way to make payments. If Contractor has not already done so, Contractor is required to register for EFT, unless the Contractor requests and receives a waiver in writing. Please call (213) 922-6811, then, press option # 7 for EFT forms.

## ARTICLE V CONTRACT TERM AND PERIOD OF PERFORMANCE

The Effective Date of this Contract is Tuesday, November 5, 2019. The Period of Performance of this Contract shall commence on the date the Contract is fully executed by LACMTA. Contractor shall complete all Services under the Contract no later than Thursday, September 30, 2027 ("Contract Completion Date"), unless this Contract is terminated earlier or extended by LACMTA, in writing, as provided in this Contract.

If this Contract incorporates a Milestone Payment Schedule, the Contractor shall complete all Milestones by the date shown in the Milestone Payment Schedule. If the Contractor's Services are authorized by means of a Task Order, the Period of Performance shall be as specified therein.

## **ARTICLE VI OPTIONS**

LACMTA may exercise an option by written notice to the Contractor at any time during the term of the Contract but shall exercise an option within thirty (30) days of the Contract Completion Date. If LACMTA has elected multiple option periods, the Contract Completion Date for exercising the second and subsequent options shall be within thirty (30) days of the expiration of the option period for any preceding option LACMTA has exercised.

In the event LACMTA exercises an option, Contractor shall continue to perform the Services specified in the Contract, in accordance with all of the terms and conditions of the Contract, for the option price(s) until the expiration of the period of the option.

## **ARTICLE VII AVAILABILITY OF FUNDS**

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

## **ARTICLE VIII INSURANCE**

The Contractor shall comply with the provisions of all insurance requirements provided in the Special Provision titled INSURANCE REQUIREMENTS.

## **ARTICLE IX NOTICES AND SERVICE THEREOF\***

- A. Any notice legally required to be given by one Party to another under the Contract shall be in writing and dated, and in accordance with the Contract or other requirements applicable to the notice in question. The notice shall be signed by the Party giving such Notice or by a duly Authorized Representative of such Party.
- B. Unless otherwise specified in the Contract Documents, notices shall not be effective unless enclosed in a sealed envelope and transmitted by registered mail or any certified delivery service addressed to:

Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012-2952  
Attention: Victor Zepeda, Contract Administrator  
Contract No. PS60032000

- C. All notices to the Contractor will be enclosed in a sealed envelope and transmitted by personal delivery to





the Contractor or its Authorized Representative or by registered mail or any certified delivery service addressed as follows:

REDFLEX TRAFFIC SYSTEMS INC  
Attention: Mark Talbot  
5651 West Talavi Blvd. Ste. 200  
Glendale, AZ, 85306

- D. Any notice of changes of address shall be given according to the provisions of this Article.
- E. Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery.

**ARTICLE X ENTIRE AGREEMENT**

This Contract along with all other Contract Documents constitutes the complete and entire agreement between LACMTA and Contractor and supersedes any prior representations, understandings, communications, agreements or proposals, oral or written.

<p>REFLEX TRAFFIC SYSTEMS INC                  5651 West Talavi Blvd. Ste. 200                  Glendale, AZ, 85306                  mtalbot@redflex.com                  T: 1.703.214.4096                  C: 1.202.438.2125</p> <p>BY: </p>	<p>LOS ANGELES COUNTY METROPOLITAN                  TRANSPORTATION AUTHORITY</p> <p>PHILLIP A. WASHINGTON                  CHIEF EXECUTIVE OFFICER</p> <p>BY: </p>
<p>SIGNATURE OF AUTHORIZED REPRESENTATIVE</p> <p></p>	<p>                  11/19/2019</p> <p>DATE</p>
<p>(PRINT OR TYPE NAME)</p> <p>CEO</p>	<p>APPROVED AS TO FORM</p> <p>MARY C. WICKHAM                  COUNTY COUNSEL</p>
<p>TITLE</p> <p>11/19/19</p>	<p>BY:</p>
<p>DATE</p> <p>TAX ID NO.: 94-3292233</p>	<p>DEPUTY</p>

## SPECIAL PROVISIONS

### SP-01 DBE PARTICIPATION

- A. The Contractor shall achieve its Disadvantaged Business Enterprise (DBE) commitment of Twenty-Nine Point Six One Percent (29.61%) of the total contract price. Achievement of the DBE commitment will be measured by the total amount paid for services completed by firms identified as race-conscious (RC) DBEs.
- B. Achievement of the DBE commitment will be measured by the total amount paid for the services completed by DBEs.
- C. To obtain an accurate record of the Contractor's performance towards meeting its DBE commitments, the Contractor shall utilize LACMTA's web-based Small Business Compliance Reporting System (SBCRS) to report DBE and non-DBE payments, change orders, and perform all other reporting activities throughout the performance of the contract. The Contractor is to maintain an accurate listing of all DBE and non-DBE firms in the SBCRS. SBCRS provides online webinar training for the Contractor, Subcontractors, Suppliers, brokers, and truckers, as well as login and password information, at no additional cost to the Contractor or its Subcontractors, Suppliers, brokers or truckers. The Contractor must complete monthly reports of DBE payments, change orders, and other required information by the 15th of each month. Administration sanctions shall be assessed for failure to comply as identified in the Diversity & Economic Opportunity Department Contract Compliance Manual (RC-FTA).
- D. The Contractor is responsible for ensuring that all Subcontractors, Suppliers, brokers, and/or truckers (at all tiers) participate in the SBCRS based webinar trainings to ensure the verification of payments and other related reporting requirements.
- E. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of LACMTA's DBE program. Failure by the Contractor to carry out the DBE requirements is a material breach of this contract, which may result in the termination of this contract or other administration sanction set forth in the Contract as identified in the Diversity & Economic Opportunity Department Contract Compliance Manual (RC-FTA).
- F. Failure to meet DBE commitments and/or DBE contract requirements may result in administrative sanctions, as set forth in the Diversity & Economic Opportunity Department Contract Compliance Manual (RC-FTA).

### SP-02 ORGANIZATIONAL CONFLICTS OF INTEREST\*

Any person, firm, corporation, joint venture or partnership, or Subcontractor determined to have an organizational conflict of interest is subject to contract termination. This Contract is subject to the restrictions against organizational conflicts of interest promulgated by the Federal Transit Administration in FTA Circular 4220.1F or successor circulars. Contractor and its Subcontractors shall at all times comply with such restrictions against organizational conflicts of interest in connection with the Services it provides to and on behalf of LACMTA. Without limiting the generality of the foregoing, Contractor shall not provide Services to LACMTA, under this Contract, which would constitute or create an organizational conflict of interest, including, but not limited to, any of the following that could result in a lack of impartiality or impaired objectivity, unequal

access to information, and biased ground rules, for this Contract or any other contract for LACMTA:

A. Influenced Scope of Services

The Contractor's prior work product, whether it is performed on behalf of LACMTA or another public or private entity, has been relied upon in establishing, or significantly influenced, the Scope of Services under this Contract.

B. Opportunity to Create Contracting Opportunities

The Contractor's prior work product, whether it is performed on behalf of LACMTA or another public or private entity, afforded an opportunity for the Contractor to make or influence findings with respect to this Contract.

C. Evaluation of Prior Work Product

The Contractor would be in position to evaluate its own prior work product as part of this Contract, whether the prior work product is performed on behalf of LACMTA or another public or private entity; or as part of this Contract the Contractor would be in a position to assess its prior work product whether or not it was performed on behalf of LACMTA or another public or private entity.

D. Access to Information

The Contractor received confidential or other information as part of the services performed for LACMTA or another public or private entity which provides the Contractor with an unfair competitive advantage to obtain this Contract or another contract with LACMTA.

### **SP-03 RELEASE OF INFORMATION\***

The Contractor shall not publish information or technical data acquired or generated by the Contractor in performing the Contract until such time as such information or technical data is released in published reports by LACMTA.

### **SP-04 WORKSITE ACCESS/RESTORATION (RESERVED)**

### **SP-05 INSURANCE REQUIREMENTS INSURANCE REQUIREMENTS**

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

#### **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:



1. Insurance Services Office Commercial General Liability coverage (occurrence form CG0001)
2. Insurance Services Office form number CA0001 covering Automobile Liability.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Railroad Protective Liability
5. Professional Liability Insurance appropriate to the Contractor's profession
6. Employee Dishonesty and Crime Bond.

### **MINIMUM LIMITS OF INSURANCE**

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required occurrence limit or \$10,000,000. Products/Completed Operations aggregate shall apply separately to this contract/agreement or the aggregate limit shall be twice the required per occurrence limit.
2. Commercial Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation to comply with California's statutory requirements.
4. Railroad Protective: \$5,000,000 per occurrence
5. Professional Liability with limits of not less than \$2,000,000 per claim.
6. Employee Dishonesty & Crime Bond in the amount of \$2,000,000 which includes coverage for Money & Security of Others.

### **OTHER INSURANCE PROVISIONS**

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

1. The Los Angeles Metropolitan Transportation Authority (LACMTA), its subsidiaries, officials and employees are to be covered as additional insureds as respects liability arising out of the activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to LACMTA, its subsidiaries, officials and employees.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects LACMTA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by LACMTA shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to LACMTA, its subsidiaries, officials and employees.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each Acord Certificate of insurance required by this contract shall be worded to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to LACMTA. Cancellation provision should also delete the words, "endeavor to".
6. Workers' Compensation and Employer's Liability policies shall provide a waiver of subrogation in favor of LACMTA.
7. The Employee Dishonesty & Crime Bond, or similar form shall be continued, and evidence provided to LACMTA, for two years following the expiration of the contract or, tail coverage provided for two years in the event of cancellation or non-renewal.
8. Railroad Protective Liability in the amount of \$5,000,000 per occurrence written in the name of LACMTA shall be obtained to satisfy this coverage requirement. As an alternate to this requirement, the Commercial

General Liability may remove the exclusion for work performed within 50ft of railroad track and evidence provided on the certificate of insurance.

### **DEDUCTIBLES, SELF-INSURED RETENTIONS & SELF INSURANCE**

Self-Insurance, for liability and worker's compensation, may be permitted at Metro's discretion. Evidence of liability insurance may be satisfied with self-insurance, at Metro's discretion. Any deductibles, self-insured retentions or programs of self insurance must be declared to and amounts over \$25,000 approved by LACMTA.

### **ACCEPTABILITY OF INSURERS**

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

### **VERIFICATION OF COVERAGE**

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

### **SUBCONTRACTORS**

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

### **SP-06 LOSS PREVENTION**

In performing the Contract, the Contractor shall at a minimum provide for protecting the lives and health of employees and other persons; preventing damage to property, Goods; and avoiding work interruptions at the Worksite. For these purposes, the Contractor shall do the following:

- A. Provide appropriate safety barricades, signs, and signal lights;
- B. Comply with the safety policies of LACMTA and all applicable laws, standards, codes, rules, and regulations;
- C. Take additional measures LACMTA determines are reasonably necessary for this purpose. This determination, when delivered to the Contractor or the Contractor's Authorized Representative at the Worksite, shall be deemed sufficient Notice of the noncompliance and corrective action required. After receiving the determination, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, LACMTA may issue an order stopping all or part of the Services until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these

circumstances.

- D. Maintain an accurate record of exposure data on all occurrence incidents to Services performed under the Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by LACMTA; and
- E. Be responsible for its Subcontractor's compliance with this Section.

#### **SP-07 CONTRACTOR EQUIPMENT\***

The Contractor shall be responsible for the maintenance of all its tools and equipment. Necessary ancillary equipment will also be kept in good repair and operating condition to ensure that Contractor's operations will proceed in an efficient and effective manner.

#### **SP-08 HAZARDOUS MATERIAL IDENTIFICATION AND SAFETY DATA (RESERVED)**

#### **SP-09 CLEAN UP**

Without limiting the requirements contained elsewhere in the Contract, the Contractor shall at all times keep any Worksite, including storage areas, free from accumulations of waste materials. Before completing the Services, the Contractor shall remove from any Worksite any rubbish, tools, scaffolding, goods that are not the property of LACMTA. Upon completing the Services, the Contractor shall leave any Worksite in a clean, neat, and orderly condition satisfactory to LACMTA.

#### **SP-10 PROTECTION OF STRUCTURES, EQUIPMENT, AND VEGETATION**

The Contractor shall use reasonable care to avoid damaging existing structures, equipment, and vegetation on the Worksite. If the Contractor's failure to comply with the requirements of the Contract or failure to use reasonable care in performing the Services and causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to LACMTA. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the costs incurred by LACMTA to affect the repairs or replacement. The costs may be deducted from the Total Contract Price.

#### **SP-11 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS\* (RESERVED)**

#### **SP-12 ALLOWABILITY, ALLOCABILITY & REASONABLENESS DEFINITIONS\***

- A. This Special Provision is applicable to all Services the performance of which are based in whole or in part on reimbursement or payment of costs incurred by the Contractor.
- B. This Special Provision is intended to clarify and further define the allowability, allocability and reasonableness of costs. It is not all-inclusive and is not intended to modify and/or interpret the Federal Acquisition Regulation (FAR) requirements or conflict with any other Contract terms and conditions. LACMTA has the right to determine the allocability, allowability and reasonableness of all costs incurred by Contractor under the Contract. If Contractor disputes LACMTA's findings, Contractor may file a dispute

under the Section titled RESOLUTION OF DISPUTES. The allowability, allocability and reasonableness of reimbursable costs claimed under the Contract will include the following considerations:

- C. Allowability of costs is determined using FAR Subpart 31.204 and Generally Accepted Accounting Principles (GAAP) (promulgated by the AICPA).
- D. Reasonableness of costs is determined using FAR Subpart 31.201-3, GAAP, Internal Revenue Code (IRC) (where applicable). Reasonableness of costs must be carefully examined to ensure that costs incurred would be similar to those expected to be incurred in a competitive pricing environment. The burden of proof shall be upon the Contractor to establish that a cost is reasonable.
- E. Costs are allocated to final cost objectives. The allocability of cost is determined using FAR Subpart 31.201.4. Specifically, indirect expenses shall be allocated on the basis of the beneficial or causal relationship between supporting (indirect expense) and receiving activities (final cost objective). Such expenses shall be distributed directly to business units/segments and/or final cost objectives to the maximum extent possible. Expenses not directly identifiable to a final cost objective, if significant in amount, shall be grouped in separate logical and homogeneous pools and allocated based on a causal or beneficial relationship to final cost objectives.
- F. Allocation of costs to the Project office indirect pool shall be determined in strict accordance with FAR Subpart 31.201.4.
- G. Specifically, the Contractor shall abate its indirect expenses (associated with non-Project Office direct labor) allocated to the Project Office for items which are similar to those provided by LACMTA to the Project Office's operations at no cost or reimbursed by LACMTA as a Project Office Other Direct Cost.
- H. For example, any expense (e.g., rent, building ownership cost, office equipment or supplies) associated with the Contractor's or Subcontractors' non-Project Office direct labor shall be deemed similar to any expense (e.g., rent, office equipment or supplies) that LACMTA has paid for 100% at the Project Office. However, any expense (e.g., rent, building ownership cost, office equipment or supplies) associated with the Contractor's or Subcontractors' indirect labor is allocable to the direct labor at the Project Office.
- I. If the Contract represents more than fifty (50%) percent of the Contractor's business (% defined as direct labor v. total Contractor direct labor), outside professional expenses incurred in preparing and negotiating Contractor's positions on claims, disputes, or audits related to issues of reasonableness, allowability, or allocability shall not be allowable as a direct or indirect cost to LACMTA, unless prior written approval is obtained from LACMTA.

### **SP-13 LIQUIDATED DAMAGES\* (RESERVED)**

### **SP-14 THE CONTRACTOR'S LICENSE**

- A. The contracting firm and the majority owner of the subcontracting firm shall have the experience and professional capability to perform the Services; and shall possess and maintain for the duration of the Contract all required licenses including the appropriate State of California professional license(s) and registration required.
- B. The Contractor and Subcontractor(s) must possess and maintain the appropriate State of California license and registration required for the contracted Services throughout the duration of the Contract. Proof of

validity of such license and/or registration shall be provided on an annual basis.

#### **SP-15 LACMTA MANAGEMENT OF CONTRACTOR'S PERSONNEL \***

- A. In the event LACMTA determines it becomes necessary to request Contractor personnel to assist in the management of any Project, LACMTA may request the Contractor to assign its personnel to any Project subject to the direction of LACMTA's Project Manager or designee. LACMTA shall request such assignment of the Contractor's personnel through a Contract Change Notice requesting such personnel. The Contractor shall advise LACMTA of its concurrence or rejection of the request within seven (7) business days.
- B. Any Contract amendment issued under this Special Provision shall include the following information:
  - 1. Name of Contractor's personnel;
  - 2. Direct and indirect costs associated with the Contractor's personnel;
  - 3. Description of duties to be performed by Contractor's personnel;
  - 4. Description of the limit of authority, if any, of Contractor's personnel; and
  - 5. Indemnification language to be provided by LACMTA in connection with the proposed duties of the Contractor's personnel.
- C. For purposes of this Provision only, the Contractor's personnel identified in a Contract amendment issued under this Special Provision shall be defined as the personnel.
- D. LACMTA shall provide the personnel with office space and associated supplies and equipment necessary to perform the duties described under the Contract amendment. LACMTA shall have no obligation for any Contractor personnel who are not specifically identified in a Contract amendment issued under this Special Provision.
- E. Any document or work product produced, generated or reviewed by the personnel in their capacity described in the Contract amendment shall be the property of LACMTA. Except for the personnel's immediate superior in the Contractor's Project office, the personnel shall not discuss their work assignment with any other Contractor personnel without prior consent of LACMTA's Project Manager.
- F. The personnel shall perform the Services described in the Contract amendment in compliance with LACMTA's policies and procedures, including, without limitation, LACMTA's Ethics Policy, Code of Conduct and other applicable policies and procedures. Further, personnel's work hours shall be compatible with LACMTA's normal work hours.
- G. During the term of the Contract amendment, the personnel shall remain an employee of the Contractor and shall continue to have their salary and benefits paid for the Contractor. In no event will the personnel be considered an LACMTA employee. Further the personnel shall not receive any benefits normally accruing to LACMTA employees unless provided by the Contractor.
- H. LACMTA, in its sole discretion, has the right to terminate a Contract amendment issued pursuant to this Provision notwithstanding the duration stated in the Contract amendment or remove the personnel at any time, all in accordance with the terms of the Contract.

## **SP-16 SUBCONTRACT ADMINISTRATION\***

LACMTA has elected to implement the following requirements related to the Services that are performed by all Subcontractors of any tier under this Contract.

- A. Executed Subcontract Agreements - Contractor shall submit to the LACMTA Contracting Officer complete copies of all executed Subcontracts and/or purchase orders within fourteen (14) calendar days after the Contractor, or its Subcontractors, executes each Subcontract or purchase order. Contractor shall also submit copies of all Change Orders, Modifications, addendums or amendments to such Subcontracts and purchase orders within fourteen (14) calendar days after execution. Contractor shall not darken out or delete any information from the submitted Subcontract and purchase order documents. The Subcontract and purchase order prices shown in the submitted documents shall not be cause for any reason by any Party to make an adjustment to the Total Contract Price and such pricing information will only be used to implement the provisions of this Contract related to Subcontractor payments and retention.
- B. Subcontract Values - Contractor shall, in its monthly Application for Payment, identify all Services provided by, the value thereof, payments made to date and retention withheld its Subcontractors and Suppliers, including all Services authorized by means of a Modification or Change Order.
- C. Survival of Obligations - Without limiting any other provision of the Contract relating to continuing obligations that extend beyond final Acceptance of the Services or any Subcontractors' or Suppliers' Services under this Contract, the Contractor's responsibility for injury to persons and/or property arising from its duties and obligations under the Contract, including without limitation, the Sections titled LIABILITY AND INDEMNIFICATION, GOODS, and WARRANTY in the Contract Document titled General Conditions, shall survive acceptance and any payment to Contractor by LACMTA for any element of the Services performed by a Subcontractor or Supplier under this Contract.
- D. Undisclosed Incomplete Services - Contractor will not be relieved of its obligations to complete any element of the Services, or any portion or item thereof, the non-completion of which was not disclosed to LACMTA prior to final Acceptance of the Contract, regardless of: (1) whether such nondisclosures were fraudulent, negligent, or otherwise; and (2) LACMTA having inspected or accepted any element of the Services, having accepted Contractor's certification that any element of the Services is completed, having made payment to Contractor for any element of the Services, or Contractor having made final payment, including a release of retention to its Subcontractor or Supplier for that element of the Services. Contractor shall remain obligated to correct all such items after final Acceptance of the Contract under this Section and all other provisions of the Contract that, expressly or by their nature, extend beyond or survive final Acceptance.

## **SP-17 PAYMENT AND REPORTING OF PREVAILING WAGE\***

- A. Applies to Contracts that utilize prevailing wage labor - This Contract is subject to the provisions of California law, including, but not limited to, California Labor Code §§ 227, 1021, and 1720 through and including 1861, together with all applicable regulations (e.g. Title 8 California Code of Regulations § 16001 et seq.). In addition to the requirements for payment of prevailing wages set forth in the [Labor Compliance Manual](#), this Contract, if federally funded, is also subject to payment of prevailing wages under federal law by the Davis Bacon Act (40 U.S.C. 3141 et seq.), as determined by the US Department of Labor, and is to be used in accordance with the provisions of Regulations 29 C.F.R. Part 1, Part 3, Part 5, Part 6 and Part 7. All pertinent federal and state statutes and regulations, including, but not limited to, those referred to above are hereby incorporated by reference into this document as though set forth in their entirety.

Contractors and subcontractors on all public works projects are required to submit their certified payroll records (CPRs) to the California Labor Commissioner using the DIR's electronic certified payroll reporting system unless exempt. Contractor and subcontractors must also submit their CPRs directly to LACMTA. Prevailing Wage Reporting System - LACMTA may require, at time of award, the Contractor to utilize LACMTA's online "Prevailing Wage Reporting System," in lieu of hard copy manual submittals, for the following documents:

- Certified Payroll and other related documents
  - Project Labor Agreement related documents (if applicable)
  - Construction Careers Policy monthly reports and related documents (if applicable)
- B. In the event of a conflict between LACMTA's living wage (see Special Provision titled Living Wage/Service Contract Worker Retention Policy), the prevailing wage under state law as determined by California authorities, and the prevailing wage under federal law as determined by the U.S. Department of Labor, the Contractor shall pay at minimum the highest of the three (3) wages.

**SP-18 LIVING WAGE / SERVICE CONTRACT WORKER RETENTION POLICY\* (RESERVED)**

**END OF SPECIAL PROVISIONS**

## GENERAL CONDITIONS

### GC-01 GLOSSARY OF TERMS\*

#### A. Abbreviations And Symbols

ADR	Alternative Disputes Resolution
Cal-OSHA	California Occupational Safety and Health Administration
CEO	Chief Executive Officer
C.F.R.	Code of Federal Regulations
DEOD	Diversity and Economic Opportunity Department of LACMTA
EPA	United States Environmental Protection Agency
FAR	Federal Acquisition Regulations
FTA	Federal Transit Administration
GEC	General Engineering Consultant
LACMTA	Los Angeles County Metropolitan Transportation Authority
NTE	Not-to-Exceed
OSHA	United States Department of Labor, Occupational Safety and Health Administration, and Occupational Safety and Health Act
PUC	Public Utilities Code, State of California
RFC	Request for Change
U.S.C.	United States Code

#### B. Definitions

Acceptance:	Documentation prepared by LACMTA or its Authorized Representative attesting to the completion of all of the Services under the Contract or specified portion thereof.
Alternative Disputes Resolution:	Means for settling a disputed claim which may include arbitration, mediation or other recognized means for settling a dispute.
Approve:	LACMTA written confirmation of documents presented by and/or actions of the Contractor related to the Services under the Contract.
Applicable Laws:	"Applicable Laws" means all Federal, State, and local laws, statutes, ordinances, regulations, policies and guidelines (including, without limitation, Environmental



Laws and Disability Laws) enacted by Governmental Authorities, codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities and common law, including, but not limited to, principles of equity applied by the courts, which are in effect at the time the Services or other obligations that are required under or in connection with the performance of this Contract, and relevant and applicable to the Scope of Services under the Contract, including without limitation all of the Regulatory Requirements.

Assessment:	A cost imposed on the Contractor for non-compliance with certain contractual requirements.
Authorize:	LACMTA's written permission to Contractor for actions to be completed.
Authorized Representative:	Person or firm with full legal authority to act for or in the place of the named business or governmental entity.
Business Days:	Business day shall mean Monday through Friday, except for federal and state holidays.
Calendar Days:	All days in a month, including weekends and holidays.
Change:	Substitutions, additions, or deletions which result in revisions to the Contract. Change does not mean work performed by the Contractor to correct defective Services caused by the Contractor's negligent acts, errors or omissions.
Change Order (CO):	A unilateral written order by LACMTA's Contracting Officer directing a Change.
Chief Executive Officer:	The Chief Executive Officer (CEO) of LACMTA.
Claim:	A written demand by one of the Parties for: <ol style="list-style-type: none"> <li>1. Time extension; and/or</li> <li>2. Payment of money.</li> </ol>
Consultant:	One that provides Services to LACMTA, also defined as the Contractor.
Contract:	This written agreement executed between LACMTA and Contractor and consisting of the Contract Documents as defined in the General Conditions.
Contract Administrator:	The person identified by LACMTA in the RFP as the Contract Administrator, or in any other notice provided by LACMTA.
Contract Change	A document issued by LACMTA to the Contractor detailing a proposed change to

Notice (CCN):	the Contract.
Contract Documents:	The Contract Documents consist of the Form of Contract, General Conditions, Special Provisions, Regulatory Requirements, Scope of Services, manuals, certifications, specifications, and all other terms, conditions, requirements and directions that collectively constitute the obligations of the Contractor in the performance of the Services, including all exhibits, attachments, appendices, and amendments to the foregoing and all Modifications and Change Orders. Task Orders are Contract Documents when fully executed and issued by LACMTA to the Contractor.
Contracting Officer:	The CEO or a designated representative who is authorized and empowered to execute contracts, contract Modifications, Change Orders, and agreements on behalf of LACMTA.
Contractor:	The individual, firm, partnership, corporation, joint venture or combination thereof, referred to throughout the Contract in the singular and by the neutral term "it", that has entered into the Contract with LACMTA.
Cure Notice:	Written notice from LACMTA to the Contractor to correct Services performed not in conformance with the Contract.
Days:	Unless otherwise stated, "days" shall mean calendar days. When a required submittal falls on a non-business day, submittal shall be on the next business day.
Goods:	Equipment, material and/or products required to perform the Services. Goods may be furnished by LACMTA or required to be furnished by the Contractor.
Government Authorities:	Any federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.
Home Office:	The home office(s) of the Contractor's firm.
Invoice:	A request for payment for Services performed.
LACMTA:	The Los Angeles County Metropolitan Transportation Authority (LACMTA) or its successor, or any successor in interest, or its Authorized Representative.
Milestone:	An established point, event or occurrence that is included in or associated with the Schedule, as defined in the Contract, and which may be tied to a requirement in the Contract.
Modification:	Any written addition, deletion, adjustment or alteration to the Contract, whether arising out of the unilateral exercise by LACMTA of any right under the Contract,

or by mutual agreement/action executed by the Parties. A Modification may be unilateral or bilateral, and includes Change Orders, adjustments in quantities, extensions of time, administrative changes and adjustments, and all other actions and events that result in an alteration, correction or adjustment of the Contract.

Notice of Termination:	Written notice from LACMTA to the Contractor terminating the Contract, or a portion thereof, either for convenience of LACMTA or for default due to the Contractor's failure to perform its contractual obligations.
Parties:	LACMTA and the person(s), governmental entities, or business entities entering into the Contract.
Period of Performance:	The total time period for completion of all Services under the Contract.
Program:	Existing and planned rail transit system that is and will be operated by LACMTA.
Project:	The Contract Scope of Services for a portion of LACMTA Transit System as defined in the Form of Contract.
Request for Change (RFC):	A document issued by the Contractor to LACMTA detailing a proposed change to the Contract.
Request for Substitution:	Goods, service(s), system(s) or subcontractor(s) that the Contractor requests to use in lieu of that specified in the Contract.
Schedule:	A time phased Project execution plan that identifies all activities necessary to implement a given Project and Contract in a logical time phased manner. The Contract Schedule provides the start and completion date of each activity and its Milestones. The Project Schedule shall include the Milestones for the entire Project.
Scope of Services (Services):	Description of the sum total of productive and operative efforts used to generate the results specified, indicated, or implied in the Contract, including all technical and professional services, and Goods used during all related activities whether originally or subsequently Scheduled.
Special Provisions:	Requirements applicable to the Contract that invoke, modify, and/or supplement the General Conditions.
State:	The State of California.
Subcontract:	A legal agreement between the Contractor and a Subcontractor or Supplier to furnish Services, labor or Goods as a portion of the Services, or any such agreement between a Subcontractor or a Supplier and its lower tier

Subcontractor or Supplier, at any tier.

Subcontractor:	Any individual, firm, partnership, corporation, joint venture or combination thereof, other than employees of the Contractor, that enters into a legal agreement with the Contractor to furnish Services, labor or Goods as a portion of the Services. Unless otherwise specified, Subcontractors includes Subcontractors of any tier.
Supplier:	Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, or Subcontractor that enters into a legal agreement with the Contractor and that manufactures, distributes or furnishes tangible Goods as a portion of the Services, with Services usually limited to delivery and/or required testing. Unless otherwise specified, Suppliers includes Suppliers of any tier.
Technical Review:	A technical quality and progress audit, including, but not limited to, a check of budget versus expenses to date, technical progress, quality of work, Schedule assessment and a measurement of design hours per drawing, review of adherence to policies and procedures and safety requirements.
Total Contract Price (TCP):	The total compensation approved by LACMTA's governing board to be paid to the Contractor in accordance with the terms of the Contract (and amendments thereto).
Transit System:	The entire fixed guideway rail transportation system, including right-of-way, pavement, tracks, structures, equipment appurtenances, and all other related property of LACMTA.
Worksite:	The location where the Contractor's Services will be performed as defined in the Contract. The term may include the location of work performed by others (i.e., the construction site of a Project).

## **GC-02 GOVERNING LAW\***

The validity, construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of California without regard to its rules of conflict of laws.

By entering into the Contract, the Contractor consents and submits to the jurisdiction of the Courts of the State of California, County of Los Angeles, over any action at law, suit in equity, and/or other proceeding that may arise out of the Contract.

## **GC-03 CONTRACT DOCUMENTS**

### **A. Explanations**

Should it appear that the Services to be performed or any relative matters are not sufficiently detailed or

explained in the Contract, the Contractor shall request in writing from LACMTA a written explanation as may be necessary and shall conform to the explanation given.

## B. Omissions And Misdemeanors

1. The Contractor shall carefully study the Contract; shall verify all figures in the Contract Documents before performing the Services; shall promptly notify LACMTA of all errors, inconsistencies, and/or omissions that it discovers; and, in instances where such non-conformities are discovered, shall obtain specific instructions in writing from LACMTA before Contractor's proceeding with the Services. Any Services affected that is performed prior to LACMTA's decision shall be at the Contractor's risk. The Contractor shall not take advantage of any apparent non-conformity that may be found in the Contract. LACMTA shall be entitled to make such corrections therein and interpretations thereof as it may deem necessary for the fulfillment of the intent of the Contract. Omissions or misdescriptions of any Services that are manifestly necessary to carry out the intent of the Contract, or that are customarily performed, shall not relieve the Contractor from performing such Services at no additional expense and/or delay, and such Services shall be performed as if fully and correctly set forth in the Contract.

### 2. Terms

Where the terms "as indicated" and "as detailed," or words of similar import are used by themselves, it shall be understood that reference is made to the Technical Specifications or other technical documents provided by LACMTA, or Contract drawings unless otherwise expressly stated. "Directed," "required," "permitted," "ordered," "designated," "selected," "approve," "accept," "satisfactory," "equal," "necessary," or words of like import shall be understood to require an identifiable action by LACMTA unless otherwise expressly stated.

### 3. References within the Contract

References to Articles (e.g. ARTICLE II), Sections (e.g. GC-02) and Paragraphs within the Contract are made by citing the title of the provision only, e.g., a reference to this particular Section would be phrased "in the Section titled CONTRACT DOCUMENTS", which would necessarily include all Subsections and Paragraphs in this Section. References to Articles, Sections and Paragraphs include Subarticles, Subsections and Subparagraphs within the same Section or Paragraph. References to other Contract Documents are made by citing the title of the Contract Part, e.g., "the Special Provisions".

## GC-04 INTERPRETATION\*

### A. Furnished By LACMTA:

Upon request by the Contractor, LACMTA shall furnish the Contractor any general information and data readily available to LACMTA or those under contract to LACMTA for this Project, which the Contractor determines, may be of use to the Contractor in the performance of the Services. LACMTA shall rely upon the Contractor to determine which of the general information and data readily available to LACMTA the Contractor requires for the performance of the Services hereunder. LACMTA makes no representations with respect to the reliability, accuracy, or completeness of any information or data it may furnish hereunder. The Contractor is entitled to rely on the information or data to the extent a service provider providing like services on a project with similar scope and complexity would believe it is appropriate to do so. The Contractor is expected to apply its professional judgment and seek any clarification it deems

necessary.

**B. Furnished by Others:**

The Contractor is to obtain, utilizing its own personnel, any required information that has been developed by other public or private agencies or companies that are not under contract to LACMTA. The Contractor is to apply its professional judgment as to the reliability of the information or data for the purpose for which the Contractor intends on utilizing such information or data.

**GC-05 AUTHORITY OF THE CONTRACTING OFFICER**

LACMTA has the final approval in all matters relating to or affecting the Services. Except as expressly specified in the Contract, the Contracting Officer may exercise any powers, rights, and/or privileges that have been lawfully delegated by LACMTA. Nothing in the Contract shall be construed to bind LACMTA for acts of its employees and Authorized Representatives that exceed the delegation of LACMTA specified herein.

No LACMTA employee or officer, except the Contracting Officer, may authorize any Change Orders, or Modifications to the Contract.

**GC-06 LACMTA'S TECHNICAL REPRESENTATIVE (PROJECT MANAGER)**

LACMTA shall provide a Project Manager and/or a technical representative for all technical aspects related to the performance of the Contract. The Contractor shall make such oral or written reports to LACMTA's technical representative with an information copy to the Contract Administrator as may be requested by LACMTA or as specifically required by the Contract. All contractual matters shall be addressed to the Contract Administrator.

**GC-07 ORGANIZATIONAL AND KEY PERSONNEL**

- A. Before starting any Services, the Contractor shall submit for LACMTA review and acceptance, an organization chart showing the proposed organization established by the Contractor for the performance of the Services. The Contractor shall identify all key personnel within its organization chart and shall provide resumes of each individual. The chart shall include the following items:
1. Lines of authority, responsibility, and communication;
  2. Office organizations, if any; and
  3. Names, titles, and functions of all supervisory and other key personnel.
- B. The Contractor's Project Manager shall supervise and direct the Services, and have overall responsibility for the Services in accordance with the Contract. The Contractor shall be solely responsible for implementation of all Services, means, methods, techniques, sequences, and procedures and for coordination of all portions of the Services under the Contract.
- C. The Contractor shall not reassign such key personnel to other projects without LACMTA's prior written approval and until a satisfactory replacement has been approved by LACMTA. The Contractor shall secure the prior written approval of LACMTA for any change or reassignment of the key personnel,

submitting written documentation of the new individuals' qualifications.

- D. If LACMTA provides office space to the Contractor, or requires Contractor to locate its office space in a specific location, then at all times during the performance of Services hereunder, only related Services shall be performed in such office space and Contractor shall not use such office space to perform non-Contract related work.
- E. LACMTA shall have the right, in its absolute discretion, to require the removal of Contractor's personnel at any level assigned to the performance of the Services, if LACMTA considers such removal necessary in the best interests of the Program and requests such removal in writing. Such personnel shall be promptly removed from the Project by the Contractor at no cost or expense to LACMTA. Further, an employee who is removed from the Project for any reason shall not be re-employed on the Program.

#### **GC-08 WHISTLEBLOWER REQUIREMENTS\***

- A. The Contractor shall comply with, and not take any action or adopt any rule, regulation or policy which is contrary to, the provisions set forth in the California Labor Code § 1102.5.
- B. The Contractor shall post and maintain all current LACMTA Phone Hotline literature provided by LACMTA ("Hotline Literature") at place(s) of performance during the term of the Contract. All Hotline Literature is to be posted in prominent locations that are highly visible and accessible to Contractor's employees. Contractor shall not hinder or coerce its employees from using LACMTA Phone Hotline to voice ideas, suggestions, or concerns relative to the performance of any LACMTA contract. The Contractor shall provide access to LACMTA representatives for the purpose of verifying Contractor's adherence to this Section. In the event LACMTA inspection finds the Contractor has failed to comply herewith, the Contractor shall promptly correct such failures in the manner directed by LACMTA, this may include, but is not limited to, replacing Hotline Literature and sponsoring training sessions, with LACMTA representatives, on the use of LACMTA Phone Hotline.

#### **GC-09 AGENT TO ACCEPT SERVICE**

The Contractor shall maintain within Los Angeles County a duly authorized agent to accept service of legal process on its behalf, and shall keep LACMTA advised of such authorized agent's name and address during the duration of the Contract and for three (3) years after Final Payment, or as long as the Contractor has warranty obligations under the Section titled WARRANTY herein, whichever period terminates later.

#### **GC-10 CONFLICT OF INTEREST\***

- A. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee (as defined in the Section COVENANT AGAINST CONTINGENT FEES), working solely for Contractor, to solicit or secure the Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach of this warranty, or violation of any other prohibition in this Section, LACMTA shall have the right to terminate the Contract for failure of Contractor to fulfill its Contract obligations.
- B. Contractor agrees that, for the term of the Contract, no member, officer, or employee of LACMTA, or of a local public body during their employment and for one (1) year thereafter, shall have any interest, direct or indirect, in the Contract, or to any benefit arising thereof as prohibited by Government Code §§ 1090 and

87100.

- C. The employment by Contractor personnel on the payroll of LACMTA for the performance of Services under the Contract will not be permitted, even though such employment may be outside of the employee's regular working hours or on Saturdays, Sundays, holidays, or vacation time. The employment by the Contractor personnel who have been on LACMTA payroll within one (1) year prior to the date of Contract award, where such employment is caused by and/or dependent upon Contractor securing the Contract or a related contract with LACMTA, is also prohibited.
- D. Neither the Contractor nor its employees nor its Subcontractors or their employees shall give or offer to give any campaign contribution to any member of LACMTA in violation of California Public Utilities Code § 130051.20 or California Government Code § 84300 et seq.

#### **GC-11 CONFIDENTIALITY\***

Contractor agrees that for and during the entire term of the Contract, any information, data, figures, records, findings and the like received or generated by the Contractor in the performance of the Contract, shall be considered and kept as the private and privileged records of LACMTA and will not be divulged to any person, firm, corporation, or other entity except on the direct authorization of LACMTA. Further, upon termination of the Contract for any cause, Contractor agrees that it will continue to treat as private and privileged any information, data, figures, records and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct written authority of LACMTA.

The Contractor shall not publish information or technical data acquired or generated by the Contractor in performing the Contract until such time as such information or technical data is released in published reports by LACMTA.

#### **GC-12 COVENANT AGAINST CONTINGENT FEES\***

- A. The Contractor warrants that no person or Authorized Representative has been specifically employed or retained to solicit or obtain the Contract in exchange for a contingent fee, except a bona fide employee or Agent. A breach or violation of this warranty shall be considered a breach of Contract pursuant to the Section titled TERMINATION FOR DEFAULT herein. In addition to any rights and remedies otherwise provided by law, LACMTA may deduct from the TCP or consideration, or otherwise recover, the full amount of the contingent fee.
- B. "Bona fide Agent", as used in this Section, means an established commercial or selling entity that is maintained by the Contractor for the sole purpose of securing business and that neither exerts nor proposes to exert improper influence to solicit or obtain LACMTA contract(s) nor holds itself out as being able to obtain any LACMTA contract(s) through improper influence.
- C. "Bona fide employee", as used in this Section, means a person who is employed by the Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance and who neither exerts nor proposes to exert improper influence to solicit or obtain LACMTA contract(s) nor holds itself out as being able to obtain any LACMTA contract(s) through improper influence.
- D. "Contingent fee", as used in this Section, means any commission, percentage, or other sum that is payable only upon success in securing an LACMTA contract.



- E. "Improper influence," as used in this Section, means any influence that induces or tends to induce an LACMTA employee, officer, Contractor, Subcontractor, Supplier, Authorized Representative, or Consultant to give consideration or to act regarding an LACMTA Contract on any basis other than the merits of the matter.

### **GC-13 ENGLISH REQUIREMENTS\***

At all times, all Contractor personnel on site must have sufficient knowledge of the English language to comprehend safety related directions and requirements. At all times, the Contractor shall have a lead representative on site who has sufficient comprehension of the English language to read, write, speak and understand all job related directions and discussions.

### **GC-14 LICENSES AND PERMITS**

Except for any permits furnished by LACMTA, the Contractor shall be fully responsible for identifying and obtaining, at its own expense, all necessary licenses and permits required for the timely prosecution of the Services.

The Contractor acknowledges that prior to entering into the Contract it familiarized itself with the requirements of all applicable federal, state, county, and municipal laws, codes, rules, and regulations, as well as the conditions of any required licenses and permits, in effect at time of execution of the Contract. The Contractor shall be responsible for complying with all of the foregoing, at its sole expense and without any additional compensation or extension of the time for performance set forth in the Form of Contract on account of such compliance, regardless of whether such compliance would require additional Services, labor, equipment, or Goods not expressly stated in the Contract.

### **GC-15 GOODS\***

- A. The Contractor shall furnish all Goods required to complete the Services, except those designated to be furnished by LACMTA. Unless otherwise indicated in the Contract, Goods incorporated into the Services shall be new, of good quality, and of the grade specified for the purpose intended. Unless otherwise specifically stated, reference to Goods or patented processes by trade name, make, or catalog number shall be regarded only as a means of establishing a standard of quality; such references shall not be construed as limiting competition. The Contractor may, at its option, use any Goods or process that is equivalent to that named subject to the prior written acceptance by LACMTA. LACMTA shall be the sole judge of the quality and suitability of proposed alternative Goods or processes subject to the right of LACMTA to accept or reject such alternative.
- B. Any Goods that may be purchased under the Contract shall be transported, handled, and stored by the Contractor in a manner that shall ensure the preservation of their quality, appearance, and fitness for the Services. All Goods shall also be stored in a manner that facilitates inspection.

### **GC-16 RIGHTS IN PROPERTY\***

#### A. Title

1. All property purchased by the Contractor for LACMTA, shall be hereinafter referred to as LACMTA Property. Title to LACMTA Property shall pass to and vest in LACMTA upon the vendor's delivery and

acceptance of such property by the Contractor.

2. Title to LACMTA Property shall not be affected by its incorporation into or attachment to any property not owned by LACMTA, nor shall LACMTA Property become a fixture or lose its identity as personal property by being attached to any real property.
  3. The title transferred as described above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances. The Contractor shall not pledge or otherwise encumber the items in any manner that would result in any lien, security interest, charge, and/or claim upon or against said items.
  4. The Contractor shall promptly execute, acknowledge, and deliver to LACMTA proper bills of sale or other written instruments of title in a form as required by LACMTA; said instruments shall convey to LACMTA title to material free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- B. LACMTA Property shall be used only for performing Services on the Contract, unless otherwise provided in the Contract or approved by the Contract Administrator.

## **GC-17 INDEPENDENT CONTRACTOR**

- A. The Contractor represents that it is fully experienced and properly qualified to perform the class of Services required for the Contract and that it is properly licensed, equipped, organized, and financed to perform the Services. The Contractor shall be an independent contractor. The Contractor is not an agent of LACMTA in the performance of the Contract, and shall maintain complete control over its employees and its Subcontractors and Suppliers of any tier. Nothing contained in the Contract or any Subcontract awarded by the Contractor shall create any contractual relationship between any Subcontractor or Supplier and LACMTA. The Contractor shall perform the Services in accordance with its own methods, in compliance with the terms of the Contract.

LACMTA reserves the right of prior approval of all Subcontractors and Suppliers and retains the right to request Contractor to terminate any Subcontractor or Supplier, for any reason deemed appropriate by LACMTA, by so notifying Contractor in writing. Should said notification be submitted to Contractor, it shall terminate said Subcontractor or Supplier immediately.

- B. Compensation and Benefits - Contractor shall be solely liable and responsible for providing all compensation and benefits to, or on behalf of, all persons performing Services pursuant to this Contract and Contractor shall require the same of all its Subcontractors. LACMTA will have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor and its Subcontractors. Contractor understands and agrees that all persons performing Services pursuant to this Contract are the sole employees of Contractor, including for purposes of workers' compensation liability, and not employees of LACMTA. Contractor shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any Services performed by or on behalf of Contractor pursuant to this Contract.

## **GC-18 SUBCONTRACTORS AND SUPPLIERS\***

- A. Documentation And Acceptance

The Contractor shall submit to LACMTA a copy of all Subcontracts within fourteen (14) days of execution regardless of value, and a copy of insurance certificates in accordance with the Special Provision titled INSURANCE REQUIREMENTS. Failure to submit Subcontracts and certificates within the required time period will result in the Subcontractor's not being permitted to perform Services on the Project.

#### B. Performance Of Services

The Contractor shall be responsible for:

1. All acts and omissions of its own personnel, and of Subcontractors, Suppliers and their employees; and
2. Coordinating the Services performed by Subcontractors and Suppliers.

Should a portion of the subcontracted Services not be performed in accordance with the terms of the Contract, or if a Subcontractor commits or omits any act that would constitute a breach of the Contract, the Subcontractor shall be replaced within thirty (30) days and shall not again be employed on the Program.

#### C. Acceptance Of Substitution Of Subcontractor

1. The Contractor shall notify LACMTA in writing of any proposal to substitute a Subcontractor in place of a Subcontractor listed in the Contractor's Qualification/Proposal. Prior to such substitution the Contractor shall secure the acceptance of LACMTA. The Contractor shall submit the following information in a form similar to that contained in the Contractor's original Qualification/Proposal.

- a. Name of Subcontractor
- b. Location and Phone Number of Place of Business
- c. Contact Person
- d. Subcontractor's License(s) number and expiration date (if applicable)
- e. Current LACMTA Contract Compliance Certification Status (if applicable)
- f. The portion of the Services that will be performed by each Subcontractor.

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

2. LACMTA shall not be responsible for delays incurred by the Contractor because of a timely disapproval by LACMTA of a Subcontractor proposed by the Contractor, or for the late submittal for acceptance of a Subcontractor to LACMTA, or because of a Subcontractor's removal from the performance of the Services.
3. The Contractor shall not do any of the following without the prior written consent of LACMTA:
  - a. Replace any previously accepted Subcontractor; and/or
  - b. Permit any previously accepted Subcontract to be assigned or transferred.

4. However, the Contractor may perform the Services itself with qualified personnel, provided written permission is obtained from LACMTA prior to performance of the Services.

#### D. Flow-Down Requirements

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

1. All articles, subarticles or portions of the Contract noted by a star (\*) shall be included in all Subcontracts of any tier.
2. All provisions required by law, regulation, rule, or the Contract shall apply to all Subcontracts of any tier.
3. Provisions indicating that by virtue of signing the Subcontract, the following apply:
  - a. The Subcontractor acknowledges and agrees that all Services being performed by it under the Subcontract shall be performed in accordance with the Contractor's Contract with LACMTA.
  - b. The Subcontractor agrees that it shall have the same duties and obligations to the Contractor with respect to its performance of its own Services as the Contractor has to LACMTA under its Contract.
  - c. The Contractor and the Subcontractor agree that LACMTA is the third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit. All guarantees and warranties, express or implied, shall inure to the benefit of both LACMTA and the Contractor during the performance of the Services; upon final completion of the Services, such guarantees and warranties shall inure to the benefit of LACMTA.
  - d. The Contractor and the Subcontractor agree that nothing contained in the Subcontract shall be deemed to create any privity of the Contract between LACMTA and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of LACMTA to the Subcontractor except those allowed under California Law. In the event of any claim or dispute arising under the Subcontract and/or the Contractor's Contract with LACMTA, the Subcontractor shall look only to the Contractor for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against LACMTA arising out of the Subcontract.
- E. This Section does not and shall not operate to relieve the Contractor of any duty or liability under the Contract nor does it create any duty or liability on the part of LACMTA. The Contractor shall have sole responsibility for promptly settling any disputes between its Subcontractors and between the Subcontractors and any of their Subcontractors.
- F. No Subcontractor shall be permitted to perform the Services under the Contract until it, or the Contractor, has supplied satisfactory evidence of required insurance to LACMTA, in compliance with the Special Provision titled INSURANCE REQUIREMENTS.

#### **GC-19 STANDARDS OF PERFORMANCE\***

- A. The Contractor shall perform and require its Subcontractors and Suppliers to perform the Services in accordance with the requirements of the Contract and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience and knowledge in performing services of a similar nature and of like complexity in the Los Angeles area. The Contractor shall

be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, it being understood that LACMTA will be relying upon such professional quality, accuracy, completeness, and coordination in utilizing the Services. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of the Contract.

- B. Contractor hereby represents that it has made the necessary commitment, that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available or will make the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Contract.
- C. All Contractor, Subcontractor, and Supplier personnel shall have sufficient skill and experience to perform the work assigned to them. Contractor shall ensure that any individual performing work under the Contract requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the Services assigned to them.
- D. If any Services provided by the Contractor, Subcontractor, or Supplier are deficient because of the Contractor's, Subcontractor's, or Supplier's failure to perform the Services in accordance with the above standards, LACMTA shall report such deficiencies in writing to the Contractor. LACMTA thereafter may:
  1. Have the Contractor re-perform such Services at the Contractor's own expense; or
  2. Have such Services performed by others and the costs thereof charged to and collected from the Contractor in accordance with the Section titled TERMINATION FOR DEFAULT herein.
- E. Corrected or re-performed Services shall be subject to the above standards of performance.

#### **GC-20 INSPECTION OF WORK (ACCEPTANCE)\***

- A. LACMTA, at its sole discretion, reserves the right to inspect all and every part of the Services at any time during the Period of Performance and after completion, at its discretion.
- B. If the Services or any parts thereof have not been performed in accordance with the Contract, the Contractor will be notified in writing that such Services are rejected. Thereupon, the Contractor shall take the necessary corrective action. LACMTA shall not be obligated to make any inspections, however, and neither the inspection of the Services, nor the lack thereof, shall relieve the Contractor of its responsibility for performing and providing the Services in accordance with the terms of the Contract.
- C. LACMTA shall not be deemed to have accepted the Contractor's performance of the Services unless LACMTA or its designated representative has given written notice of Acceptance of the Services to the Contractor. No payment in whole or in part shall be construed to be an Acceptance of the Services.
- D. LACMTA shall have access, at all reasonable times, to the Contractor's calculations, supporting materials, data, and information concerning the Services, including computer programs and printouts, which LACMTA determines are required to review the Services properly and expeditiously. The Contractor shall furnish sufficient and convenient facilities for such inspection and review, and shall grant LACMTA's designated representatives free access at all reasonable times to all locations where the Services is performed.
- E. Prior to the release of Services, LACMTA and the Contractor shall determine which required reports will be

submitted to LACMTA in draft form before final submission of the report.

## **GC-21 SAFETY\***

This Section is to be construed in its broadest sense for the protection of persons and property by the Contractor and no action or omission by LACMTA, the Contracting Officer, any Authorized Representative or any other person shall relieve the Contractor of any of its obligations and duties hereunder.

- A. The Contractor shall at all times conduct its operations in such a manner as to avoid risk of bodily harm to persons or damage to property. The Contractor shall promptly take all reasonable precautions to safeguard against such risks and shall make regular safety inspections of its operations. The Contractor shall be solely responsible for the discovery, determination and correction of any unsafe conditions caused by the Contractor's performance of the Services.
- B. In addition, the Contractor shall comply with all applicable safety laws, standards, codes, rules, and regulations, including any safety program established by LACMTA. The Contractor shall cooperate and coordinate with LACMTA and with other LACMTA contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by LACMTA.
- C. The Contractor shall inform its personnel of LACMTA safety practices and the requirements of LACMTA's Safety Principles, described in the Section titled SAFETY AND LOSS PREVENTION, and LACMTA's safety program when identified in the Scope of Services. If any of the Contractor's personnel are required to visit any Worksites, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel.

## **GC-22 SAFETY AND LOSS PREVENTION\***

This Section is to be construed in its broadest sense for the protection of persons and property by the Contractor and no action or omission by LACMTA, the Contracting Officer, any Authorized Representative or any other person shall relieve the Contractor of any of its obligations and duties hereunder.

### **A. LACMTA's Safety Principles**

1. Safety is a 24/7 priority
2. Safety is everyone's responsibility
3. Accidents and injuries are preventable
4. Working safely is a condition of employment
5. Training is essential for good safety performance
6. Management is accountable for safety

### **B. Contractor Responsibilities**

The Contractor is responsible for:

1. Complying with all applicable safety Laws
2. Enforcing Worksite safety practices; and
3. The discovery, determination and correction of any unsafe conditions related to the Contractor's performance of the Services or Goods supplied by the Contractor on LACMTA property.
4. The Contractor shall cooperate and coordinate with LACMTA and with other LACMTA contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by LACMTA.

#### C. Safety Practices

1. The Contractor shall inform its personnel of LACMTA safety practices and the requirements of LACMTA's safety program when identified in the Scope of Services.
2. If any of the Contractor's personnel are required to visit any Worksites, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel. The Contractor shall cooperate and coordinate with LACMTA and with other LACMTA contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by LACMTA.

#### **GC-23 UNAUTHORIZED ACTIONS\***

Any action taken by the Contractor or its Subcontractors or Suppliers not in conformance with the terms and conditions of the Contract will be considered as unauthorized and at the sole expense of the Contractor. Contractor or its Subcontractors or Suppliers will not be compensated for any actions deemed by LACMTA to be unauthorized. No extensions of time will be granted under the Contract due to unauthorized actions, nor will any assessed Liquidated Damages be waived.

#### **GC-24 LIABILITY AND INDEMNIFICATION\***

- A. Indemnification - To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless LACMTA, its subsidiaries, and any of their respective members, directors, officers, partners, employees and agents, successors and assigns (individually and collectively known as "Indemnitees") from and against any and all liabilities, including, but not limited to, claims, actions, suits (including without limitation workers' compensation suits), demands, costs, judgments, liens, penalties, damages, losses, and expenses, including, but not limited to, any fees of accountants, attorneys or other professionals arising out of, connected with, or resulting from any act, omission, fault or negligence of the Contractor or any of its officers, Authorized Representative, employees, Subcontractors or Suppliers, or any person or organization directly or indirectly employed by any of them, in connection with or relating to, or claimed to be in connection with or relating to, the Services, the Contract, or the Program, including, but not limited to, any costs or liability on account of:
1. Personal injury to or death of any person (including Indemnitees) or for damage to or loss of use of property (including property of LACMTA); and
  2. LACMTA's reasonable reliance upon the use of data or other information provided or delivered by the Contractor pursuant to the Contract.

The indemnification specified in this Section shall apply even in the event of the act, omission, fault or negligence whether active or passive, of the Indemnitees, but shall not apply to claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses arising from the willful misconduct of, or defects in design furnished by, the Indemnitees. LACMTA shall not be responsible for any negligence, willful misconduct or defects in design caused and/or furnished by the Contractor.

The indemnification specified in this Section shall survive termination or closeout of the Contract or Final Payment and is in addition to any other rights or remedies that LACMTA may have under the law or under the Contract. In the event of any claim or demand made against any of the Indemnitees, LACMTA may at its sole discretion reserve, retain, and/or apply any monies due the Contractor under the Contract, for the purpose of resolving such claims; provided, however, that LACMTA, at its sole discretion, may release such funds if the Contractor gives LACMTA reasonable assurance that the LACMTA's interests will be protected. LACMTA shall, at its sole discretion, determine whether such assurance is reasonable.

Claims against the Indemnitees by any employee of the Contractor, its Subcontractors, Suppliers, anyone directly or indirectly employed by any of them, and/or anyone for whose acts any of them may be liable shall not in any way limit the Contractor's indemnification obligation as set forth above, including the amount and/or type of damages, compensation, and/or benefits payable by or for the Contractor or its Subcontractors or Suppliers under workers' compensation acts, disability benefit acts, and/or other employee benefit acts and/or insurances.

- B. Third Party Liability - Nothing contained in the Contract is intended to or shall have the effect of creating any rights in any third party against LACMTA. The inclusion of the Contract or any part thereof in any other document shall not be deemed to be creating or incorporating any obligation, duty, or liability on the part of LACMTA. The Contractor shall indemnify LACMTA in accordance with the provisions of this Section against any claim made by any third party claiming rights under the Contract.
- C. Joint Severable Liability - If the Contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the Contractor that are assumed under or arise out of the Contract. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of the Contractor contained in, resulting from or assumed under the Contract, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.
- D. Professional Liability - The Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of all Services furnished by the Contractor (including the Services performed by Subcontractors on the basis provided herein) under the Contract. In addition to any other remedies provided LACMTA under the Contract or at law, the Contractor or Subcontractor shall correct or revise at no additional cost or fee to LACMTA any defective Services caused by the Contractor's or Subcontractor's negligent acts, errors or omissions in the performance of the Services hereunder. Neither LACMTA's inspection of, nor failure to inspect, review, accept, make payment for, any of the Services required under the Contract shall be construed to relieve the Contractor or Subcontractor of its obligations and responsibilities under the Contract for any negligent acts, errors and omissions in its performance of Services hereunder, nor operate as a waiver of any of LACMTA's rights under the Contract or of any cause of action arising out of the performance of the Contract. The Contractor or Subcontractor shall be and remain liable to LACMTA in accordance with applicable law for all damages to LACMTA caused by any failure of the Contractor or Subcontractor to comply with the terms and conditions of the Contract, or by the Contractor's or Subcontractor's negligent acts or errors or omissions in the performance of the Contract. With respect to the performance of Services by Subcontractors, the Contractor shall use its professional judgment, care and prudence in approving and accepting such Services but shall also take all action



necessary to ensure correctness/accuracy of Subcontractors work. The Contractor warrants that the Services performed hereunder is of high professional quality and has been performed in full conformity with all codes, rules, regulations and statutory requirements.

In the event that the Contractor fails to perform its obligations under this Section (or under any other warranty or guarantee under the Contract) within the specified time and to the reasonable satisfaction of LACMTA, LACMTA shall have the right to correct and/or cause to be re-performed any defective or non-conforming Services and any Services of third parties damaged by such defective or non-conforming Services or the correction or re-performance thereof. The Contractor shall be obligated to fully reimburse LACMTA upon demand for any expenses incurred hereunder.

- E. Investigation Of Potential Negligence - Contractor shall pay for all costs associated with its investigation of any negligence alleged against it under the terms and conditions of the Contract, unless there is a finding that the Contractor was not negligent; in which case LACMTA shall only pay for the reasonable cost of the Contractor's staff time to investigate the alleged negligence. Where it has been determined Contractor was in fact negligent, Contractor shall be responsible for and charged with LACMTA's staff time to investigate or review any alleged negligence by the Contractor, request for information, or claim related thereto, which shall not include third party costs.

The Contractor shall be a participant in the review of any, request for information or claim which alleges or involves potential Contractor negligence, and shall not be responsible for or charged with any claims for delay by the Construction Manager or any construction Contractor unless the Contractor has been given a reasonable opportunity to participate in the review.

- F. The Contractor acknowledges that the rights and remedies of LACMTA specified in this Section are in addition to and do not limit any rights or remedies of LACMTA, afforded by the Contract or by law.

- G. Warranty - Contractor warrants that:

1. It is aware of and understands the hazards which are presented to persons, property and the environment in the performing of transportation, storage, remediation and disposal Services as described within the Scope of Services of the Contract.
2. It will transport, store, remediate and dispose of such materials in full compliance with all applicable governmental laws, regulations and orders.
3. If the Scope of Services requires off-site storage or disposal, Contractor warrants that the selected storage and disposal facilities are at all times appropriately licensed and permitted to store and dispose of the waste, materials or hazardous substances detailed within the work plan. In the event the storage or disposal facility loses its permitted status hereafter during the terms of the Contract, Contractor will promptly notify LACMTA of such loss.

- H. Indemnification (Environmental Impairment Losses) - Environmental Impairment Losses are in addition to the indemnification provisions of the Contract. It is agreed that the Contractor, at the Contractor's sole cost and expense, shall indemnify and hold harmless Indemnitees from and against the full amount of any and all present and future Environmental Impairment Losses that may arise out of the negligent performance of the activities or Services provided by the Contractor under the Contract. The term "Environmental Impairment Losses" shall mean any and all loss, liability, expense or damage (including, without limitation, all attorneys' fees and costs and all other professional or contractors' fees and costs), incurred by Indemnitees under federal, state or local environmental law as a result of the activities conducted by the

Contractor under the Contract.

- I. Environmental Indemnity - In addition to any other indemnification provisions of the Contract, Contractor shall indemnify, defend and hold harmless Indemnitees, from and against any and all present and future liability, loss, cost, damage, and expense of every kind and nature, including, but not limited to, cleanup costs, releases or substances resulting from acts of Contractor, failure to recognize or report the existence, quantity, or location of substances, remedial work required under any federal, state, or local law, regulation, or ordinance, contractors' fees, and attorneys' fees, resulting, directly or indirectly, from any negligent act or omission of Contractor, or any employee, Subcontractor, or Supplier of the Contractor, in the performance or failure to perform any work carried out, wholly or in part, pursuant to the Contract.

## **GC-25 PERIOD OF PERFORMANCE**

- A. Time is of the essence in the performance and completion of the Services. Neither Party hereto shall be considered in default in the performance of its obligations with respect to the timely performance or completion of the Services to the extent that the performance of any such obligation is prevented or delayed by an excusable delay. Should Contractor's Services be delayed by an excusable cause, Contractor's schedule for completion of tasks affected by such delay may be extended. Excusable delays may include, but are not limited to, Acts of God or acts or failures to act of government agencies or LACMTA in either their sovereign or contractual capacities; fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, civil disturbance; but, in every case, the failure to perform must be reasonably beyond the control, and without the fault or negligence of the Contractor, and the Contractor must take all reasonable measures to mitigate the delay at its own cost and expense.
- B. Within 30 days after the last day of delay, the Contractor shall furnish LACMTA with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract references, and the measures taken to prevent or minimize the delay. Failure to submit such information shall be sufficient cause for denying the delay claim. LACMTA will ascertain the facts surrounding the delay and extent of the delay. LACMTA's decision will be final and conclusive.

## **GC-26 EXTENSION OF TIME**

- A. All extensions of time must be approved/granted by LACMTA in writing. The Contractor will be granted an extension of time for any portion of an excusable delay in completion of the Services, provided that the following are satisfied:
1. The excusable delay was not foreseeable and did not result from the fault or negligence of the Contractor;
  2. Contractor has taken reasonable precautions to prevent further delays owing to such causes; and
  3. Contractor notifies LACMTA in writing of the cause(s) for the delay within five (5) days from the beginning of any such delay. Unless excused in writing by LACMTA in its sole discretion, the Contractor's failure to provide such notice within the time required shall constitute a waiver of any claim for a time extension or additional compensation.
- B. Claims for additional compensation resulting from an excusable delay shall only be available to the extent that LACMTA caused such delay and shall in any event be limited to the costs incurred during a LACMTA approved extension of time resulting from the LACMTA caused delay(s), as determined at the completion of the performance of the Services and not at time of the occurrence of the delay. The Contractor shall not

be entitled to any additional compensation if the Services are completed by the Contract Completion Date.

- C. An extension of time will not be granted for a delay described above caused by a shortage of Goods, except LACMTA furnished Goods, unless the Contractor supplies LACMTA with documented proof that it made every effort to obtain such Goods from every known source within reasonable distance of the Worksite. The Contractor shall also submit proof, that the inability to obtain such Goods when originally planned, did in fact cause a delay in final completion of the Services that could not be compensated for by revising the sequence of its operations. Only the physical shortage of Goods will be considered as a basis for an extension of time. No consideration will be given to any claim that Goods could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of LACMTA that:
1. Such Goods could have been obtained only at exorbitant prices or;
  2. The prices were entirely inconsistent with current rates, taking into account the quantities involved and the usual practices employed in obtaining such quantities; and
  3. Such facts could not have been known or anticipated at the time the Contract was executed.
- D. In case the Contractor is actually and necessarily delayed by any act or omission on the part of LACMTA, or others under contract with LACMTA and providing that the Contractor notifies LACMTA in writing within five (5) days from the beginning of any such delay, specifying the act or omission causing such delay, the time for completion of the Services shall be extended accordingly, and an adjustment shall be made to the TCP for any increase in the cost of performance of the Services (excluding profit) necessarily caused by such delay. If the delay in the performance of the portion of Services described in the Contractor's five (5) day notice has been similarly delayed by Contractor-induced causes, including, but not limited to, the fault or negligence of the Contractor or any of its Subcontractors, the time for completion of the Services will be extended for the period of any such concurrent delay with no adjustment to the TCP.
- E. Within thirty (30) days after the last day of a delay, the Contractor shall supply LACMTA with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract references, and the measures taken to prevent or minimize the delay. Unless excused in writing by LACMTA in its sole discretion, the Contractor's failure to provide such notice within the time required shall constitute a waiver of any claim for a time extension or additional compensation. LACMTA will ascertain the facts and the extent of the delay; its findings thereon will be final and conclusive unless the Contractor disputes the decision. All time extensions must be approved by LACMTA prior to Contract final Acceptance.
- F. No extension of time will be granted under this Section for any delay in which remedies are included or excluded by any other provision of the Contract. Only the actual delay necessarily resulting from the causes specified in this Section shall be grounds for extension of time. In case the Contractor is delayed at any time or for any period by two or more of the causes specified in this Section, the Contractor shall not be entitled to a separate extension for each one of the causes; only one extension will be granted for the entire delay.

The Services shall continue and be carried on in accordance with all the provisions of the Contract. The Contract shall remain in full force and effect during the continuance and until the completion and final Acceptance of the Services covered by the Contract, unless formally suspended or terminated in accordance with the terms of the Contract. Permitting the Contractor to finish the Services, or any part thereof, after the time fixed for completion or after the date to which the time for completion may have been extended and/or making payments to the Contractor after any such periods shall not constitute a waiver on

the part of LACMTA of any rights under the Contract.

- G. Neither the granting of an extension of time beyond the date fixed for the completion of any part of the Services nor the performance and Acceptance of any part of the Services after the time specified for the completion of the Services shall be deemed to be a waiver of LACMTA's right to terminate the Contract for abandonment or failure to complete by the Contract Completion Date or to impose and deduct damages as may be specified.
- H. In all cases that the Contractor either claims or intends to claim a delay, the Contractor shall submit to LACMTA at the earliest possible date, but within thirty (30) days of the event causing the delay:
  1. An analysis of the impact of the claimed delay event upon the Contractor's then current Schedule, identifying the affected activities and the actual impacts; and
  2. Proposals to minimize the effects of the claimed delay.

### **GC-27 SUSPENSION\***

- A. The requirements of this Section are in addition to other audit, inspection, and record keeping requirements specified elsewhere in the Contract.
- B. If LACMTA notifies Contractor that work on a particular portion of the Project will be suspended for a period to exceed one hundred eighty (180) days, Contractor shall immediately notify LACMTA that key personnel working on that portion of the work shall promptly:
  1. Be moved to support another portion of the Program, as approved by LACMTA, or
  2. Be released because there is no need for the services of the specific key personnel on the Program

If suspension is less than one hundred eighty (180) days, Contractor and LACMTA shall agree upon the short-term duties of all affected personnel.
- C. The Contractor shall comply immediately with any written order it receives from LACMTA suspending the Services and take all reasonable steps to minimize costs allocable to the Services covered by the suspension during the period of suspended Services. The Contractor shall resume performance of the suspended Services upon expiration of the notice of suspension, or upon direction of LACMTA.
- D. Provided that Contractor makes a claim as provided in the Section titled NOTICE OF INTENT TO CLAIM AND CLAIMS herein, the Contractor shall be allowed (1) an equitable adjustment in the TCP (not to include profit) (2) an extension of the Contract time, directly attributable to any suspension and/or (3) to recover reasonable costs incurred during suspension. However, no adjustment shall be made under this Section for any suspension, delay or interruption (i) to the extent that Contractor's performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or (ii) for which an equitable adjustment or an extension of time is provided for or excluded under any other term or condition of the Contract.
- E. Submittal of an RFC by the Contractor for an equitable adjustment of the TCP or the Contract time extension shall be filed in compliance with the Section titled CHANGES herein; and shall be filed within twenty (20) days after the end of the Services suspension. Unless excused in writing by LACMTA in its sole discretion, the Contractor's failure to provide such notice within the time required shall constitute a

waiver of any claim for a time extension or additional compensation. The provisions of this Section shall only apply if a written order of suspension is issued by LACMTA.

- F. LACMTA will make partial payments against costs authorized by LACMTA and incurred by the Contractor in connection with the suspended portion of the Contract, so long as the aggregate of such payments does not exceed the authorized value of the Contract.

## **GC-28 HISTORICAL, ARCHAEOLOGICAL, PALEONTOLOGICAL, AND SCIENTIFIC DISCOVERIES\***

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

## **GC-29 CHANGES**

- A. LACMTA may at any time, and from time to time without invalidating the Contract, make Changes in the Scope of Services. LACMTA and Contractor will endeavor to reach mutual agreement regarding costs and Schedule associated with the Change; however, LACMTA reserves the right to direct the Contractor to perform the Changed Services. Such Changes, including any increase or decrease in the amount of the Contractor's compensation and/or the Period of Performance, shall be incorporated into the Contract through the issuance of a Contract Modification. All of the provisions of the Contract shall apply to Changes. Upon receipt of a Contract Modification, approved by LACMTA, the Contractor shall continue performance of the Scope of Services as revised by the Modification.

- B. Contractor's Cost and Schedule Proposal:

The Contractor shall submit a Contractor's Cost and Schedule Proposal (including a completed Form 60 using the Contractor's then-current rates) to LACMTA within ten (10) days after receipt of a Change request. The Proposal shall detail price and scheduling information showing all of the cost and time ramifications of the Changes shown in the request. If any prices or other aspects are conditional, such as orders being made by a certain date or the occurrence of a particular event at a specified time, the Contractor shall identify these conditions in its Proposal. The components to be used by the Contractor in preparing the Proposal shall be those set forth in the Contract and shall be presented in such a manner that all elements of the Proposal can be easily identified and certified upon request. The submittal shall include certified current cost or pricing data as described in the Section titled AUDIT REQUIREMENTS herein.

- C. Contract Modification or Change Order:

A Contract Modification shall be agreed to by the Parties to reflect Changes in the Contract terms and/or Scope of Services. If the Parties cannot agree, LACMTA's Contracting Officer may unilaterally, or by agreement with Contractor, issue a Change Order (CO) directing Contractor to proceed with a Change in the Work. The CO shall either contain a Not to Exceed (NTE) amount to set the maximum limit that may be expended by the Contractor under the CO or a fixed amount (lump sum) that LACMTA considers to be a fair and equitable adjustment to the Total Contract Price. LACMTA's Contracting Officer may unilaterally, or by agreement with the Contractor, revise the CO amount, based upon additional information or forward pricing subsequent to determination of the initial CO amount.

When the Contractor's compensation for a Change and the required adjustments, if any, to the Total Contract Price and/or Schedule have been determined, a Contract Modification or Change Order will be issued containing the following items:

1. The total Contract adjustments to be made.
2. A statement that it is LACMTA's intention to treat the items described therein as Changes in the Scope of Services.
3. Scheduling requirements, time extensions, prices, and all costs of any nature arising out of each Change.
4. A statement that the adjustment to the Total Contract Price, if any, includes all amounts to which the Contractor is entitled as a result of the events giving rise to the Change.

The execution of a Contract Modification by both Parties shall be deemed to be an agreement to all Changes in Contract terms and/or Scope of Services and costs and time of performance related to each Change. There will be no reservation of rights by either Party on a bi-lateral Contract Modification.

For all Contract Changes greater than or equal to one-hundred-thousand dollars (\$100,000), an Ethics Declaration must be submitted by the Contractor.

D. Except as expressly provided herein, no order, statement, or conduct of any person shall be treated as a Change under the Contract or entitle the Contractor to any adjustment under the Contract.

E. Contractor Requested Changes:

Except where otherwise provided by the Contract Documents, the Contractor may request a Change for additional compensation or an extension of time by submitting to LACMTA a Request for Change (RFC). Such RFC shall be submitted to LACMTA within five (5) days of the event, circumstance, condition or decision by LACMTA giving rise to the Contractor's asserted entitlement to a Change. The Contractor shall submit a Contractor's Cost and Schedule Proposal (including a completed Form 60 using the Contractor's then-current rates) to LACMTA within ten (10) days after submission of an RFC. The Proposal shall detail price and scheduling information showing all of the cost and time ramifications of the Changes shown in the request. Unless excused in writing by LACMTA in its sole discretion, the Contractor's failure to provide an RFC or Cost and Schedule Proposal within the time required shall constitute a waiver of any claim for a time extension or additional compensation.

### **GC-30 NOTICE OF INTENT TO CLAIM AND CLAIMS**

- A. The Contractor shall give to LACMTA a written notice of potential claim within five (5) days of any act or event for which it intends to seek adjustment in the Contract price, terms, or schedule. The written notice shall set forth the basis of the claim and an estimate of any costs involved. Unless excused in writing by LACMTA in its sole discretion, the Contractor's failure to provide such notice within the time required shall constitute a waiver of any claim for a time extension or additional compensation.
- B. The claim shall be filed within thirty (30) days of the act or event and shall be in sufficient detail to allow LACMTA to evaluate the claim. The Contractor shall also furnish any additional information relating to the claim as LACMTA may request. Failure of the Contractor to comply with these requirements shall be

sufficient cause for denying the Contractor's claim. Unless excused in writing by LACMTA in its sole discretion, the Contractor's failure to provide file such claim within the time required shall constitute a waiver of any claim for a time extension or additional compensation.

- C. LACMTA shall, within thirty (30) days of the receipt of the claim render a decision or provide an estimate of when a decision will be made. If no decision is made within thirty (30) days of the filing of the claim, or within an estimated period provided, the claim shall be deemed rejected by LACMTA. The Contractor shall proceed diligently with performance of the Contract, pending resolution of any claim or appeal or action ensuing under the Contract.
- D. Contractor shall proceed diligently with performance of the Contract pending resolution of any Claim, Dispute, appeal or action ensuing under the Contract, including the Services that are all or part of any Claim or Dispute, except for any performance the Contracting Officer determines in writing should be delayed, suspended or terminated as a result of such Claim or Dispute and LACMTA will continue to satisfy its payment obligations for undisputed amounts.

### **GC-31 RESOLUTION OF DISPUTES**

The Parties shall use their best efforts to resolve disputes under the Contract by submission of the dispute to the Contract Administrator and an Authorized Representative of the Contractor. If a dispute cannot be resolved at this administrative level, the Parties may mutually agree to utilize an alternative dispute resolution (ADR) process such as arbitration, mediation, or other recognized ADR process for settling a dispute.

### **GC-32 FINAL ACCEPTANCE\***

#### **A. Acceptance Of Services**

1. When the Contractor determines that all Services as required in the Contract are fully completed, including all required milestones, submissions, and deliveries to LACMTA specified in the Contract, the Contractor shall, within ten (10) business days thereafter, give LACMTA a written request for final Acceptance, specifying that the Services are completed and the date on which they were completed. After the receipt of the request for final Acceptance, LACMTA will commence a review of Contractor's request for final Acceptance and, within sixty (60) days will either:
  - a. Give the Contractor written notice that LACMTA has determined that all Services authorized under the Contract have been completed and LACMTA requires no further Services from Contractor; or
  - b. Advise the Contractor in writing of any outstanding Services that must be furnished, or completed at no additional cost to LACMTA, or be corrected at the Contractor's cost. Contractor shall promptly cure the deficiencies identified by LACMTA and shall submit a new request for final Acceptance. The procedure in the Subsection 32.A.1. above shall then be repeated until such time as LACMTA is satisfied that all Services required under the Contract have been completed in accordance with the Contract Documents and no further Services from the Contractor are required.
2. Upon submittal of the request for final Acceptance, the Contractor shall make no additional charges for Services under the Contract. Further, no Claims or disputes shall be submitted by Contractor after LACMTA has issued a notice of final Acceptance. LACMTA shall not pay for any additional charges or be liable for any costs incurred after the date of the request for final Acceptance.

## B. Final Acceptance

1. Within ninety (90) calendar days of receipt of written notice from LACMTA confirming that all Services authorized under the Contract have been completed and LACMTA requires no further Services from Contractor, Contractor shall submit to LACMTA an application for Final Payment in accordance with the provisions of the Form of Contract.
2. Notwithstanding the final Acceptance, the Contractor will not be relieved of its obligations hereunder, nor will the Contractor be relieved of its obligations to complete any portions of the Services, the non-completion of which were not disclosed to LACMTA (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise); and the Contractor shall remain obligated under all those provisions of the Contract which expressly or by their nature extend beyond and survive final Acceptance.

- C. Any failure by LACMTA to reject the Services or to reject the Contractor's request for final Acceptance as set forth above, shall not be deemed to be Acceptance of the Services by LACMTA for any purpose nor imply Acceptance of, or agreement with, the Contractor's request for final Acceptance.

## **GC-33 WARRANTY\***

The Contractor warrants that all Services shall be in accordance with the Contract and shall comply with the Section titled STANDARD OF PERFORMANCE herein for the Term of the Contract and for a period of one year from final Acceptance of the Services. In the event of breach of this warranty, the Contractor shall take the necessary actions to correct the breach and the consequences thereof, at the Contractor's sole expense, in the most expeditious manner as permitted by existing circumstances. If the Contractor does not promptly take steps to correct the breach upon notification thereof by LACMTA, LACMTA without waiving any other rights or remedies it may have at law or otherwise, may do so or cause others to do so, and the Contractor shall promptly reimburse LACMTA for all expenses and costs incurred in connection therewith.

## **GC-34 SOFTWARE LICENSING AGREEMENT AND PROVISIONS FOR USE\***

- A. The terms used in this Section are defined as follows:

1. **Software:** The computer programs and products required to be developed and delivered by the Contractor to LACMTA under the Contract, in object code (but excludes commercial software developed at private expense and not in the public domain).
2. **Source Code Materials:** A human-readable copy of the Software and related materials and documentation generated in preparing the Software, including programmer notes, flow charts, logic diagrams, and listings.
3. **Documentation:** Systems and user manuals sufficient to enable a person skilled in the applicable art to operate, maintain, and support the Software for its intended purposes.

- B. The Contractor shall deliver to LACMTA the Software, Source Code Materials, and Documentation, in such tape, disk, or hardcopy format as LACMTA may designate.

- C. The Contractor shall retain ownership of the Software, Source Code Materials, and Documentation with the right to exploit the same, subject to LACMTA's rights as herein provided. LACMTA shall place such



copyright notices affirming the Contractor's ownership rights as the Contractor may reasonably require on all materials licensed hereunder which are reproduced by LACMTA.

- D. The Contractor hereby grants to LACMTA a royalty-free, paid-up, non-exclusive license, in perpetuity, to use duplicate, and disclose the Software, Source Code Materials, and Documentation, and to make modifications of and enhancements to the Software, and permit others (who sign standard nondisclosure agreements) to do the same, but only for governmental purposes and not for any commercial purposes.
- E. LACMTA shall hold the Software, Source Code Materials, and Documentation in confidence, shall use and disclose them only as expressly authorized herein or as required by law and only to its employees, agents or sublicensees to whom disclosure is necessary or appropriate for the performance and exercise of its rights hereunder, and shall take reasonable steps to ensure that unauthorized persons will have no access to them.
- F. The Contractor warrants that the Software will perform according to the specifications set forth in the Contract, that it is owner of the Software, Source Code Materials, and Documentation that it has the right to convey and grant the license herein granted to LACMTA, and that LACMTA's use thereof as herein contemplated will not infringe any third party's proprietary rights in the United States. The foregoing warranties shall not apply to the extent the Software is modified by LACMTA.
- G. Upon LACMTA's request the Contractor shall generate modifications of and enhancements to the Software not required by the Contract, at the Contractor's rates charged for comparable services to its most favored customers.

#### **GC-35 RIGHTS IN TECHNICAL DATA, PATENTS AND COPYRIGHTS\***

- A. All documents and materials prepared or developed by the Contractor and its Subcontractors pursuant to the Contract shall become the property of LACMTA, including all intellectual property and other proprietary rights, without restriction or limitation on their use and shall be made available upon request, to LACMTA at any time. Original copies of such shall be delivered to LACMTA upon completion of the Services or termination of the Services. The Contractor shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication and further use of this material is subject to the written approval of LACMTA.
- B. LACMTA shall have the right to use, duplicate, modify or disclose all documents and materials and the information conveyed therein, in whole or in part, in any manner whatsoever, and to have or permit others to do so except as limited by the Section titled PUBLIC RECORDS ACT herein.
- C. To the extent Contractor incorporates documents and materials where the copyrights and other intellectual property rights to such documents and materials belong to third Parties, the Contractor shall secure and grant to LACMTA and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free license to publish, perform, translate, reproduce, deliver, create derivative works of, and otherwise use as they deem fit. No such materials shall be included in documents and materials prepared or developed by Contractor and its Subcontractors hereunder without the written permission of the copyright owner for LACMTA to use such in the manner herein described.
- D. The Contractor warrants that the Services and Goods shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against LACMTA, the Contractor shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by LACMTA, and

indemnify and hold harmless LACMTA, its subsidiaries, agents and employees from all liability, damages, costs, and expenses associated therewith, including, but not limited to, defense costs and attorneys' fees.

When use of these Goods and/or processes is judged to be an infringement and such use is banned, the Contractor, at its own expense, shall, with the concurrence of LACMTA, do one of the following:

1. Secure for LACMTA the right to continue using said Goods and/or processes, by suspension of the injunction or by procuring a license(s);
2. Replace said Goods and/or processes, with non-infringing Goods and/or processes;
3. Modify said Goods and/or processes, so that they become non infringing; or
4. Remove said Goods and/or processes, and refund the sum paid therefor without prejudice to any other rights of LACMTA.

### **GC-36 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT\***

The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act in performing the Services under the Contract.

### **GC-37 ENVIRONMENTAL COMPLIANCE**

- A. The Contractor shall include the requirements of the following Subsections in every Subcontract that is more than one hundred thousand dollars (\$100,000) and shall take such action as LACMTA directs to enforce these requirements.
- B. The Contractor shall comply with all air, water, and noise pollution provisions set forth in the Scope of Services.
- C. Air Quality Control
  1. The Contractor shall comply with all applicable standards, orders, and requirements issued under the Clean Air Act (42 U.S.C. § 7401 et seq.); all applicable standards of the State of California; and all clarifications, mitigation measures, and any other requirements approved by LACMTA in accordance with state and federal laws.
  2. The Contractor shall comply with all rules, regulations, and ordinances of the South Coast Air Quality Management District (SCAQMD) and statutes of the State that apply to any Services performed pursuant to the Contract, including any air quality control rules, regulations, ordinances, and statutes specified in § 11017 of the California Government Code. Contractor, Subcontractors, and Suppliers shall submit evidence to LACMTA that the governing air quality control criteria are being met; such evidence will be retained by LACMTA.
  3. In the absence of applicable air quality control rules, regulations, ordinances, or statutes governing solvents, including, but not limited to, the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Contract, the Contractor shall comply with the applicable material requirements of the SCAQMD. Containers of paints, thinner, curing compound, or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.

4. The Contractor shall comply with California state law regarding pollution controls in purchasing new motor vehicles with Project funds.
5. Material to be disposed of shall not be burned.

D. Water Quality:

The Contractor shall comply with all applicable standards, orders, and requirements issued under the Clean Water Act (33 U.S.C. § 1251 et seq.); all applicable water standards of the State of California; and all clarifications, mitigation measures, and any other requirements approved by LACMTA in accordance with state and federal laws.

E. Environmental Protection Agency Regulations

1. The Contractor shall comply with all applicable regulations (40 C.F.R.) of the Environmental Protection Agency (EPA).
2. The Contractor shall not use any facility in the performance of the Contract that is listed on the EPA List of Violating Facilities, unless and until the EPA eliminates said name of such facility from said listing. The Contractor shall promptly notify LACMTA of the receipt of any communication from the Director, Office of Federal Activities, EPA (or any successor agency), indicating that a facility to be used by the Contractor is under consideration for listing on the EPA List of Violating Facilities. The Contractor shall also report violations to LACMTA, to the FTA, and to the EPA Assistant Administrator for Enforcement.

F. Energy Conservation:

The Contractor shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321). Refer to the Scope of Services for energy conservation measures.

### **GC-38 THE CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC\***

- A. Contractor shall provide to LACMTA, for LACMTA's review and approval, all LACMTA related copy proposed to be used by the Contractor for advertising or public relations purposes prior to publication. The Contractor shall not allow LACMTA related copy to be published in its advertisements and public relations programs prior to receiving such written approval. The Contractor shall ensure that all published information is factual and that it does not in any way imply that LACMTA endorses the Contractor's firm, service, and/or product.
- B. The Contractor shall refer all inquiries from the news media relating to the Contract to LACMTA, and shall comply with the procedures of LACMTA's Public Affairs staff regarding statements to the media relating to the Contract or the Services.
- C. If the Contractor receives a complaint from a citizen or the community, the Contractor shall, within a reasonable period of time given the nature of the complaint, inform LACMTA about what action was taken to alleviate the situation.
- D. The Contractor shall not publish information or technical data acquired or generated by the Contractor in performing the Contract until such time as such information or technical data is released in published reports by LACMTA or otherwise authorized in writing by LACMTA.

**GC-39 TERMINATION FOR CONVENIENCE OF LACMTA\***

- A. The performance of the Services under the Contract may be terminated, with or without cause, at any time, in whole or in part, as determined by LACMTA in its sole discretion. Such termination will be accomplished by delivery of a Notice of Termination to the Contractor, specifying the extent to which performance of the Services under the Contract shall be terminated and the date upon which such termination shall become effective.
- B. After receipt of a Notice of Termination, except as otherwise directed by the LACMTA, the Contractor shall:
1. Stop Services under the Contract on the date and to the extent specified in the Notice of Termination.
  2. Place no further orders or Subcontracts for Goods or Services, except as may be necessary for completion of such portions of the Services expressly excluded from the Notice of Termination.
  3. Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and require them to communicate the Notice of Termination to all persons providing Services, supplies or other value to the Project on their behalf.
  4. Terminate all orders and Subcontracts that relate to the performance of the Services terminated by the Notice of Termination.
  5. Settle outstanding liabilities and Claims arising out of such termination of orders and Subcontracts, with the acceptance of LACMTA if required (which acceptance shall be final for the purposes of this Section).
  6. Assign to LACMTA in the manner, at the times, and to the extent directed by LACMTA all of the rights, titles, and interests of the Contractor under the orders and Subcontracts so terminated; in which case LACMTA will have the right, at its sole discretion, to settle or pay any or all Claims arising out of the termination of such orders and Subcontracts.
  7. Transfer title and deliver to LACMTA in the manner, at the times, and to the extent directed by it:
    - a. Services in process, completed Services, and other Goods procured as a part of, or acquired in connection with, the performance of the Services terminated; and
    - b. The completed or partially completed plans, drawings, information, and other items that would have been required (per the Scope of Services) to be furnished to LACMTA if the Contract had been completed.
  8. Use its best efforts to sell the Goods of the types referred to above in the manner, at the times, to the extent, and at the price(s) directed or authorized by LACMTA, providing that the:
    - a. Contractor is not required to extend credit to any purchaser;
    - b. Contractor may acquire any such Goods under the prescribed conditions; and/or
    - c. Proceeds of any such transfer or disposition are applied or otherwise credited to reduce payments made by LACMTA to the Contractor under the Contract.
  9. Take any action that may be necessary, or that LACMTA may direct, for the protection and preservation

of the property related to the Contract that is in the possession of the Contractor and in which LACMTA has or may acquire an interest.

10. Comply with all other requirements of LACMTA as may be specified in the Notice of Termination.
  11. Complete performance of that portion of the Services that has not been terminated by the Notice of Termination, as applicable and in accordance with the Contract and written directions given by LACMTA.
  12. If the termination is for the convenience of LACMTA, Contractor shall submit a final invoice within sixty (60) days of termination and upon approval by LACMTA. Upon failure of the Contractor to submit its termination claim within the time specified, LACMTA will determine the amount due the Contractor, if any, on the basis of information available, and will pay the Contractor the amount so determined. Such payment shall constitute payment in full for the Services performed under the Contract. Unless excused in writing by LACMTA in its sole discretion, the Contractor's failure to provide such notice within the time required shall constitute a waiver of any claim for any further or additional compensation.
- C. Subject to the provisions of the above Subsection, the Contractor and LACMTA may agree upon the total or partial amount to be paid to the Contractor by reason of the total or partial termination of the Services pursuant to this Section. The Contract will be amended or revised accordingly and the Contractor will be paid the agreed-upon amount.
- D. In the event of failure of the Contractor and LACMTA to agree on the total amount to be paid the Contractor by reason of the termination of Services pursuant to this Section, LACMTA will pay the Contractor the amounts determined by LACMTA as follows:
1. The Total Contract Price allocable to the portion of the Services properly performed by the Contractor as of the date of termination.
  2. The cost of settling and paying Claims arising out of the termination of the Services under Subcontracts or orders as specified above, exclusive of the amounts paid or payable on account of Goods delivered or Services furnished by Subcontractors prior to the effective date of the Notice of Termination of Services under the Contract, which amounts are included in Subsection C of this Section.
  3. The reasonable cost of preserving and protecting property will also be paid, as well as any other reasonable costs incidental to the termination of the Services under the Contract, including those reasonable expenses incurred to determine the amounts due.
  4. Except to the extent that LACMTA will have otherwise expressly assumed the risk of loss, the fair value (as determined by LACMTA) of property that is destroyed, lost, stolen, or damaged (so as to become undeliverable to LACMTA or other buyer as described above) shall be excluded from the amounts paid to the Contractor.
  5. LACMTA may deduct from the amount due the Contractor under this Section amounts attributable to the following:
    - a. The amount of the Claim that LACMTA may have against the Contractor in connection with the Contract; and
    - b. The agreed upon price for and/or proceeds from the sale of Goods or other items acquired or sold

by the Contractor that have not been otherwise recovered by or credited to LACMTA.

- E. Under such terms and conditions as it may prescribe and at its sole discretion, LACMTA may make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever LACMTA decides that the aggregate of such payments is within the amount to which the Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed-upon or determined to be due under this Section, such excess shall be payable by the Contractor to LACMTA upon demand, together with interest at a rate equal to that set forth in California Code of Civil Procedure § 685.010.
- F. The Contractor shall not be entitled to anticipatory or consequential damages as a result of any termination under this Section, including without limitations any asserted loss of income or profit on the portion of the Services not performed due to the termination or otherwise, or any loss of financing, funding or loss of business reputation. Payment to the Contractor in accordance with this Section shall constitute the Contractor's exclusive remedy for any termination hereunder. The rights and remedies of LACMTA provided in this Section are in addition to any other rights and remedies provided by law or under the Contract.
- G. Anything contained in the Contract to the contrary notwithstanding, a termination under this Section shall not waive any right or claim to damages that LACMTA may have; LACMTA may pursue any cause of action that it may have by law or under the Contract against the Contractor.

#### **GC-40 TERMINATION FOR DEFAULT\***

- A. LACMTA may terminate the Contractor's Services, in whole or in part, for default under any of the following circumstances:
  1. Failure or refusal of the Contractor to perform any obligation required under the Contract, or violation of any duty required of the Contractor under the Contract.
  2. Failure or refusal of the Contractor to complete the Services by the Contract Completion Date.
  3. Bad faith by the Contractor.
  4. Violation by the Contractor of an order or requirement of LACMTA authorized by or within the scope of the Contract.
  5. Abandonment of the Contract by the Contractor.
  6. A filing by or against the Contractor of a petition in bankruptcy, reorganization, insolvency, conservatorship, or similar proceeding.
  7. Failure of the Contractor to pay any amounts owing to any persons performing any portion of the Services, or the failure of the Contractor to pay its debts incurred on the Contract as they become due, providing that such failure continues for a period of ten (10) business days after written notice to the Contractor by LACMTA.
  8. The attachment, levy, execution, or other judicial seizure of any portion of the Contractor's property, or any substantial portion of the other assets of the Contractor, which is not released, expunged, or discharged within a period of ten (10) working days.

9. Material failure to comply with any law, ordinance, rule, regulation, or order of a legal authority applicable to the Contractor, the Services, the Program or the Project.
  10. Failure to properly indemnify any Indemnitee that the Contractor is obligated to indemnify under the General Condition titled LIABILITY AND INDEMNIFICATION herein or elsewhere under the Contract.
  11. Failure to promptly correct or re-perform rejected Services.
  12. Conviction of the Contractor or any of its officers, partners, principals, or employees for a violation of any federal, state or local safety law or regulation, or for a crime arising out of, or in connection with, or reasonably related the Services to be done or payment to be made under the Contract.
- B. If LACMTA determines the Contractor is in default of the Contract, LACMTA will so notify the Contractor by issuing a Cure Notice describing the default. If the Contractor fails to cure the default within five (5) days after receipt of such Cure Notice, or if the default cannot be cured within five (5) days, and the Contractor fails to commence to cure within five (5) days and diligently proceed to cure within the time LACMTA, at its sole discretion, determines to be necessary, LACMTA may, by written notice, terminate the Contractor's right to proceed under all or such part of the Contract as LACMTA at its sole discretion deems to be in its best interest; provided that, LACMTA shall not be required to provide notice or opportunity to cure, and Contractor shall not have the right to cure, any default arising from a criminal conviction as provided above. Whether or not the Contract or any part thereof is terminated, the Contractor shall be liable for any damage to LACMTA resulting from the Contractor's default.
- C. Upon receipt of a Notice of Termination for default from LACMTA, the Contractor shall do the following:
1. Stop all Services under the Contract on the date and to the extent specified in the Notice of Termination.
  2. Place no further orders or Subcontracts for Goods or Services, except as may be necessary for completion of such portions of the Services or Services expressly excluded from the Notice of Termination.
  3. Communicate any Notice of Termination to the affected Subcontractors and Suppliers, and any other parties, at any tier.
  4. Terminate all orders and Subcontracts that relate to the performance of Services terminated by the Notice of Termination.
  5. Comply with all other requirements of LACMTA as may be specified in the Notice of Termination.
- D. Upon LACMTA's termination of the Contract because of the Contractor's default, LACMTA shall have the right to complete the Services by whatever means and methods it deems advisable. LACMTA will not be required to obtain the lowest prices for completing the Services, but shall make such expenditures that, in LACMTA's sole judgment, best accomplish such completion.
- E. Upon LACMTA's termination of the Contract because of Contractor's default, LACMTA may take over the Services, and complete the Services by contract or otherwise. In such case, the Contractor shall be liable to LACMTA for any reasonable costs or damages occasioned to LACMTA thereby. The expense of completing the Services, or any other costs or damages otherwise resulting from failure of the Contractor to fulfill its obligations, will be charged to the Contractor and will be deducted by LACMTA out of such payments as may be due or may at any time thereafter become due to LACMTA. If such costs and

expenses are in excess of the sum which otherwise would have been payable to the Contractor, then the Contractor shall promptly pay the amount of such excess to LACMTA upon notice of the excess so due.

- F. If the Contract is terminated as specified in this Section, LACMTA may require that the Contractor transfer title to and deliver the following items to LACMTA as directed: any Goods, fixtures, plans, drawings, information, reports, estimates, Contract rights and other items that the Contractor has specifically produced or acquired for the terminated portion of the Contract and would have been required to be furnished to LACMTA if the Contract had been completed. The Contractor also shall, at its sole expense, protect and preserve property in its possession in which LACMTA has an interest.
- G. If it is determined that LACMTA did not have grounds to terminate the Contractor for default under the terms of this Section, the termination shall be deemed to have been effected for the convenience of LACMTA. In such event, the rights and remedies of LACMTA and the Contractor shall be determined in accordance with the Section titled TERMINATION FOR CONVENIENCE OF LACMTA herein.

The Contractor shall not be entitled to anticipatory or consequential damages as a result of any termination under this Section, including without limitations any asserted loss of income or profit on the portion of the Services not performed due to the termination or otherwise, or any loss of financing, funding or loss of business reputation. Payment to the Contractor in accordance with this Section shall constitute the Contractor's exclusive remedy for any termination hereunder. The rights and remedies of LACMTA provided in this Section are in addition to any other rights and remedies provided by law or under the Contract.

#### **GC-41 ASSIGNMENT\***

- A. The Contractor shall not assign, transfer, convey, or otherwise dispose of the Contract (or the right, title, or interest in it or any part of it) without the prior written consent and endorsement of LACMTA, which consent shall not be unreasonably withheld.
- B. No right under the Contract shall be asserted against LACMTA, in law or in equity, by reason of any assignment of the Contract, or any part thereof, unless authorized by LACMTA as specified in this Section.
- C. Any assignment of proceeds of the Contract shall be subject to all proper offsets and withholdings in favor of LACMTA and to all deductions specified in the Contract. All monies withheld, whether assigned or not, shall be subject to being used by LACMTA for completion of the Services, pursuant to the terms of the Contract. In the event that LACMTA consents to such assignment of monies, written notice thereof shall be given by the Contractor to LACMTA at least ten (10) days before payment is due.

#### **GC-42 NO WAIVER**

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

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

Failure or delay by LACMTA to insist upon strict performance of any terms or conditions of the Contract, or to exercise any rights or remedies provided herein by law, shall not be deemed a waiver of any right of LACMTA to insist upon strict performance of the Contractor's obligations set forth in the Contract, or any of its rights or



remedies as to any prior or subsequent default hereunder.

### **GC-43 SEVERABILITY\***

In the event any article, section, subsection, subarticle, paragraph, sentence, clause, or phrase contained in the Contract shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other articles, sections, subsections, subarticles, paragraphs, sentences, clauses, or phrases of the Contract, which shall remain in full force and effect as if the article, section, subsection, subarticle, paragraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, was not originally contained in the Contract.

### **GC-44 AUDIT REQUIREMENTS\***

#### **A. Applicability**

This Section applies to the Contractor, its Subcontractors and Suppliers. The Contractor, its Subcontractors and Suppliers shall be subject to audit at any reasonable time by the Authorized Auditors for this Contract, a Task Order, a Modification, or Defective Cost or Pricing Data for any of the foregoing.

#### **B. Defined Terms**

**Audit:** audit, examine, verify, review, excerpt, vouch or transcribe Contractor's, Subcontractors' or Suppliers' Records.

**Authorized Auditors:** LACMTA employees, any firms appointed by LACMTA or other authorized agencies acting as agents of a Governmental Entity. For federally funded Contracts, Authorized Auditors shall also include the FTA Administrator, the Comptroller General of the United States, or any of their duly Authorized Representatives.

**Costs:** Amounts (both direct and indirect) claimed to be due and payable, or anticipated to be incurred in performing the Contract, a Task Order, or Modification.

**Records:** All of the Contractor's, Subcontractors' or Suppliers' Cost or pricing data supporting the Contract, Task Order, Modification or element of any of the foregoing, including, but not limited to, books, data, Records, documents, reports, computations and projections, accounting procedures and practices and other evidence, in all forms (e.g. paper or machine readable media such as disk, tape, etc.) or types (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect the performance of the Services and all Costs claimed to have been incurred or anticipated to be incurred in performing the Services on a proposed Modification. Any information provided by the Contractor, Subcontractor or Supplier on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The detail and depth of Records required as backup support for Audits shall be that which adequately establishes and maintains visibility of both allowable, and identified unallowable Costs including directly associated costs.

**Reproduce:** copy, download, transcribe, print, etc. by any means whatsoever free of charge.

#### **C. Access**

## 1. Records

Upon reasonable written advance notice to the Contractor, Subcontractors or Suppliers, with a copy sent to the Contractor's Authorized Representative, the Authorized Auditors shall have access during Contractor's normal business hours to all Records related to Costs or performance of the Contract, Task Order or Modification for the purpose of Auditing.

## 2. Worksites

For any federally funded major capital project, the Authorized Auditors shall include the FTA Administrator or his Authorized Representatives including any PMO Contractor. Access shall include the Worksite.

## D. Records Retention

The Contractor, Subcontractors and Suppliers shall maintain all Records required under this Contract for a period of not less than three years after the date of Termination, in whole or in part or Final Payment, whichever is later. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor, Subcontractor and Suppliers shall maintain all Records related to this Contract until LACMTA or any Governmental Agency or their duly Authorized Representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

## E. Reproduction of Records

The Authorized Auditors shall have the right to Reproduce any Contractor, Subcontractor or Supplier Records related to Costs proposed for the Contract, a Task Order, or a Modification. The Contractor, Subcontractor or Supplier shall make said Records (or to the extent accepted by the Authorized Auditors, photographs, micro-photographs or other authentic reproductions thereof) available to the Authorized Auditors at the Contractor's offices at all reasonable times and without charge.

## F. Maintenance and Segregation of Records

The Contractor, Subcontractors or Suppliers shall maintain and segregate Cost and pricing data and Records sufficient to properly reflect all direct and indirect Costs of whatever nature claimed to have been incurred or anticipated to be incurred in connection with the Contract, a Task Order, and a Modification.

## G. Defective Cost and Pricing Data

1. FAR 52-215-10 Price Reduction for Defective Cost or Pricing Data and 52.215-11 Price Reduction for Defective Cost or Pricing Data-Modifications shall apply to this Contract. The term Government referred to in the FAR clauses shall include LACMTA for purposes of this Contract.

### 2. Contractor and Subcontractor/Supplier Data

#### a. Contractor Data

The Contractor shall certify in the form prescribed by LACMTA that to the best of its knowledge and belief, the data submitted in relation to any Modification or Claim under this Contract were accurate, complete and current as of the date of agreement of the negotiated price of the Modification. If the Contractor, Subcontractor, Supplier, prospective subcontractor or prospective supplier supplied

certified cost or pricing data that were not complete, accurate, and current, or furnished data of any description that were not complete, accurate and current, the amount, including profit, negotiated in connection with any Modification or Claim shall be adjusted, and the Contract shall be modified to reflect the adjustment.

b. Subcontractor/Supplier Data

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

H. Disposition of Audit Findings

The Contracting Officer may use all evidence in the Records including the Audit findings to:

1. Demand payment from the Contractor or adjust any Contractor's invoice to:
  - c. Reduce amounts found by the Contracting Officer to be unallowable costs; or
  - d. Adjust for prior overpayments or underpayments; or
2. Offset amounts owed to LACMTA against other balances owed to the Contractor under other contracts.

**END OF GENERAL CONDITIONS**

## REGULATORY REQUIREMENTS

### RR-01 ADMINISTRATIVE CODE\*

- A. Applicability - This Section applies to all contracts.
- B. LACMTA Administrative Code - Contractor warrants and represents that it has read and understands Title 4, Procurement, and Title 5, Ethics, of the [LACMTA Administrative Code](#) (hereinafter "Administrative Code"), and will comply with each and every one of those requirements in accordance with their terms to the extent that they are applicable to contractors doing business with LACMTA. All definitions used in the Administrative Code are hereby incorporated herein as though fully set forth.

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

1. Comply with:
  - a. Chapter 5-20, Contractor Code of Conduct;
  - b. Chapter 5-25, Lobbying the LACMTA; and
  - c. Chapter 5-35, LACMTA Conflict of Interest Code, and
2. Not induce, attempt to induce, or solicit:
  - a. Board members to violate Chapter 5-10;
  - b. LACMTA employees to violate Chapter 5-15;
  - c. LACMTA Financial employees to violate Chapter 5-30: or
  - d. Either Board members, LACMTA employees or LACMTA Financial employees to violate any other provision of the Administrative Code.
- C. Compliance with § 1090 et seq. and § 87100 et seq. of the California Government Code -Contractor shall comply with all applicable provisions of § 1090 et seq. and § 87100 et seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:
  1. Contractor shall not cause or permit any member, officer, or employee of LACMTA to have any financial interest in the Contract;
  2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with LACMTA;
  3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of LACMTA has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and

complete disclosure of all such information in writing to LACMTA.

- D. Campaign Contributions - Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of LACMTA's Board of Directors in violation of California Public Utilities Code § 130051.20, California Government Code § 84300 et seq., or the Administrative Code.
- E. Environmental Management System (EMS) - Contractor represents that during the performance of the Contract it will assist LACMTA in achieving the principles of LACMTA's EMS according to the [Environmental Policy](#). Contractor further commits that it shall adhere to the applicable EMS principles in its choice of means and methods in the performance of the Services.

## **RR-02 DISCRIMINATION\***

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

## **RR-03 PUBLIC RECORDS ACT\***

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

## **RR-04 CIVIL RIGHTS REQUIREMENTS\***

- A. Applicability - This Section applies to all contracts.
- B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, Federal transit law at 49 U.S.C. § 5332, and California Government Code § 12900, et seq., Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, age, ancestry, use of

or eligibility for family and medical care leave, marital status, genetic information, military and veteran status, gender, gender identity, and gender expressions, sexual orientation, medical condition, or disability (mental and physical). In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

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

#### C. Equal Employment Opportunity

1. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract, as well as California Government Code § 12900, et seq. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, national origin, sex, or age, ancestry, use of or eligibility for family and medical care leave, marital status, genetic information, military and veteran status, gender, gender identity, and gender expressions, sexual orientation, medical condition, or disability (mental and physical). Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, assignment of duties, recruitment or recruitment advertising, layoff or terminate on; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.
2. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor shall refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor shall comply with any implementing requirements FTA may issue.
3. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor shall comply with any implementing requirements FTA may issue.

#### **RR-05 CLEAN WATER AND CLEAN AIR REQUIREMENTS\***

- A. Applicability - This Section applies to all contracts over \$100,000.

## B. Clean Water Requirements

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., and all applicable clean water standards of the State of California and any state or local agency having jurisdiction. Contractor shall report each violation to LACMTA. LACMTA will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office, and all other agencies having jurisdiction.

## C. Clean Air

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and all applicable Clean Air Standards of the State of California or any state or local agency having jurisdiction. Contractor shall report each violation to LACMTA. LACMTA will, in turn, report each violation as required to FTA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

## **RR-06 CONTRACTOR REGISTRATION LAW\***

- A. Applicability - This Section applies to all contracts that require prevailing wages.
- B. This Contract is subject to the provision of California law regarding public works, including, but not limited to the California Labor Code. Contractor and all Subcontractors must be registered with California Department of Industrial Relations (DIR) to be eligible to work on public works projects in accordance with California Labor Code §1725.5. Further, pursuant to California Labor Code §1725.5, no contractor or subcontractor may be awarded a contract for public works unless registered with the DIR. Contractor must ensure that its Subcontractors are properly registered with the DIR. Contractors that hire unregistered subcontractors are subject to penalties up to \$10,000.
- C. A list of all registered contractors and subcontractors may be found on the DIR website so that awarding bodies and contractors will be able to comply with requirement to only use registered contractors and subcontractors.
- D. This Contract is subject to compliance monitoring and enforcement by the DIR and LACMTA.
- E. Small Project Exemption Contractors who work exclusively on small public works projects are not required to register as a public works contractor or file electronic certified payroll reports with the State of California for those projects. However, contractors are still required to submit certified payroll records and accompanying documents to LACMTA. Contractors must also provide these documents to the California Labor Commissioner's Office upon request. The small project exemption applies for all public works projects that do not exceed:
  1. \$25,000 for new construction, alteration, installation, demolition or repair, and
  2. \$15,000 for maintenance.

Note, these dollar limits are for total project budget.

## **RR-07 COMPLIANCE WITH CALIFORNIA HEALTH AND SAFETY CODE (HSC) §25250.51 (RESERVED)**

## RR-08 ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM\*

- A. Applicability - This Section applies to all contracts in which contractors are performing safety sensitive functions as defined in 49 C.F.R. Part 655.
- B. FTA Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations Regulations - Contractor and its Subcontractors shall comply with the FTA anti-drug and alcohol misuse regulations (49 C.F.R. Part 655) and the U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 C.F.R. Part 40) to the full extent that they are, by their terms, applicable to Contractor and its Subcontractors.
- C. Certificate of Compliance - The Certificate of Compliance with 49 C.F.R. Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, submitted by Contractor prior to award, is incorporated as part of the Contract Documents.
- D. Drug and Alcohol Testing Program - In the event that any part of the Services under this Contract fall within the scope of 49 C.F.R. Part 655, Contractor, and its Subcontractors (as applicable), shall implement all programs required under 49 C.F.R. Part 655, including without limitation, a drug and alcohol testing program and an anti-drug use and alcohol misuse program, in full compliance with 49 C.F.R. Part 655.
- E. Alcohol and Drug Free Workplace Program - In addition to the above, for Services performed on LACMTA property, Contractor shall provide an alcohol and drug-free workplace program in accordance with FTA Drug and Alcohol [requirements](#).

## RR-09 ACCESS TO RECORDS

- A. Applicability - This Section applies to all federally funded contracts.
- B. Contractor agrees to provide LACMTA, the FTA Administrator, the Comptroller General of the United States or any of their Authorized Representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.15 and 633.17, to provide the FTA Administrator or the FTA's Authorized Representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- C. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to LACMTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. Contractor shall permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until LACMTA, the FTA Administrator, the Comptroller General, or any of their duly Authorized Representatives, have disposed of all such litigation, appeals, claims or exceptions related



thereto.

## **RR-10 FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES\***

- A. Applicability - This Section applies to all federally funded contracts.
- B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 (including any changes, revisions or successor circulars) is automatically hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any LACMTA requests which would cause LACMTA to be in violation of the FTA terms and conditions.

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

- C. Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between LACMTA and FTA, as they may be amended or promulgated from time to time during the term of this Contract collectively "Federal Requirements". These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

## **RR-11 ENERGY CONSERVATION REQUIREMENTS**

- A. Applicability - This Section applies to all federally funded contracts.
- B. Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. § 6321 et seq.

## **RR-12 NO GOVERNMENT OBLIGATION TO THIRD PARTIES\***

- A. Applicability - This Section applies to all federally funded contracts.
- B. Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to LACMTA, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract.

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

## **RR-13 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS\***

- A. Applicability - This Section applies to all federally funded contracts.
- B. The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, shall apply to actions pertaining to this Contract. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- C. Contractor also acknowledges that this Contract is connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1) on Contractor, to the extent the Federal Government deems appropriate.
- D. Contractor shall include this Section in each Subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify this Section, except to identify the Subcontractor who will be subject to the provisions.

#### **RR-14 SUSPENSION AND DEBARMENT\***

- A. Applicability - This Section applies to federally funded contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services.
- B. This Contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, Contractor shall verify that none of the Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945.

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

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

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

#### **RR-16 COMPLIANCE WITH FEDERAL LOBBYING POLICY\***

- A. Applicability - This Section applies to federally funded contracts over \$100,000.
- B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that contractors who apply or bid for an

award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, attached hereto as Exhibit I and titled Certification of Compliance with Federal Lobbying Requirements. As set forth in the certifications, each tier of Subcontractors shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to LACMTA.

#### **RR-17 BUY AMERICA\***

- A. Applicability - This Section applies to federally funded rolling stock purchase and construction contracts over \$100,000 and to contracts over \$100,000 for materials & supplies for steel, iron, or manufactured products.
- B. Contractor shall comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

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

#### **RR-20 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT\***

- A. Applicability - This Section applies to federally funded construction contracts over \$100,000 (including ferry vessels), rolling stock purchases over \$100,000 and to operations/management contracts over \$100,000 (except transportation services).
- B. Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 3701 et seq. as implemented by U.S. Department of Labor regulations, 29 C.F.R. 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:
  1. Overtime requirements - Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  2. Violation, Liability for Unpaid Wages, Liquidated Damages - In the event of any violation of Subsection B.1 above, Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchmen and guards, employed in violation of Subsection B.1, in the sum of twenty-six dollars (\$26) 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 Subsection B.1.

3. Withholding for Unpaid Wages and Liquidated Damages - LACMTA shall upon its own action or upon written request of an Authorized Representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by Contractor or Subcontractor under the Contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in Subsection B.2 above.
4. Subcontracts - Contractor or Subcontractor shall insert in any Subcontracts the requirements set forth in this Section and also a clause requiring Subcontractors include these provisions in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the requirements set forth in this Section.
5. Payrolls and basic records - Contractor and Subcontractor shall maintain payrolls and basic records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. The records to be maintained hereinabove shall be made available by Contractor and Subcontractor for inspection, copying, or transcription by representatives of LACMTA and U.S. Department of Labor, and Contractor and Subcontractor will permit such representatives to interview employees during working hours on the job.

## **RR-21 SEISMIC SAFETY**

- A. Applicability - This Section applies to federally funded Architect & Engineer contracts for the design of new buildings or additions to existing buildings and to contracts for the construction of new buildings or additions to existing buildings.
- B. Any new building or addition to an existing building shall be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and Contractor shall certify to compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **RR-26 FEDERAL PATENT AND DATA RIGHTS\***

- A. Applicability - This Section applies to each contract involving experimental, developmental or research work and for which the purpose of the FTA grant is to finance the development of a product or information.
- B. Subject Data

The term "Subject Data" used in this Section means recorded information, whether or not copyrighted, that

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

### C. Restrictions on Subject Data

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

1. Except for its own internal use, LACMTA or Contractor may not publish or reproduce Subject Data in whole or in part, or in any manner or form, nor may LACMTA or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
2. In accordance with 2 C.F.R. § 200.315, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal purposes," any Subject Data or copyright described in Subsections C.2.a and C.2.b of this Subsection C.2. As used in the previous sentence, "for Federal purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - a. Any Subject Data developed under the Contract, whether or not a copyright has been obtained; and
  - b. Any rights of copyright purchased by LACMTA or Contractor using Federal assistance in whole or in part provided by FTA.
3. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, LACMTA and Contractor performing experimental, developmental, or research work required by the Contract shall permit FTA to make available to the public, either FTA's license in the copyright to any Subject Data developed in the course of the Contract, or a copy of the Subject Data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become Subject Data and shall be delivered as the Federal Government may direct. This Subsection C.3 shall not apply to adaptations of automatic data processing equipment or programs for LACMTA's or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
4. Unless prohibited by state law, upon request by the Federal Government, LACMTA and Contractor shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by LACMTA or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Neither LACMTA nor Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any

employee, official, or agent of the Federal Government.

5. Nothing contained in this Section shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
6. Data developed by LACMTA or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements of Subsections C.2, C.3, and C.4 of this Section, provided that LACMTA or Contractor identifies that data in writing at the time of delivery of the Contract Services.

#### D. Patent Rights

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

#### E. Provision of Rights in Invention to Federal Government

Unless the Federal Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), LACMTA and Contractor shall take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

### **END OF REGULATORY REQUIREMENTS**

## **EXHIBITS**

Please open the file folder titled EXHIBITS to obtain the Exhibits listed below, which are incorporated in this Contract.

**EXHIBIT A SCOPE OF SERVICES**

**EXHIBIT B PRICING AGREEMENT**

**EXHIBIT C WORK-COMPLETION/DELIVERABLE SCHEDULE**

**EXHIBIT D DIVERSITY & ECONOMIC OPPORTUNITY DEPARTMENT CONTRACT COMPLIANCE MANUAL (RC-FTA)**

**EXHIBIT E-1 PAYMENT CERTIFICATION (CONTINUOUS)**

**EXHIBIT E-2 PAYMENT CERTIFICATION (FINAL)**

**EXHIBIT F RELEASE OF CLAIMS**

**EXHIBIT G APPROVED SUBCONTRACTORS AND SUPPLIERS**

**EXHIBIT H MISCELLANEOUS (RESERVED)**

**EXHIBIT I CERTIFICATION OF COMPLIANCE WITH FEDERAL LOBBYING REQUIREMENTS - 49 CFR PART 20**

**END OF EXHIBITS**