



To: All Interested Parties

September 30, 2022

From: Lisa Rheinheimer
Assistant General Manager
Monterey-Salinas Transit District

RFP 23-02 Construction Manager/General Contractor (CM/GC) for SURF! Busway and Bus Rapid Transit Project

ADDENDUM 3

This Addendum 3 to the above referenced RFP provides B.04 Sample Construction Service Agreement. No other sections, terms or conditions of the above cited solicitation are being altered with this Addendum 3.

Attachment:

B.04 Sample Construction Service Agreement



SURF! Busway and Bus Rapid Transit Project

B.04 SAMPLE Construction Service Agreement

The complete SAMPLE Agreement includes:

PART A: General Provisions Division I, (Sections 1-9)

PART B: Required Forms

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MST General Provisions Division I, (Sections 1-9)

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PART B
REQUIRED FORMS

**TENTATIVE LIST OF EXHIBITS TO CM/GC CONSTRUCTION SERVICES AGREEMENT WITH
GENERAL PROVISIONS BOOK**

(To Be Provided during TCP Negotiation)

- A. FTA Terms and Conditions
- B. FTA Project Sign, Measure X Project Sign
- C. Initial Notice of Potential Claim, Supplemental Notice of Potential Claim, and Full and Final Documentation of Potential Claims

- D. State Bond Funding General Provisions (If applicable)
- E. Good Faith Effort (GFE) Booklet /Guidelines
- F. Contractors Statement of Experience and Financial Condition (Orange Booklet)
- G. Iran Contracting Act Certification
- H. Public Works Contractor Registration Certification
- I. Sample Construction Supplement Documents and Forms
 - FHWA Terms and Conditions
 - Buy America Certificate
 - Additional Information for Buy America Certificate -Alternative B
 - Davis Bacon Rates
 - Performance Bond
 - Payment Bond
 - Guaranty
 - Annual Employment Utilization Report
 - Designation of Subcontractors
 - Acknowledgment of Addenda
 - Contractor's License Requirements
 - Ability to Meet Minimum Insurance Requirements
 - Contractor's Statement of Eligibility
 - Contractor's Statement of Subcontractor's Eligibility
 - Contractor's List of Subcontractors (DBE and Non- DBE) Parts I and II
 - Local Agency DBE Commitment and Instructions
 - DBE Information-Good Faith Efforts
 - Final Utilization of Disadvantaged Business Enterprises (DBE) and Small Business (SB), First-Tier Subcontractors
 - Monthly DBE/DBE Tracking Verification
 - DBE Certification Status Change
 - Noncollusion Affidavit
 - Bidders List
 - Certification of Restrictions on Lobbying
 - Disclosure of Lobbying Activities
 - Disclosure of Lobbying Activities Continuation Sheet
 - Instructions for Completion of SF-LLL Disclosure of Lobbying Activities

INSTRUCTIONS TO CONTRACTOR

Contractor is advised to **carefully read the MST General Provisions**, as these General Provisions are specific to MST's Contracts. It is the responsibility of Contractor to fully understand the MST General Provisions before entering into a Construction Services Agreement. If you have questions, contact the MST Project Manager.

General

This Agreement governs any work that may be awarded to Contractor pursuant to Construction Supplements, as described below:

SURF! Busway and Bus Rapid Transit facilities including new busway construction, existing street and road improvements, traffic signalization, retaining and earth structures, drainage structures and improvements, utility relocation, new construction and services required for the SURF! Project construction.

As determined by MST, separate supplements may be negotiated for work including but not limited to advance utility relocation, structures, environmental mitigation or material acquisition.

Each Construction Supplement with Contractor will be a Contract document that will serve as an independent amendment to the Construction Services Agreement and will automatically incorporate all of the terms of the Construction Services Agreement.

Construction Supplements will not supersede each other; they will be treated as independent amendments concerning the specific work described within them. MST does not guarantee that all Construction Supplements will be contracted with Contractor. If MST is unable to reach an agreement with Contractor for a Construction Supplement, then the work associated with the supplement may be advertised through the Invitation for Bid (IFB) Process, or otherwise awarded by any legal means available to MST.

If authorized by MST, Construction Supplements will be entered into based on a Total Construction Price (TCP), as further explained in this Agreement. The TCP will be negotiated on the basis of the Conformed Drawings, Conformed General Provisions and Scope of Work for the applicable Construction Supplement. Once design is complete, and prior to commencement of construction under any Construction Supplement, Issued for Construction (IFC) Drawings and IFC General Provisions will be provided to Contractor in accordance with the terms of this Agreement. MST and Contractor agree that IFC Plans and Specifications will be released to Contractor with additional detail and construction requirements and that the additional detail in the IFC plans and specification including adjustments in quantities from the TCP Item List do not constitute a change as defined in Section 4-1 of these General Provisions.

Construction Supplements related to Major Components that may be awarded to Contractor include, but are not limited to:

- Utilities Relocation
- Advance Material Procurement
- Advance Structures
- Environmental Mitigation and Maintenance

In order for the Construction Supplements to be executed by MST, certain requirements must be completed. These requirements are listed in Section 2, "Requirements and Conditions for Construction Supplements," of the General Provisions.

This Project is funded in whole or in part with Federal Transit Administration (FTA), , State Transit and Intercity Rail Capital Program funding and Contractor will be required to comply with the terms of each funding source.

Section 7 of the General Provisions entitled "Legal Relations and Responsibility," and the two subsections entitled "DBE" and "Performance of Subcontractors" of the General Provisions address the Disadvantaged Business Enterprise Program requirements. The SURF! DBE Construction Services has an aspirational Contract goal of 1.5% overall including all Supplements. The 1.5% aspirational goal is also applicable to each Construction Supplement awarded.

Contractor is and has represented itself as competent to perform the Work described herein and desires to enter into this Construction Service Agreement with MST in accordance with all applicable laws and regulations, including all applicable MST Board policies, and the terms and conditions set forth in this Agreement.

All questions regarding the Construction Services Agreement and Construction Supplements shall be directed via email to Lisa Rheinheimer, MST Project Manager, lrheinheimer@mst.org.

Contractor and MST have previously entered into Preconstruction Services Agreement. Pursuant to the Preconstruction Agreements, Contractor has developed work plans ("Contractor Plans") identified below, which have been accepted or will be subject to acceptance by MST prior to commencement of construction under a Construction Supplement for which such plan is applicable ("Contractor Plans"). Contractor shall implement all applicable Contractor Plans, as the same may be amended upon written agreement of MST and Contractor, in performance of the Work. Contractor Plans include but not limited to:

- Subcontracting Plan
- Construction Contracting Plan
- Construction Management Plan

- Utility Coordination Plan
- Conduct of Construction Plan
- Construction Safety and Security Plan
- Construction Quality Control Plan
- Storm Water Pollution Prevention Plan
- Construction Hazardous Materials Plan
- Construction Workforce Training/Hiring Plan

Unless expressly modified herein, nothing contained in this Agreement alters the obligations under the Preconstruction Services Agreement.

Contractor's License

Contractor shall have a valid Class A Contractor's license issued by the State of California at the time of Construction Services Agreement award. Contractor shall be required to be properly licensed through Agreement acceptance including all executed Construction Supplements. Additionally, for each Construction Supplement, listed subcontractors shall have a valid license issued by the State of California for performance of that portion of the work allotted to it before they are allowed to perform work on the supplement.

Construction Supplements will require submittal of license numbers for subcontractors who will complete work in excess of the lesser of \$275,000 or one half of one percent of the TCP of the Construction Supplement value. Contractor and subcontractors shall be required to maintain their licenses in good standing throughout the term of this Agreement.

Assistance in Locating Disadvantaged Business Subcontractors

MST will assist in identifying DBE firms available within the MST market region.

Read the Good Faith Effort (GFE) Booklet carefully (see Exhibit F). Contact the MST Project Manager if you have any questions about meeting any of the DBE goal.

Prevailing Wages

MST will obtain from the Director of the Department of Industrial Relations (DIR) the general prevailing rate of per diem wages in the locality in which the work is to be performed for each Construction Supplement for each craft or type of worker needed to execute the Construction Supplement. These rates will be on file and available at the MST offices, or may be obtained online at www.dir.ca.gov/dlsr. Contractor is advised that a copy of these rates

must be posted by Contractor at the job site(s).

As the work involves federal funds, compliance with Davis-Bacon Fair Labor Standards Act is required and, Contractor and all its subcontractors shall pay the higher of the state or federal prevailing wage rates. The Davis Bacon rates will be included with each Construction Supplement.

DIR Registration and Labor Compliance Monitoring

Pursuant to Labor Code sections 1725.5 and 1771.1, Contractor must be registered with the DIR prior to entering into this Agreement, and shall maintain active registration with the DIR for the duration of the Agreement. All subcontractors of all tiers of Contractor must be registered with the DIR prior to entering into any subcontracts for any work under a Construction Supplement, and must be required to maintain active registration with the DIR for the duration of the work on the Construction Supplement.

The Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement (DLSE), which is part of the California DIR, will be monitoring and enforcing the payment of prevailing wage laws on any Construction Supplement awarded. For additional information regarding Contractor's and subcontractors' obligations with regard to labor compliance, please refer to the California DIR website and Section 7-1 of the General Provisions.

Retentions

MST will retain five percent of each progress payment as provided in this Agreement. At the request and expense of Contractor, MST will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

Construction Services Agreement Forms (Part B)

These forms must be signed and/or completed and will become part of the Agreement:

- Equal Employment Opportunity Certification
- Contractor's License Requirements
- Public Contract Code 10162 Questionnaire, Statement of Eligibility, No Contempt of Court Finding
- Debarment and Suspension Certificate
- Public Contract Code Sections 10232 and 10285.1 Statements
- DBE Commitment Affidavit

Part A

General Provisions

SECTION 1: DEFINITIONS AND TERMS

1-1.01 General

Unless the context otherwise requires, wherever in the specifications and other contract documents the following abbreviations and terms, or pronouns in place of them, are used, the intent and meaning shall be interpreted as provided in this Section 1.

Working titles having a masculine gender, such as "workman" and "journeyman" and the pronoun "he," are utilized in the specifications for the sake of brevity and are intended to refer to persons of either gender.

Unless otherwise stated, the words "directed," "required," "permitted," "ordered," "instructed," "designated," "considered," "necessary," "prescribed," "approved," "acceptable," "satisfactory," or words of like import, refer to actions, expressions, and prerogatives of the Engineer.

1-1.02 Abbreviations

ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials
CALTRANS	California Department of Transportation
CT MUTCD	Caltrans Manual of Uniform Traffic Control Devices
CCIP	Contractor Controlled Insurance Program
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CIP	Capital Improvement Project
CMGC	Construction Manager/General Contractor
CPM	Critical Path Method
CPUC	California Public Utilities Commission
CQC	Contractor's Quality Control Plan
CSOEFC	The MST Contractor's Statement of Experience and Financial Condition
CUCP	California Unified Certification Program
DBE	Disadvantaged Business Enterprise
DOT	United States Department of Transportation
eCPRs	Electronic certified payroll
EPA	United States Environmental Protection Agency
EIR	Environmental Impact Report
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration (Department of Transportation)
FTA	Federal Transit Administration

TCP	Total Construction Price
IFB	Invitation for Bids
IFC	Issued for Construction
MST	Monterey Salinas Transit
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Act (Federal)
QC	Quality Control
RE	The MST Resident Engineer
ROE	Right-of-Entry
ROW	Right-of-Way
SB	Small Business
TIA	Time Impact Analysis
UL	Underwriters' Laboratories Inc.

1-1.03 Definitions

Acceptance: The formal written acceptance by MST of all Work to be performed pursuant to the Construction Supplement which has been completed in all respects in accordance with the plans and specifications and any modifications thereof previously approved.

Affiliated Agencies: City of Marina, City of Seaside, Sand City, Transportation Agency for Monterey County (TAMC), and all MST member agencies as set forth in California Public Utilities Code Part 17 (commencing with section 106000) to Division 10, et seq. Use of the term "Affiliated Agencies" in the Contract does not indicate a partnership in the legal sense or joint liability or responsibility for MST and any of the agencies set forth in Section 106000 et seq.

As-Built Drawings: Improvement drawings marked to reflect record information obtained during construction.

Avoirdupois: The system of weights (or, properly, mass) based on a pound of sixteen ounces. It is the everyday system of weight used in the United States.

Base: A layer of specified material of planned thickness placed immediately below the pavement or surfacing.

Basement Material: The material in excavation or embankments underlying the lowest layer of subbase, base, pavement, surfacing, or other specified layer which is to be placed.

Board: The MST Board of Directors.

CM/GC General Provisions

Bond, Payment: A bond submitted by Contractor that is equal to the Construction Supplement amount, for the purpose of securing the payment of the claims of laborers, mechanics, or materialmen employed on the Work under the Supplement. The payment bond must accompany the Construction Supplement when returned for MST execution of the Supplement.

Bond, Performance: A bond submitted by Contractor that is equal to the Construction Supplement amount, for the purpose of guaranteeing the faithful performance of the Supplement. The performance bond must accompany the Construction Supplement when returned for MST execution.

Bridge: Any structure, with a bridge number, which carries a utility facility, or railroad, highway, pedestrian, or other traffic, over a water course or over or under or around any obstruction.

Contract Change Order or CCO: A document that authorizes an addition, deletion or revision in a fully executed Construction Supplement and in the form contained in the Contract Documents.

Caltrans: The Department of Transportation of the State of California.

Conduit: A pipe or tube in which smaller pipes, tubes, or electrical conductors are inserted or are to be inserted.

Construction Services Agreement or Agreement: The written agreement covering the performance of the Work. The Agreement shall include all Construction Supplements defining the Work contemplated and which are required to complete the Work in a substantial and acceptable manner. The Agreement shall also include MST Board Policy No. 024, which shall take precedence over any conflicting Agreement provisions. No Agreement document shall be binding upon MST until the same has been completely executed by Contractor and approved and executed by authorized MST personnel.

Construction Supplement(s): The written agreement(s) defining the Scope of Work and the furnishing of labor, materials, tools, and equipment in the construction of the Work. The Construction Supplement(s) shall include but is not limited to: the TCP, the IFC Drawings General Provisions, Bonds; and any and all written agreements covering alterations, amendments, or extensions to the Construction Supplement including Contract Change Orders. The Construction Supplement shall also include MST Board Policy No. 024, which shall take precedence over any conflicting Contract provisions.

Contract: (See "Construction Service Agreement")

Contract Bonds: A collective reference to the Performance Bond and the Payment Bond.

Contractor Controlled Insurance Program (CCIP): Type of "wrap-up" policy program in which all participants involved in a construction project are covered by a single policy. The policy sponsor for this program is Contractor for the project. The policy provides coverage for the project owner and Covered Entities as well as contractors and subcontractors that are working on the job site.

Contract Documents: See Section 5-1.04 for list of documents that comprise the entire Agreement and the order of precedence for the documents.

Contractor: The person(s), CM/GC firm, partnership, corporation, or combination thereof, private or public, who have entered into a contract with MST, as party of the second part or their legal representatives. The terms "prime contractor", "you" and "your employees" shall mean Contractor or CM/GC.

Contractor's Plans: Plans prepared pursuant to the Preconstruction Agreements including but not limited to, those identified in the Instructions to Contractor, which have been accepted or will be subject to acceptance by MST prior to commencement of construction under a Construction Supplement for which such plan is applicable.

Contractor's Risk: An amount established for the Work or item(s) of work which is allocated to Contractor in the TCP to fund costs attributed to any risk allocated to Contractor in the Risk Allocation Matrix.

Covered Entities: MST, City of Marina, City of Seaside, Sand City, Transportation Agency for Monterey County (TAMC), Caltrans, State of California, the United States Government, and any successors or assigns.

CSOEFC: A standard experience questionnaire and financial statement verified under oath that shall meet the requirements adopted in MST Board Policy No. 024.

Culvert: Any structure, other than a bridge, which provides an opening under a roadway or railway for drainage or other purposes.

Days: Unless otherwise designated, Days as used in the specifications will be understood to mean calendar days.

DBE: Disadvantaged Business Enterprises, a certified DBE business owned by women or an ethnic group that has been determined to be under-represented in previous procurements based on a disparity study, as defined in Title 49, Part 26.5, Code of Federal Regulations (C.F.R.).

Designer: The firm or firms that designed the Work for MST as the Engineer of Record.

Detour: A temporary route for traffic around a closed portion of a road.

CM/GC General Provisions

Divided Highway: A highway with separated traveled ways for traffic, generally in opposite directions.

Drawings. As Built: Improvement drawings marked to reflect record information obtained during construction.

Drawings. Conformed: Conformed Drawings are the plans with addenda that are given to Contractor for establishing the TCP, but are not for construction.

Drawings. Issued for Construction (IFC drawings): Plans for the Work approved by the Engineer and issued to Contractor for construction. Which show the location, character, dimensions, and details of work to be performed. The IFC drawings provide specific details and dimensions peculiar to the Work and are supplemented by the Standard Plans and Regional Drawings insofar as the same may apply.

Drawings. Regional: The drawings identified for the local governing public agency or local city that are reference for the Work, usually available from that local city.

Drawings. Standard: The standard drawings identified on the Plans for the governing public agency or agencies that are referenced in this project.

Engineer: Engineer assigned by MST, acting either directly or through properly authorized agents, the agents acting within the scope of the particular duties delegated to them.

Engineer. Resident: Engineer assigned by MST to oversee the construction of this project; the "RE."

General Manager/CEO: General Manager/CEO of MST, acting either directly or through properly authorized agents, the agents acting within the scope of the particular duties delegated to them.

Federal Acquisition Regulation (FAR): The primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds.

Federal Agencies: Whenever, in the specifications, reference is made to any federal agency or officer, the reference shall be deemed made to any agency or officer succeeding in accordance with law to the powers, duties, jurisdiction, and authority of the agency or officer mentioned.

Fixed Costs: Any necessary labor, material, and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of the work done.

CM/GC General Provisions

Frontage Road: A local street or road auxiliary to and located generally on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

General Provisions: MST General Provisions are specific clauses setting forth conditions or requirements peculiar to the Work. The Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates is to be considered as a part of these General Provisions. When the words “Department,” “District,” “Director,” or “State,” are used in the General Provisions, they shall be taken to mean MST and its comparable officer, unless otherwise defined within the context of that section.

General Provisions. Conformed: Conformed General Provisions are the General Provisions with addenda that are given to Contractor for establishing the TCP, but are not for construction.

General Provisions. Issued for Construction (IFC General Provisions. General Provisions or Specifications): General Provisions issued by MST to Contractor for construction of the Work or items of work.

TCP Item List: The list of work items and quantities of work with associated costs negotiated to be performed in a Construction Supplement.

TCP Booklet: Part B, the separate booklet enclosed with a Construction Supplement that includes the TCP Item List, Risk Allocation Matrix, and all other forms required to be filled out and submitted to MST prior to execution of a Construction Supplement.

Grading Plane: The surface of the basement material upon which the lowest layer of subbase, base, pavement, surfacing, or other specified layer is placed.

Total Construction Price (TCP): A not to exceed price for completion of construction and acceptance of all TCP Items as negotiated in a Construction Supplement for the work listed in a TCP Item List and as generally shown in the plans and specification at time of a Construction Supplement execution.

Highway: The whole ROW or area which is reserved for and secured for use in constructing the roadway or railway and its appurtenances. *Laboratory*: When referenced in the technical specifications (of the Caltrans Standard Specifications) and MST General Provisions, the State of California Division of Engineering Services – Materials Engineering and Testing Services and Division of Engineering Services – Geotechnical Services of the Department of Transportation, or established laboratories of the various Districts of Caltrans, or other laboratories authorized by Caltrans to test materials and work involved in the Contract. When a reference is made in the specifications to the “Transportation Laboratory,” the reference shall mean Division of *Engineering Services* – Materials Engineering and

Testing Services and Division of Engineering Services – Geotechnical Services, located at 5900 Folsom Boulevard, Sacramento, CA 95819, Telephone (916) 227-7000.

Initiation of TCP: A memorandum prepared by MST instructing Contractor to commence development of a TCP.

Legal Holidays: Those days designated as state holidays in the Government Code.

Liquidated Damages: The amount prescribed in a Construction Supplement to be paid to MST or to be deducted from any payments due or to become due Contractor for each Day's delay in completing the whole or any specified portion of the Work beyond the time allowed in the Supplement.

MUTCD (California): The California Manual on Uniform Traffic Control Devices (California MUTCD), most current edition, published by Caltrans. Prescribes uniform standards and specifications for all official traffic control devices in California.

Median: That portion of a divided highway separating the traveled ways for traffic in opposite directions including inside shoulders.

Notice to Proceed: A written notification issued by the Project Manager to Contractor stating the date Contractor can begin work on all aspects of the supplement subject to the conditions of the contract and the supplement. The performance time of the Construction Supplement starts from the NTP date.

Owner: MST shall be Owner of the Work but may not necessarily be the owner of the real property upon which the Work will be performed (See "Property Owner").

Pavement: The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

Plans (See "Drawings"): The project drawings or IFC Plans and Standard Plans, Regional Plans, profiles, typical cross sections, working drawings, and supplemental drawings or reproductions thereof. In the above definition, the following terms are defined as follows:

- Standard Plans: (See "Drawings. Standard"): The Standard Plans issued by MST for the Project.
- Working Drawings: Submittal and other drawings required for completion of the Work prepared by Contractor and reviewed or approved, as required, for construction by MST.
- IFC Plans: (see Drawings, Issued for Construction)

Preconstruction Services: Services provided by Contractor prior to commencement of construction activities in accordance with the Preconstruction Services Agreements between the CM/GC and MST.

Processing: Any operation or operations of whatever nature and extent required to produce a specified material.

Project: (See "Work").

Property Owner: MST projects are sometimes performed on real property or ROW owned by an affiliated agency, Caltrans, Transportation Agency for Monterey County, or another entity. Whether MST and/or one or more entities other than MST owns the real property on which the Work will be performed, the entity(ies) will be referred to as "Property Owner."

Public Contract Code: The California Public Contract Code. The provisions of this Code and any other applicable laws form and constitute a part of the provisions of this Contract to the same extent as if set forth herein in full.

Railroad. Railway: Permanent rails affixed with a ROW.

Relief From Maintenance: Upon the request of Contractor, MST may relieve Contractor of the duty of maintaining and protecting certain portions of the work which have been completed in all respects in accordance with the requirements of Contract and to the satisfaction of the Project Manager, so that Contractor will not be required to do further work thereon.

Resident Engineer: The individual identified by MST as the MST primary contact for the Work. Unless otherwise provided, all contract communications, directions, approvals and the like shall be through the Resident Engineer.

Risk Allocation Matrix: A matrix of risk items of work with a value allocated to each risk item of work.

Roadbed: The roadbed is that area between the intersection of the upper surface of the roadway or railway and the side slopes or curb lines. The roadbed rises in elevation as each increment or layer of subbase, base, surfacing, or pavement is placed. Where the medians are so wide as to include areas of undisturbed land, a divided highway is considered as including two separate roadbeds.

Roadway: That portion of the highway included between the outside lines of sidewalks, or curbs, slopes, ditches, channels, waterways, and including all the appertaining structures and other features necessary to proper drainage and protection.

Schedule of Values: A listing of elements, systems, items, or other subdivisions of the work, that make up a value of a lump sum TCP Item, so that a percentage complete can be established for each item as progress is made on the project.

Shoulders: The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

Standard Specifications: The directions, provisions, and requirements contained in the Standard Specifications of Caltrans, dated 2018, and all addenda thereto. When the words "Department," "District," "Director," or "State," are used in the Standard Specifications, they shall be taken to mean MST and its comparable officer, unless otherwise defined within that section.

State: The State of California, including Caltrans, the California Highway Patrol, or any other State of California agency whose action or oversight is related to the Work.

Subbase: A layer of specified material of planned thickness between a base and the basement material.

Subgrade: That portion of the roadbed on which pavement, surfacing, base, subbase, or a layer of any other material is placed.

Substructure: All that part of the bridge below the bridge seats, tops of piers, haunches of rigid frames, or below the spring lines of arches. Backwalls and parapets of abutments and wingwalls of bridges shall be considered as parts of the substructure.

Superstructure: All that part of the bridge except the bridge substructure.

Surfacing: The uppermost layer of material placed on the traveled way, or shoulders. This term is used interchangeably with pavement.

Traffic Lane: That portion of a traveled way for the movement of a single line of vehicles.

Transit Center: A station where riders can connect with other forms of transportation and where rest rooms are available.

Traveled Way: That portion of the roadway or railway for the movement of vehicles, exclusive of shoulders.

Vehicle: A mechanical means of transport propelled by an engine. Typically the vehicle used for overhead

construction is in the form of a truck, but may be of other mechanical forms if found to provide equivalent functionality as a truck. The vehicles are typically used to transport tools, materials, and labor to the work site and are used in the performance of the Work.

Work: All the work specified, indicated, shown or contemplated in the Construction Supplement to construct the improvement, including all alterations, amendments or extensions thereto made by contract change order or other written orders of the Engineer, and including the furnishing of all labor, materials, equipment and services.

Working Drawings: As further defined in Section 5.01, Working Drawings are drawings required to adequately control the work prepared by Contractor and accepted by the Engineer.

1-1.04 Units of Measurement

Some of the symbols for United States customary units of measurement used in the specifications and other contract documents are defined as follows:

Symbols as used in the Specifications	Symbols as used in elsewhere	Definitions
A	—	amperes
	ACRE	acre
	CF	cubic foot
	CY	cubic yard
—	EA	each
g	—	gram
ksi	—	kips per square inch
	GAL	gallon
h	H	hour
	LB	pound
—	LS	lump sum
	LF	linear foot
	LNMI	lane mile
	MFBM	thousand foot board measure
	MI	mile
	MSYD	thousand station yard
Ω	—	ohm
pcf	—	pounds per cubic foot
s	—	second
	STA	100 feet
	SQFT	square foot
	SQYD	square yard
	TAB	tablet
	TF	track foot
ton	TON	2,000 pounds
W	—	watt
V	—	volt

END OF SECTION 1

SECTION 2: REQUIREMENTS AND CONDITIONS FOR CONSTRUCTION SUPPLEMENTS

2-1.01 Total Construction Price (TCP) and Contents of TCP booklet (Part B of Construction Supplement)

I. A Construction Supplement is a Lump Sum Contract with a TCP based on an identified and approved work package. A TCP is defined as follows:

A. Reimbursable Costs= Direct Costs+ Indirect Costs (General Conditions)

Direct Costs are the calculated and agreed cost for the construction of the work including labor, equipment, materials, material transportation, temporary work and supports, tests, taxes for material incorporated into the work, and other costs for physical construction of the work whether self- performed or subcontracted.

Indirect Costs include Contractor's cost for managing and controlling the work including: reporting, scheduling, quality control, safety plan implementation, coordination, stakeholder communications, bonds, insurance, payroll taxes and other similar items as required by the work. It shall include the costs for field office personnel, the establishment and maintenance of field office facilities and related appurtenances, and also for the costs of storing material and equipment. Contractor shall identify and MST will approve all positions within Contractors organization to be included in the calculation of indirect costs.

B. Contractor's Risk

Contractor's Risk is the sum of costs negotiated and agreed upon for uncertain risk conditions allocated to Contractor. A risk matrix shall be developed that identifies each risk condition, the negotiated value of each condition, and the schedule of payment that will be made for each condition. The sum of these conditions shall make up Contractor's Risk portion of the TCP.

C. Contractor's Fixed Fee

Contractor's Fixed Fee has been established per the Pre-Construction Services agreement at TBD percent of the direct and indirect negotiated cost for construction. Compensation for Contractors' Fixed Fee will be made on a pro-rata basis coinciding with the work performed on each monthly progress pay estimate. Costs included in the fixed fee include:

1. Profit
2. All home, branch or regional office related costs, including: general and administrative expense, overhead, indirects, and non-direct salaries

The sum of the total above (Items A-CJ is the TCP.

- II. MST and Contractor shall negotiate the terms and conditions to apply to each Construction Supplement based on the Conformed Drawings, Conformed General Provisions, and the Scope of Work and the relevant sections of the Construction Supplement. Pursuant to the terms of the Preconstruction Services Agreement, the negotiation of the TCP, including direct and indirect costs, has been done in observance of the applicable provisions of applicable laws.

Addenda, if required, will be issued to correct omissions or points requiring clarification in the Conformed Drawings and Special Conditions for each Construction Supplement that come to the attention of MST prior to the MST acceptance of the TCP.

Contractor shall acknowledge receipt of Addenda on a form included in the TCP Booklet. Only addenda issued by MST will be valid. Oral modifications of any of the documents are void.

Failure to acknowledge all addenda issued may be grounds for rejection of the Construction Supplement.

In the event that pages are missing in the Conformed Drawings and Special Conditions, it is Contractor's responsibility to alert the MST Contract Analyst for the Construction Supplement so that corrections can be made via addenda.

The General Manager/CEO or designee is the officer responsible for the overseeing and negotiating the TCP submitted to MST. The MST Board of Directors is responsible for approving Contractor for contract awards of \$100,000 or more.

As there may be multiple Construction Supplements issued pursuant to this Agreement, any reference in this Agreement to a Construction Supplement shall be deemed to refer to the relevant Construction Supplement.

2-1.01.1 TCP Booklet

As part of the TCP Booklet, Contractor will include a TCP Item List they have developed showing an estimate of the quantities and a coinciding description of work to be performed or materials to be furnished. The TCP Item List shall set forth the item prices and totals, in clearly legible figures and stated in United States currency and shall be signed by Contractor.

As part of the TCP Booklet, Contractor will also include a Risk Allocation Matrix for the work to be performed or materials to be furnished. Contractor's Risk will be identified in the Risk Allocation Matrix, developed during the

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CM/GC Pre-construction services, and agreed upon by MST and Contractor during final negotiations of the TCP. The Matrix, at a minimum, will include specific line item risks that have schedule impacts and/or costs impacts to the project. Final allocation of the risk items assigned to Contractor is included in the Matrix. For risks allocated to Contractor, a corresponding value will be identified for each risk item. The total of these items will equal the total contractor risk value allowed in the TCP.

Contractor shall be responsible for submittal and compliance with the following to be included in the TCP Booklet:

- Total Construction Price - TCP Item List
- Risk Allocation Matrix with Dollars and Schedule Impacts
- FHWA Terms and Conditions
- Davis Bacon Rates
- Performance Bond
- Payment Bond
- Annual Employment Utilization Report
- Designation of Subcontractors - Completed, including dollar amounts
- Acknowledgment of Addenda - Signed
- Contractor's License Requirements - Completed, signed
- Ability to Meet Minimum Insurance Requirements - Completed, signed
- Contractor's Statement of Eligibility - Completed, signed
- Contractor's Statement of Subcontractor's Eligibility - Completed, signed
- Contractor's List of Subcontractors (DBE and Non- DBE) Parts I and II - Completed
- Local Agency DBE Commitment - Completed, signed
- DBE Information - Good Faith Efforts - Completed
- Final Utilization of DBE and SB, First-Tier Subcontractors - Completed, signed at end of project
- Monthly DBE/DBE Trucking Verification - Completed, signed (when applicable)
- DBE Certification Status and Change - Completed, signed (when applicable)
- Non-collusion Affidavit - Completed, signed
- Certification of Restrictions on Lobbying
- Disclosure of Lobbying Activities
- Disclosure of Lobbying Activities Continuation Sheet
- Instructions for Completion of SF-LLL Disclosure of Lobbying Activities
- Guaranty - Completed, signed
- Bidder's List - Completed
- Buy America Certificate - Completed, signed
- Additional Information for Buy America Certificate - Alternative B - Completed

The entire TCP Booklet must be submitted as part of the Construction Supplement. All forms must be in the TCP Booklet, in order. Sample Construction Supplement forms are located in Exhibit K of this Construction Services Agreement.

2-1.01.2 Contractor Responsibility Regarding Selection of Subcontractors

In preparing a TCP, Contractor shall comply with the Construction Contracting Plan and the DBE and SB Subcontracting Plan (and as may be amended) developed under the Preconstruction Services Agreement, which identify the solicitation and selection processes for awarding subcontracts for work on the Project. Contractor shall provide MST with information and records regarding Contractor's selection methods for subcontractors for Construction Supplements.

DOT requires MST to create and maintain a "Bidders List" containing information about all firms (DBE and non-DBE) that Bid, proposed, or quoted on the MST DOT-assisted contracts, in accordance with 49 CFR 26.11. Contractor shall provide the requested information for every firm who Bid, proposed, or submitted a quote, including subcontractors of any tier, and any firms who provided quotes but were not listed as subcontractors, and submit the "Bidders List" with the each TCP Booklet. MST will utilize this information to assist in the DBE goal setting process. The Bidders List content will not be considered in evaluating the Bid/proposal or determining award of any contract.

2-1.02 Contractor Plans Prepared Under Preconstruction Services Agreement

The Contactor and MST have previously entered into Preconstruction Services Agreements for each of the Major Components, as such terms are defined in the Instructions to Contractor provisions of this Agreement. Pursuant to the Preconstruction Agreements, Contractor has developed the plans identified in the Instructions to Contractor, which have been accepted or will be subject to acceptance by MST prior to commencement of construction under a Construction Supplement for which such plan is applicable ("Contractor Plans"). Contractor shall implement all applicable Contractor Plans, as the same may be amended upon written agreement of MST and Contractor, in performance of the work.

2-1.03 Examination of Plans, Specifications, Contract, and Site of Work

Prior to the submission of a TCP, Contractor shall have examined carefully the site of the Work contemplated, the Conformed Drawings and Specifications and the Construction Supplement forms. The submission of a TCP shall be conclusive evidence that Contractor has investigated and is satisfied as to the general and local conditions to be encountered, as to the character, quality and scope of work to be performed, the quantities of materials to be furnished and as to the requirements of the TCP proposal, plans, specifications and the supplement.

If, after examining the plans and specifications for this project Contractor is aware of any errors or omissions

therein, prior to submission of a TCP, Contractor shall report in writing any such errors or omissions to MST.

The submission of a TCP shall also be conclusive evidence that Contractor is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information was reasonably ascertainable from an inspection of the site and the records of exploratory work done by MST as shown in the plans and specifications made a part of the Construction Supplement.

Where MST has made investigations of site conditions including subsurface conditions in areas where Work is to be performed or in other areas, some of which may constitute possible local material sources, Contractor may, upon written request, inspect the records of MST as to those investigations subject to and upon the conditions hereinafter set forth.

Where there has been prior construction by MST or other public agencies within the project limits, records of the prior construction that are currently in the possession of MST and which have been used by, or are known to, the Designers and administrators of the Project will be made available for inspection by Contractor, upon written request, subject to the conditions hereinafter set forth. The records may include, but are not limited to, as-built drawings, design calculations, foundation and site studies, project reports and other data assembled in connection with the investigation, design, construction and maintenance of the prior projects.

Inspection of any records of investigations and any project records in the possession of MST may be made at the MST business offices. Inspection of any records of investigations and project records in the possession of other public entities must be coordinated through such other public entities.

When a log of test borings or other record of geotechnical data is included with the Construction Supplement plans, it is furnished for Contractor's information and its use shall be subject to the conditions and limitations set forth in this Section.

When cross sections are not included with the plans, but are available, Contractor may inspect the cross sections and obtain copies for their use, at their expense.

When cross sections are included with the plans, it is expressly understood and agreed that the cross sections do not constitute part of the Construction Supplement, do not necessarily represent actual site conditions or show location, character, dimensions and details of work to be performed, and are included in the plans only for the convenience of Contractor and their use is subject to the conditions and limitations set forth in this Section 2-1.03.

When contour maps were used in the design of the project, Contractor may inspect those maps, and if available, may obtain copies for their use.

The availability or use of information described in this Section is not to be construed in any way as a waiver of the provisions of the first paragraph in this Section and Contractor is cautioned to make independent investigations and examinations as they deem necessary to be satisfied as to conditions to be encountered in the performance of the Work and, with respect to possible local material sources, the quality and quantity of material available from the property and the type and extent of processing that may be required in order to produce material conforming to the requirements of the specifications.

MST assumes no responsibility for conclusions or interpretations made by Contractor based on the information or data made available by MST. MST does not assume responsibility for representation

made by its officers or agents before the execution of the Construction Supplement concerning surface or subsurface conditions, unless that representation is expressly stated in writing in the supplement.

No conclusions or interpretations made by Contractor from the information and data made available by MST will relieve Contractor from properly fulfilling the terms of the Construction Supplement.

2-1.04 Substitution of Specified Equipment, Material, Article, or Patented Process

Unless otherwise specifically provided in the General Provisions, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition; and Contractor may, at his option, use any material, article or process which, in the judgment of the Engineer is equal to that named. Contractor shall furnish, at his own expense, all information necessary or related thereto as required by the Engineer. The Engineer shall be the sole judge as to the comparative quality and suitability of alternative equipment or articles or materials and their decision shall be final.

2-1.05 Required Listing of Proposed Subcontractors

The TCP Booklet shall list the name and address of each subcontractor to whom Contractor proposes to subcontract portions of the Work in an amount in excess of the lesser of \$275,000 or one-half of 1 percent of Contractor's TCP or, in the case of TCPs for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime Contractor's total TCP or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. Contractor's attention is directed to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

A form for listing the subcontractors, as required herein, is included in Exhibit K-9 of the Construction Services

CM/GC General Provisions

Agreement entitled "Designation of Subcontractors."

2-1.06 MST Employees, Design Engineers, and Construction Managers May Not Be Included On the Construction Contract

No employee of MST or its Affiliated Agencies shall be eligible to subcontract for any portion of, or to supply any materials for any contract administered by MST.

No engineering or architectural firm which has provided design services for a project or that will provide construction management services on a project shall be eligible to subcontract for any portion of the Work. The ineligible firms include the prime Contractor for design or construction management, subcontractors that worked on portions of the design, and affiliates of any of the foregoing. An affiliate is a firm that is subject to the control of the same persons, through joint ownership or otherwise.

2-1.07 No Assignment

Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of MST. Any assignment without the written consent of MST shall be void.

2-1.08 Previous Disqualification, Removal, or Other Prevention Of Bidding

Pursuant to Section 10162 of the Public Contract Code, Contractor shall complete, under penalty of perjury, the questionnaire in Part B of the Construction Services Agreement, relating to previous disqualification, removal or other prevention of Bidding of Contractor, or officers or employees of Contractor because of violation of law or a safety regulation.

A TCP may be rejected on the basis of a Contractor, any officer of Contractor, or any employee of Contractor who has a proprietary interest in Contractor, having been disqualified, removed, or otherwise prevented from Bidding on, or completing a federal, state, or local project because of a violation of law or a safety regulation.

2-1.09 Compliance with Orders of the National Labor Relations Board

Contractor shall swear by a statement in the form found in Part B and each Supplement, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court which orders Contractor to comply with an order of the National Labor Relations Board. For purposes of this Section, a finding of contempt does not include any finding which has been vacated, dismissed, or

otherwise removed by the court because Contractor has complied with the order which was the basis for the finding. MST may rescind any contract in which Contractor falsely swears to the truth of the statement required by this Section.

2-1.10 Federal Lobbying Restrictions

This Agreement is subject to 31 U.S.C. 1352, as amended, and the U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. 20. As part of each TCP Booklet, Contractor shall file with MST the certification required by 49 CFR 20, "New Restrictions on Lobbying." Contractor shall not, and certifies that it has not, used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

If any funds other than federal funds have been paid for the same purposes in connection with this federal-aid contract, Contractor shall submit a completed disclosure form as part of TCP Booklet.

A certification for federal-aid contracts regarding payment of funds to lobby Congress or a federal agency is included in the TCP Booklet. "Disclosure of Lobbying Activities," with instructions for completion of the form, is also included with the TCP Booklet. Signing the TCP Form shall constitute signature of the Certification.

The above-referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding \$100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

Contractor, subcontractors, and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by Contractor, subcontractors, and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action
- (3) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered federal action

2-1.11 Ineligibility to Contract

CM/GC General Provisions

In addition to all other remedies permitted by law, MST may, upon advice of the General Manager/CEO and General Counsel, by resolution declare a contractor ineligible to Bid on MST procurement and construction contracts for a period not to exceed three years for any of the following grounds:

- I. Two or more claims of computational, clerical, or other error in Bid submission within a two-year period
- II. Unjustified failure or refusal to timely provide or properly execute contract documents
- III. Unsatisfactory performance of contract
- IV. False, excessive, and/or unreasonable claims while performing work for MST
- V. Two or more occasions within a two-year period of failure to submit bond or insurance documents acceptable to MST in the time periods required
- VI. Unjustified refusal to properly perform or complete contract work or warranty performance
- VII. Unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract
- VIII. Conviction under a state or federal statute or municipal ordinance for fraud, bribery, theft, falsification or destruction of records, receiving stolen property, or of any other similar crime
- IX. Any offense or action which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of Contractor on future contracts with MST
- X. Any debarment of Contractor by another governmental agency
- XI. False statements or certifications in documents submitted as part of a Bid or any supplementary documentation thereto

2-1.12 Guarantee

A guarantee for a period of no less than 12 months from the date of Acceptance is required. A guarantee form for this purpose is included in the TCP Booklet. In addition to this guarantee, Contractor may be required to supply additional guarantees for materials, as specified in the technical specifications for the Construction Supplement. The guarantees for any materials shall be signed and delivered to the Engineer for the Construction Supplement before acceptance of the Construction Supplement.

Full compensation for furnishing the guarantee shall be considered as included in the TCP, and no additional compensation will be allowed.

END OF SECTION 2

SECTION 3: AWARD AND EXECUTION OF CONSTRUCTION SUPPLEMENTS

3-1.01 Award Of Construction Supplements

The award of a Construction Supplement, if it is awarded, will be to Contractor if it successfully negotiates a TCP with MST. MST reserves the right to:

- A. Request Contractor to solicit subcontractor quotes for Work it has proposed to self-perform in the TCP.
- B. Request that Contractor solicit low bids and/or best value bids on any portion(s) of the work.
- C. Reject a TCP if MST deems it to be in its interest to do so and award the Contract utilizing any other procurement method authorized by law.
- D. Prohibit Contractor, including all members of a Joint Venture, who failed to negotiate a TCP for the work to participate in the subsequent procurement process for the work.
- E. Reject a proposed TCP and not enter into a Construction Supplement with Contractor if Contractor has not either met the DBE goal for the relevant Construction Supplement, or demonstrated Good Faith Efforts in accordance with the requirements of this Agreement.

3-1.02 Contract Bonds

The Contract Shall furnish a Payment Bond and a Performance Bond in a sum equal to the awarded Construction Supplement price. The Payment Bond shall secure the payment of the claims of laborers, mechanics, or materialmen employed on the Work under the Construction Supplement, and the Performance Bond shall guarantee the faithful performance of the Construction Supplement. The bond forms will be furnished to Contractor within the MST Construction Supplement. The executed bonds shall be returned to MST with the Contractor-executed Construction Supplement.

All alterations, extensions of time, extra and additional work, and other changes authorized by the specifications or any part of the Construction Supplement may be made without securing the consent of the surety or sureties on the Contract bonds.

Bonds shall be duly executed by a responsible corporate surety, admitted to transact surety business in the State of California and secured through an authorized agent with an office in California. The surety shall be subject to approval by MST, and no single bond should exceed 10 percent of the surety's current capital and surplus. MST may require that the surety shall be listed in the current Federal Register Circular 570 and that no single bond shall exceed the Underwriting Limitation therein. Contractor shall pay all bond premiums, cost, and incidentals and shall be listed in the TCP Item List.

3-1.03 Insurance Policies

Contractor shall comply with the MST insurance certificate submittal process:

- I. Insurance exclusions are allowed if not inconsistent with Section 7-1.12, "Indemnification and Insurance." Allowance of any additional exclusions is at the discretion of MST.

- II. Certificate of Insurance showing all other required coverages. Certificates of Insurance, as evidence of required insurance for the auto liability and any other required policy shall set forth deductible amounts applicable to each policy and all exclusions that are added by endorsement to each policy. The evidence of insurance shall provide that no cancellation, lapse, or reduction of coverage will occur without 30 days prior written notice to MST.

3-1.04 Execution of Contract and Construction Supplements

The Contract shall be signed by Contractor in duplicate counterpart and returned within 14 days of receipt of the Contract from MST. The Construction Supplements shall be signed by Contractor in duplicated counterpart and returned, together with the Performance Bond and Payment Bond, and compliant insurance certificates provided to within 14 days of receipt of the Construction Supplement from MST. No contract shall be binding upon MST until the same has been completely executed by Contractor and approved and executed by authorized MST personnel. The Construction Supplement shall include the conformed versions of the General Provisions and Drawings.

3-1.05 Failure to Execute Construction Supplement

MST reserves the right to withdraw all requests for TCPs for additional Construction Supplements if Contractor fails to execute at any time a Construction Supplement after the successful negotiation of a TCP for that supplement.

3-2.01 Measurement and Payment

Full compensation for conforming to the requirements of Section 3, "Award and Execution of Construction Supplements," not otherwise provided for, shall be considered included in the TCP and no separate payment will be allowed.

END OF SECTION 3

SECTION 4: SCOPE OF WORK - CONSTRUCTION SUPPLEMENTS

4-1.01 Intent of Plans and Specifications

The intent of the plans and specifications is to prescribe the details for the construction and completion of the Construction Supplement being considered, which Contractor undertakes to perform in accordance with the terms of a Construction Supplement, including the manufacture and furnishing of all equipment and materials necessary for the construction and completion within the scope of work. Where the plans or specifications describe portions of the Construction Supplement in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, Contractor shall furnish all labor, materials, tools, equipment, and incidentals, and do all the Work involved in executing the Construction Supplement in a satisfactory and workmanlike manner.

The Work being considered is described in each Construction Supplement and includes procuring all materials and performing all other work necessary to complete the Construction Supplement in accordance with the IFC Drawings and Specifications included in the Construction Supplement.

4-1.02 Final Cleaning Up

Final Cleaning Up will be listed in the TCP Item List under the Indirect Costs Category. Full compensation for final cleaning up will be considered as included in the prices paid for the various contract items of work and no separate payment will be made therefore or would be paid for separately in an approved Schedule of Values. Before final inspection of the Work, Contractor shall perform all of the following:

- I. Clean all areas of the Work, material sites, and all ground occupied by Contractor in connection with the Work of all rubbish, excess materials, falsework, temporary structures, and equipment. All parts of the Work shall be left in a neat and presentable condition.
- II. Remove from the project all loose material of any nature, except spare parts, loose furniture or furnishings, manuals and parts books, and similar items.
- III. Remove all temporary buildings, utility lines or pipes, and other work of a temporary nature within such time.
- IV. Render exterior earth surfaces free of rocks, broken concrete, or masonry.
- V. Rake all surfaces to a uniform surface and appearance. All unexposed accessible areas shall be free of dust and excess construction materials.
- VI. Wash, wipe, wax, polish, vacuum, mop, dust, or otherwise treat all surface areas to bring out the best of the finished condition.

- VII. Thoroughly clean all fixtures, including lighting fixtures.
- VIII. Leave all areas free of any marks of paints, adhesive, dirt, or surface film of any kind.
- IX. All work shall appear new, clean, unblemished, and complete.
- X. Coordination: Coordinate cleanup operations with the MST site work contractor.
- XI. Preparation: Prior to final inspection, remove from the project all loose material of any nature, except spare parts, loose furniture or furnishings, manuals and parts books, and similar items. Remove all temporary buildings, utility lines or pipes, and other work of a temporary nature. Exterior earth surfaces shall be free of rocks, broken concrete or masonry. Rake to a uniform surface and appearance. All unexposed accessible areas shall be free of dust and excess construction materials.
- XII. Surface Cleaning: Prior to final inspection, wash, wipe, wax, polish, vacuum, mop, dust, or otherwise treat all work to bring out the best of the finished condition. Clean all glass and remove all labels or other markings. Thoroughly clean lighting fixtures. Leave free of any marks of paints, adhesive, dirt, or surface film of any kind. All work shall appear new, clean, unblemished, and complete.
- XIII. Nothing herein, however, shall require Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by MST.

4-1.03 Changes

MST reserves the right to make such alterations, deviations, additions to, or deletions from the plans and specifications, including the right to increase or decrease the quantity of any TCP Item or portion of the Work or to delete any TCP Item or portion of the Work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated. Those changes will be set forth in a Contract Change Order which will specify, in addition to the work to be done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for that work. A Contract Change Order will not become effective until approved by MST. MST approved Contract Change Orders become part of the IFC Plans and Specifications.

Upon receipt of an approved Contract Change Order, Contractor shall proceed with the ordered work. If ordered in writing by the Engineer, Contractor shall proceed with the work so ordered prior to actual receipt of an approved Contract Change Order. In those cases, the Engineer will, as soon as practicable, issue an approved Contract Change Order for the ordered work and the provisions in Section 4-1.03A, "Procedure and Protest," shall be fully applicable to the subsequently issued contract change order. See Section 4-1.03D, "Extra Work." If Contractor determines that a time extension is warranted, Contractor shall submit a Time Impact Analysis conforming to the requirements of this Contract.

When the compensation for an item of work is subject to adjustment under the provisions of this Section 4-1.03, Contractor shall, upon request, furnish the Engineer with adequate detailed open book cost data for

that item of work. If Contractor requests an adjustment in compensation for an item of work as provided in Section 4-1.03B(1) or Section 4-1.03B(2), the cost data shall be submitted with the request.

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

4-1.03A Procedure and Protest

A Contract Change Order approved by the Engineer may be issued to Contractor at any time. Should Contractor disagree with any terms or conditions set forth in an approved Contract Change Order not executed by Contractor, Contractor shall submit a written protest to the Engineer within 15 Days after the receipt of the approved Contract Change Order. The protest shall state the points of disagreement, and, the Contract specification references, quantities and costs involved. If a written protest is not submitted, payment will be made as set forth in the approved Contract Change Order, and that payment shall constitute full compensation for all Work included in the Contract Change Order. Unprotested approved Contract Change Orders will be considered as executed contract change orders as that term is used in Section 4-1.03B, Section 4-1.03C, and Section 4-1.03D, inclusive.

Where the protest concerning an approved Contract Change Order relates to compensation, the compensation payable for all work specified or required by that Contract Change Order to which the protest relates will be determined as provided in Section 4-1.03B, Section 4-1.03C, and Section 4-1.03D inclusive.

Contractor shall keep full and complete records of the cost of that work and shall permit the Engineer to have access thereto as may be necessary to assist in the determination of the compensation payable for that work.

Where the protest concerning an approved Contract Change Order relates to the adjustment of contract time for the completion of the Work, the time to be allowed will be determined as provided in Section 8-1.07, "Liquidated Damages."

Proposed Contract Change Orders may be presented to Contractor for consideration prior to approval by the Engineer. If Contractor signifies acceptance of the proposed Contract Change Order by executing the document and if the change order is approved by the Engineer and issued to Contractor, payment in accordance with the provisions as to compensation therein set forth shall constitute full compensation for all work included therein or

required thereby. A Contract Change Order executed by Contractor and approved by the Engineer is an executed Contract Change Order as that term is used in Section 4 in its entirety. An approved Contract Change Order shall supersede a proposed, but unapproved, contract change order covering the same work.

The Engineer may provide for an adjustment of compensation as to a TCP Item of work included in a contract change order determined as provided in Section 4-1.03B, Section 4-1.03C, and Section 4-1.03D inclusive, if that item of work is eligible for an adjustment of compensation thereunder.

4-1.03B Increased or Decreased Quantities

Increases or decreases in the quantity of a contract item of work will be determined by comparing the total pay quantity of that item of work with the quantity in the TCP Item List.

If the total increased or decreased quantity of any TCP Item of work resulting from changes varies from the TCP Item List by 25 percent or less, payment will be made for the quantity of work of the item performed at the TCP Item List unit price therefore, unless eligible for adjustment pursuant to Section 4-1.03, "Changes in Unit Cost of Work."

If the total increased or decreased quantity of any TCP Item of work resulting from changes varies from the TCP Item List therefore by more than 25 percent, in the absence of an executed contract change order specifying the compensation to be paid, the compensation payable to Contractor will be determined in accordance with Section 4-1.03B(1), Section 4-1.03B(2), or Section 4-1.03B(3) as the case may be.

4-1.03B(1) Increases of More Than 25 Percent

Should the total increased pay quantity of any item of work required under the Contract exceed the quantity in the TCP Item List therefore by more than 25 percent, the work in excess of 125 percent of the estimate and not covered by an executed contract change order specifying the compensation to be paid therefore will be paid for by adjusting the TCP Item List unit price for that item, as hereinafter provided, or at the option of the Engineer, payment for the work involved in the excess will be made on the basis of force account as provided in Section 9-1.03, "Scope of Payment."

The adjustment of the TCP Item List unit price will be the difference between the TCP Item List unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the item. If the costs applicable to the item of work include fixed costs, the fixed costs will be deemed to have been recovered by Contractor by the payments made for 125 percent of the TCP Item List of the quantity for the item, and in computing the actual unit cost, the fixed costs will be excluded. Subject to the above provisions, the actual unit cost will be determined by the Engineer in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, "Scope of Payment;" or the adjustment will be as agreed to by Contractor and the

Engineer.

When the compensation payable for the number of units of an item of work performed in excess of 125 percent of the TCP Item List is less than \$25,000 at the applicable contract unit price, the Engineer reserves the right to make no adjustment in the Contract unit price if the Engineer so elects, except that an adjustment will be made if requested in writing by Contractor.

4-1.03B(2) Decreases of More Than 25 Percent

Should the total decreased pay quantity of any item of work required under the Contract be less than 75 percent of the quantity in the TCP Item List therefore, an adjustment in compensation pursuant to this Section 4-1.03B(2) will not be made unless Contractor so requests in writing. If Contractor so requests, the quantity of the item performed, unless covered by an executed contract change order specifying the compensation payable therefore, will be paid for by adjusting the TCP Item List unit price as hereinafter provided, or at the option of the Engineer, payment for the quantity of the work of the item performed will be made on the basis of force account as provided in Section 9-1.03, "Scope of Payment," provided however, that in no case shall the payment for that work be less than that which would be made at the TCP Item List unit price.

The adjustment of the TCP Item List unit price will be the difference between the TCP Item List unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the item, including fixed costs. The actual unit cost will be determined by the Engineer in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, "Scope of Payment;" or the adjustment will be as agreed to by Contractor and the Engineer.

The payment for the total quantity of the item of work will in no case exceed the payment which would be made for the performance of 75 percent of the TCP Item List of the quantity for the item at the original TCP Item List unit price.

4-1.03B(3) Eliminated Items

Should any TCP Item List item of the Work be eliminated in its entirety, in the absence of an executed contract change order covering the elimination, payment will be made to Contractor for actual costs incurred in connection with the eliminated contract item if incurred prior to the date of notification in writing by the Engineer of the elimination.

If acceptable material is ordered by Contractor for the eliminated item prior to the date of notification of the elimination by the Engineer, and if orders for that material cannot be canceled, the material will be paid for at the actual cost to Contractor. In this case, the material paid for shall become the property of MST, and the actual cost

of any further handling will be paid for. If the material is returnable to the vendor and if the Engineer so directs, the material shall be returned and Contractor will be paid for the actual cost of charges made by the vendor for returning the material. The actual cost of handling returned material will be paid for.

The actual costs or charges to be paid by MST to Contractor as provided in this Section 4-1.03B(3) will be computed in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, "Scope of Payment."

4-1.03C Changes in Unit Cost of Work

If an ordered change in the IFC Plans or Specifications materially changes the unit cost to perform the work of a TCP Item from that on which Contractor based the TCP Item price, and if the change increases or decreases the actual unit cost of the changed item as compared to the actual or estimated actual unit cost of performing the work of that item in accordance with the Conformed plans and specifications, in the absence of an executed contract change order specifying the compensation payable, an adjustment in compensation therefore will be made in accordance with the following.

The basis of the adjustment in compensation will be the difference between the actual unit cost to perform the work of that item or portion thereof involved in the change as originally planned and the actual unit cost of performing the work of the item or portion thereof involved in the change, as changed. Actual unit costs will be determined by the Engineer in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, "Scope of Payment;" or the adjustment will be as agreed to by Contractor and the Engineer. The adjustment will apply only to the portion of the work of the item actually changed in character. At the option of the Engineer, the work of the item or portion of item which is changed in character will be paid for by force account as provided in Section 9-1.03.

If the compensation for an item of work is adjusted under this Section 4-1.03C, the costs recognized in determining that adjustment shall be excluded from consideration in making an adjustment for that item of work under the provisions in Section 4-1.03B, "Increased or Decreased Quantities."

Failure of the Engineer to recognize a change in character of the work at the time the approved contract change order is issued shall in not be construed as relieving Contractor of the duty and responsibility of filing a written protest within the 15 day limit as provided in Section 4-1.03A, "Procedure and Protest."

4-1.03D Extra Work

New and unforeseen work will be classed as extra work when determined by the Engineer that the work is not already covered by any of the various items for which there is a TCP Item price or by combinations of those items.

CM/GC General Provisions

In the event portions of this work are determined by the Engineer to be covered by some of the various items for which there is a TCP Item price or combinations of those items, the remaining portion of the work will be classed as extra work. Extra work also includes work specifically designated as extra work in the plans or specifications.

This extra work will be initiated with a Request for Proposal (RFP) issued by the Engineer. Contractor shall respond within five working days with a detailed cost proposal with all labor, material, and equipment costs shown in a force account format in accordance with Section 9-1.05, "Force Account Payment." Failure of Contractor to submit a complete cost proposal within the allotted time will constitute a waiver by Contractor of any and all rights for additional cost and/or time associated with the change order. If Contractor determines that a time extension is warranted, Contractor shall submit a Time Impact Analysis conforming to the requirements described in Section 8 of these specifications.

Contractor shall do the extra work and furnish labor, material and equipment therefore upon receipt of an approved contract change order or other written order of the Engineer, and in the absence of an approved contract change order or other written order of the Engineer, Contractor shall not be entitled to payment for the extra work.

Payment for extra work required to be performed pursuant to the provisions in this Section 4-1, in the absence of an executed Contract Change Order, will be made by force account as provided in Section 9-1, "Scope of Payment;" or as agreed to by Contractor and the Engineer.

4-1.04 Detours

Contractor shall construct and remove detours and detour bridges for the use of public traffic or rail traffic as provided in these General Provisions, or as shown on the plans, or as directed by the Engineer. Payment for this work is included in the TCP for this contract.

When public traffic or rail traffic is routed through the Work, provision for a passageway through construction operations will not be considered as detour construction or detour maintenance, and this work shall conform to and be paid for as provided in Section 7-1.08, "Public Convenience," unless otherwise specified in these General Provisions.

Detours used exclusively by Contractor for hauling materials and equipment shall be constructed and maintained by Contractor at Contractor's expense.

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

CM/GC General Provisions

Where Contractor's hauling is causing such damage to the detour that its maintenance in a condition satisfactory for public traffic or rail traffic is made difficult and unusually expensive, the Engineer shall have authority to regulate Contractor's hauling over the detour.

4-1.05 Use of Materials Found on the Work

Unless designated as selected material as provided in Section 19-2, "Selected Material," of the Caltrans Standard Specifications, Contractor, with the approval of the Engineer, may use in the proposed construction such stone, gravel, sand, or other material suitable in the opinion of the Engineer as may be found in excavation. Contractor will be paid for the excavation of those materials at the Contract price for the excavation, but Contractor shall replace at Contractor's expense with other suitable material all of that portion of the material so removed and used which was contemplated for use in the Work, except that Contractor need not replace at Contractor's expense, any material obtained from structure excavation used as structure backfill. No charge for materials so used will be made against Contractor. Contractor shall not excavate or remove any material from within the contract limits that is not within the excavation, as indicated by the slope and grade lines, without written authorization from the Engineer.

4-2.01 Measurement and Payment

Full compensation for conforming to the requirements of Section 4, "Scope of Work - Construction Supplements," not otherwise provided for, shall be considered included in the TCP and no separate payment will be allowed.

END OF SECTION 4

SECTION 5: CONTROL OF WORK

5-1.01 Authority of Resident Engineer

The Resident Engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the Work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the Contract on the part of Contractor; and all questions as to compensation. The Engineer's decision shall be final, and the Engineer shall have authority to enforce and make effective those decisions and orders which Contractor fails to carry out promptly.

5-1.02 Plans, Working Drawings, and Submittals

MST will provide, at no cost to Contractor, up to five copies of half size IFC Drawings, full size IFC Drawings and General Provisions for each executed Construction Supplement. One electronic copy with all IFC Drawings and General Provisions will be provided. Additional copies will be provided at Contractor's expense for printing, assembling, and shipping.

The IFC Drawings furnished consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the IFC Drawings shall be in writing. The IFC Drawings shall be supplemented by such Working Drawings prepared by Contractor as are necessary to adequately control the Work. No change shall be made by Contractor in any Working Drawing after it has been approved by the Engineer.

Working Drawings and Submittals shall be accepted by the Engineer before any work involving the drawings is performed. It is expressly understood that approval of Contractor's working drawings or Submittals shall not relieve Contractor of any responsibility under the Contract for the successful completion of the Work in conformity with the requirements of the Contract and IFC Drawings and General Provisions.

Acceptance of working drawings or Submittals shall not operate to waive any of the requirements of the plans and specifications or relieve Contractor of any obligation thereunder, and defective work, materials and equipment may be rejected notwithstanding the acceptance.

5-1.02.1 Working Drawings

Working Drawings shall have overall dimensions not greater than 28 inches by 42 inches, nor less than 22 inches by 34 inches, except as otherwise permitted by the Engineer. Drawings shall be complete and shall have

a title block in the lower right hand corner that will identify Contractor, the subcontractor, the Construction Supplement by title and number, the subject matter of the drawing, and the serial number and date of each revision.

Contractor shall submit one electronic copy in CADD (when requested by the Engineer) and Portable Document Format (PDF) and six copies of each working drawing to the Engineer for review unless the General Provisions in a Construction Supplement require additional copies.

Working Drawings for any part of the permanent work shall include, but not be limited to, stress sheets, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required elsewhere in the specifications.

Working Drawings for cribs, cofferdams, falsework, temporary support systems, haul bridges, centering and form work and for other temporary work and methods of construction Contractor proposes to use, shall be submitted when required by the specifications or ordered by the Engineer. Working Drawings shall be subject to acceptance insofar as the details affect the character of the finished work and for compliance with design requirements applicable to the construction when specified or called for, but details of design will be left to Contractor who shall be responsible for the successful construction of the Work.

Each Working Drawing submitted by Contractor shall bear the approval stamp of Contractor and shall be marked to indicate any deviation in the Working Drawing from the requirements of the IFC Drawings and General Provisions. By approving and submitting Working Drawings, Contractor represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers, and similar data, and that he has checked and coordinated each Working Drawing with the requirements of the Work and of the IFC Drawings and General Provisions.

The Engineer will review the Working Drawings with reasonable promptness (however not less than 14 days shall be scheduled for such processing. The Engineer will make every effort to process the review of the Working Drawings in not more than 28 days from the date of receipt from Contractor to the date it is returned to Contractor) so as to cause no delay, but only for conformance with the design concept of the Work and with the IFC Drawings and General Provisions. Two copies will be stamped "no exception taken," "exceptions as noted," or "revise as noted and resubmit," by the Engineer or the Designer and returned to Contractor.

- Where a Working Drawing is returned marked "no exception taken," Contractor shall proceed with the Work in conformance with the Construction Supplement.
- Where a Working Drawing is returned marked "exceptions as noted," Contractor shall make the changes noted on the submittal and proceed with the Work in accordance with the IFC Drawings and General

Provisions. The revised Working Drawing shall be resubmitted with the corrections clearly defined on the revised drawing.

- Where a Working Drawing is marked "revise as noted and resubmit," Contractor shall revise the Working Drawing and resubmit for review. The Revised Working Drawing shall be resubmitted, with the corrections clearly defined on the drawing, in accordance with the provisions of this subsection for the original submittal.

5-1.02.2 Submittals

Where the General Provisions require the submittal of catalog sheets, brochures, manufacturer's instructions, or other printed information normally furnished by the material supplier and equipment manufacturer, Contractor shall submit six copies of the required information to the Engineer for review. The copies will be stamped "no exception taken," "exceptions as noted," or "revise as noted and resubmit" by the Engineer or the Designer, and two copies will be returned to Contractor.

5-1.02.3 Site Copy of Plans, Specifications, and As-Builts

Contractor shall keep one copy of all Construction Supplement documents, IFC Drawings and General Provisions, shop drawings, submittals, as-builts, and Change Orders for the Work in good order at the site, which shall be available to the Engineer. MST may at its discretion arrange for Engineer review of the documents at the 30 percent, 60 percent, 90 percent, and 100 percent construction completion dates.

In addition to the requirements contained in the Construction Supplement, Contractor shall maintain an accurate and legible As-Built Drawing set of blue line, full-size prints of the IFC Drawings in a clean, undamaged condition. Contractor shall mark-up the set of As-Built Drawings to show the actual installation where the installed work varies from the work or on the IFC Drawings or where new information is obtained. Charge Order numbers should be noted on the As-Built Drawing. Particular attention to concealed work that would be difficult to measure and record at a later date should be given.

The Engineer may approve an electronic format for As-Builts. As-Built Drawings shall be organized into manageable sets bound with durable paper or cardboard cover sheets. The cover of each set shall contain titles, dates, and other significant identification necessary.

As-Built Drawings shall be kept up to date with all entries checked by the Engineer before the work is buried or covered up. Prior to acceptance of a construction supplement, Contractor shall deliver the As-Built Drawings to the Engineer. The final As-Builts shall become the property of MST.

CM/GC General Provisions

5-1.02.4 Excavation Safety Plans

The Construction Safety Orders of the Division of Occupational Safety and Health shall apply to all excavations. For all excavations 5 feet or more in depth, Contractor shall submit to the Engineer a detailed plan showing the design and details of the protective systems to be provided for worker protection from the hazard of caving ground during excavation. The detailed plan shall include any tabulated data and any design calculations used in the preparation of the plan. Excavation shall not begin until the detailed plan has been reviewed and approved by the Engineer.

Detailed plans of protective systems for which the Construction Safety Orders require design by a registered professional engineer shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California, and shall include the soil classification, soil properties, soil design calculations that demonstrate adequate stability of the protective system, and any other design calculations used in the preparation of the plan.

No plan shall allow the use of a protective system less effective than that required by the Construction Safety Orders.

If the detailed plan includes designs of protective systems developed only from the allowable configurations and slopes, or Appendices, contained in the Construction Safety Orders, the plan shall be submitted at least five days before Contractor intends to begin excavation. If the detailed plan includes designs of protective systems developed from tabulated data, or designs for which design by a registered professional engineer is required, the plan shall be submitted at least three weeks before Contractor intends to begin excavation.

5-1.03 Conformity with Construction Supplement IFC Documents and Allowable Deviations

Work and materials shall conform to the lines, grades, typical cross sections, dimensions and material requirements, including tolerances, shown on the IFC Plans or indicated in the IFC General Provisions. Although measurement, sampling and testing may be considered evidence as to conformity, the Engineer shall be the sole judge as to whether the work or materials deviate from the IFC Plans and General Provisions, and the Engineer's decision as to any allowable deviations shall be final.

5-1.04 Coordination and Interpretation of Contract Documents

The Contract Documents include the Construction Services Agreement, Instructions to Bidders, the General Provisions, Construction Supplements (including IFC Drawings and General Provisions), all applicable Permits Standard Plans from other agencies.

1. In resolving conflicts between the Contract Documents, the order of precedence shall be as follows:
 - 1.1 Permits from other agencies and all applicable laws
 - 1.2 IFC General Provisions
 - 1.3 IFC Drawings
 - 1.4 Construction Services Agreement including Parts A and B (with the exception of Exhibit A and K-1 (FTA and FHWA provisions) except as otherwise noted in 1.2 above).
 - 1.5 Caltrans Standard Specifications and Caltrans Revised Standard Specifications.
 - 1.6 Applicable Standard Plans including, but not limited to, Caltrans and Caltrans Revised Standard Plans and. In case of conflict, the specifications for the jurisdiction in which the work is occurring shall control.
 - 1.7 Supplemental Project Information (as included in Part D of the Construction Supplements)
2. Written numbers and notes on a drawing govern over graphics
3. A detail drawing governs over a general drawing
4. A detail specification governs over a general specification
5. A specification in a section governs over a specification referenced by that section

If Contractor discovers a conflict or discrepancy in the Contract Documents it should immediately submit an RFI.

Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

5-1.05 Conduct of Construction

Contractor shall comply with and fully carryout the Final Conduct of Construction Plan completed in compliance with the Preconstruction Services Agreement. Additionally, Contractor shall manage the construction work so that it is completed in accordance with MST safety certification process and start- up and testing plan. When required by the General Provisions or Drawings, Contractor shall follow the sequence of operations as set forth in the Final Conduct of Construction Plan and the Construction Management Plan completed in compliance with the Preconstruction Services Agreements.

5-1.06 Superintendent

Contractor shall designate in writing before starting work, an authorized representative who shall have the authority to represent and act for Contractor.

When Contractor is comprised of two or more persons, firms, partnerships, or corporations functioning on a joint venture basis, Contractor shall designate in writing before starting work, the name of one authorized representative who shall have the authority to represent and act for Contractor.

The authorized representative shall be present at the site of the Work at all times while work is actually in progress. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any work which may be required.

Whenever Contractor's authorized representative is not present on any particular part of the Work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.

Any order given by the Engineer, not otherwise required by the specifications to be in writing, will on request of Contractor, be given or confirmed by the Engineer in writing.

5-1.07 Lines and Grades

Stakes or marks will be set by Contractor as Contractor determines to be necessary to establish the lines and grades required for the completion of the Work specified in the specifications, on the plans, and in these General Provisions.

5-1.08 Inspection

The Engineer shall, at all times, have safe access to the Work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of the specifications, these General Provisions and the plans, including refreshing survey stakes if they have been obliterated. All work done and all materials furnished shall be subject to the Engineer's inspection.

The inspection of the Work or materials shall not relieve Contractor of any of Contractor's obligations to fulfill the Contract Documents as prescribed. Work and materials not meeting the requirements shall be made good and unsuitable work or materials may be rejected, notwithstanding that the Work or materials have been previously inspected by the Engineer or that payment therefore has been included in a progress estimate.

Projects financed in whole or in part with Federal funds shall be subject to inspection at all times by the Federal

agency involved.

5-1.09 Removal of Rejected and Unauthorized Work

All work which has been rejected shall be remedied or removed and replaced by Contractor in an acceptable manner, and no compensation will be allowed to Contractor for the removal, replacement, or remedial work.

Any work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra work done without written authority will be considered as unauthorized work and will not be paid for.

Upon order of the Engineer unauthorized work shall be remedied, removed or replaced at Contractor's expense.

Upon failure of Contractor to comply promptly with any order of the Engineer made under this Section 5-1.09, MST may cause rejected or unauthorized work to be remedied, removed or replaced, and to deduct the costs from any moneys due or to become due Contractor.

5-1.10 Equipment and Plants

Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the project.

Plants shall be designed and constructed in accordance with general practice for the equipment and shall be of sufficient capacity to ensure the production of sufficient material to carry the Work to completion within the time limit.

Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer shall remove unsuitable equipment from the Work and discontinue the operation of unsatisfactory plants.

Contractor shall identify each piece of equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to the Engineer a list giving the description of each piece of equipment and its identifying number. In addition, the make, model number, and empty gross weight of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross weight shall be either the manufacturer's rated weight or the scale weight, expressed in pounds. The make, model, serial number and manufacturer's rated capacity in pounds for each scale shall be clearly stamped or stenciled on the load receiving element and its indicator or indicators. All meters shall be similarly identified, rated and marked. Upon request of the Engineer, Contractor shall furnish a statement by the manufacturer, designating sectional and weighbridge capacities of portable vehicle scales.

5-1.11 Alternative Equipment

While certain of the specifications may provide that equipment of a particular size and type is to be used to perform portions of the Work, it is to be understood that the development and use of new or improved equipment is to be encouraged.

Contractor may request, in writing, permission from the Engineer to use equipment of a different size or type in place of the equipment specified.

The Engineer, before considering or granting the request, may require Contractor to furnish, at Contractor's expense, evidence satisfactory to the Engineer that the equipment proposed for use by Contractor is capable of producing work equal to, or better than, that which can be produced by the equipment specified.

If permission is granted by the Engineer, it shall be understood that the permission is granted for the purpose of testing the quality of work actually produced by the equipment and is subject to continuous attainment of results which, in the opinion of the Engineer, are equal to, or better than, that which can be obtained with the equipment specified. The Engineer shall have the right to withdraw permission at any time that the Engineer determines that the alternative equipment is not producing work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of permission by the Engineer, Contractor will be required to use the equipment originally specified and shall, in accordance with the directions of the Engineer, remove and dispose of or otherwise remedy, at Contractor's expense, any defective or unsatisfactory work produced with the alternative equipment.

Neither MST nor Contractor shall have any claim against the other for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of the permission.

Permission to use alternative equipment in place of equipment specified will only be granted where the equipment is new or improved and its use is deemed by the Engineer to be in furtherance of the purposes of this Section 5-1.11. The approval for use of particular equipment on any project shall in no way be considered as an approval of the use of the equipment on any other project.

Nothing in this Section 5-1.11 shall relieve Contractor of the responsibility for furnishing materials or producing finished work of the quality specified in the specifications or in these General Provisions.

5-1.12 Alternative Methods of Construction

Whenever the IFC Drawings or General Provisions provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the Work

and leave the selection of the method of construction or the type of material or equipment to be used up to Contractor, it is understood that MST does not guarantee that every specified method of construction or type of material or equipment can be used successfully throughout all or any part of any project. It shall be Contractor's responsibility to select and use the alternative or alternatives which will satisfactorily perform the work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives on any project, full compensation for any additional cost involved shall be considered as included in the TCP Item of Work involved and no additional compensation will be allowed.

5-1.13 Differing Site Conditions

Contractor shall promptly, and before the following conditions are disturbed, notify the Engineer, in writing, of any:

1. Material that Contractor believes may be unforeseen material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class 11, or Class III disposal site in accordance with provisions of existing law (see Section 5-1.20, "Removal of Asbestos and Hazardous Substances").
2. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to Contractor prior to executing the Construction Supplement.
3. Unknown physical conditions at the site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work required by the Contract Documents.

During the progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract Documents about the site made available or identified during the pre-construction phase of the project or if unknown physical conditions of an unusual nature, materially differing from those ordinarily encountered and generally recognized as inherent in the work required by the Contract Documents, are encountered at the site, the party discovering those conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

Upon such written notification, the Engineer will investigate the conditions, and if the Engineer determines that the conditions materially differ, or do involve hazardous waste, and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment will be made. The Engineer will notify Contractor of the Engineer's determination whether or not an adjustment of the Contract, including use of Contingencies, is so warranted.

In the event that a dispute arises between MST and Contractor whether the conditions materially differ, or involve

hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the Contract. Contractor must comply with all claims and dispute resolution procedures required by the Contract Documents and Law.

No contract adjustment which results in a benefit to Contractor will be allowed unless Contractor has provided the required written notice.

No contract adjustment will be allowed under the provisions specified in this Section for any effects caused on unchanged work.

Any contract adjustment warranted due to differing site conditions will be made in conformance with the provisions in Section 4-1.03, "Changes." Contractor will not receive any additional compensation for alleged lost profits.

5-1.14 Character of Workers

If any subcontractor or person employed by Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, they shall be discharged immediately on the request of the Engineer, and that person shall not again be employed on the Work.

5-1.15 Final Inspection

When the Work required as part of a Construction Supplement has been completed, the Engineer will make the final inspection.

5-1.16 Notification of Utility Owners

Contractor shall be fully responsible for notifying the utility companies before excavating near their respective underground and overhead facilities. Contractor shall comply with applicable utility company requirements for safety and protection of utilities during the performance of his work. Contractor shall call and notify Underground Service Alert at 8-1-1 at least two days before excavating pursuant to this Contract.

5-1.17 Maintaining Vehicular Traffic

When traffic cones or delineators are used to delineate a temporary edge of the traffic lane, the line of cones or delineators shall be considered to be the edge of traffic lane, however, Contractor shall not reduce the width of an existing lane to less than three meters (10 feet) without written approval from the Engineer. The lane closure provisions to this Section shall not apply if the work area is protected by the permanent or temporary railing or

barrier.

Whenever traffic lanes are to be closed to public traffic or rail traffic, Contractor shall close lanes as shown in the current Caltrans Manual of Uniform Traffic Control Devices (CT MUTCD). Full compensation for closing traffic lanes as shown in said manual, except for flagging and flagging signs costs, shall be considered as included in the TCP Item List for the items of work requiring lane closures and no separate payment will be made therefore. Flagging and flagging sign costs for lane closures will be paid for as provided in the Caltrans Standard Specifications.

When work is in progress in a trench or other excavation adjacent to the traveled way, portable delineators, conforming to the Caltrans Standard Specifications, shall be placed on the edge of pavement. At other times, the portable delineators shall be placed off and adjacent to the edge of pavement. The portable delineators shall be placed as necessary for proper delineation. The spacing between delineators shall not exceed 50 feet on tangents or 25 feet on curves.

Contractor's equipment or personal vehicles used in lieu of Contractor's equipment, and marked with permanent or temporary name plates identifying contracting firm, may park in the area of construction but only during construction operation hours. No personal vehicles, with or without markings, shall be allowed within the Work area within the right of way.

When leaving a work area and entering a roadway or railway carrying public traffic or rail traffic, Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic or rail traffic.

Closing of crosswalks through the work area at an intersection will be permitted, providing a minimum of one crosswalk at each intersection shall be provided across the work areas at all times when work is not actively in progress. Temporary pedestrian crosswalk facilities shall consist of asphalt concrete surfacing, metal plates, portland cement concrete, or timber. Surfaces shall be skid-resistant and free of irregularities. Hand railings shall be provided on each side of pedestrian walkways as necessary to protect pedestrian traffic from hazards due to construction, operations or adjacent vehicular traffic. The walkway width shall be a minimum of six feet. Ramps for handicapped pedestrians shall be provided. Railings shall be constructed of wood, S4S lumber, and shall be painted white. Contractor shall maintain railings and walkways in good condition at all times. Walkways shall be kept clear of obstructions.

Minor deviations from the requirements of this Section which do not significantly change the cost of the Work may be permitted upon the written request of Contractor if, in the opinion of the Engineer, public traffic or rail traffic will be better served and the Work expedited. Such deviations shall not be adopted until the Engineer has indicated his approval in writing. All other modifications will be made by contract change order.

5-1.18 Traffic Management and Traffic Control Plans

Traffic Management and Control Plans are required prior to commencement of construction. Full compensation for conforming to the requirements of this Section not otherwise provided for shall be considered as included in the TCP Item List or as included in the price paid for the various items of work and no separate payment will be made.

5-1.19 Partnering

MST offers and encourages Contractor to participate in a "partnering" program. Although Contractor is encouraged to enter into such an agreement there will be no penalties of any kind imposed if Contractor elects not to participate in a partnering arrangement. One of the primary objectives of the program is to resolve potential claims and disputes quickly and at the lowest level possible. The program must be based on MST staff, its Construction Manager, Contractor, and approved subcontractors using trust and open communications throughout the construction of the project by establishing a cooperative atmosphere to work.

If Contractor elects to participate in such a program, Contractor will, prior to the commencement of construction, set up a meeting of all the parties with the assistance of a professional facilitator as is mutually agreed to by both parties. The purpose of the meeting is to reach a consensus of respective goals and methods in successfully completing the Contract. Thereafter, the parties will continue to meet on a regular basis to openly discuss problems of mutual concern.

No partnering program will alter either MST or Contractor's legal rights and obligations under the Contract.

Generally the goals of partnering shall include:

- A. MST, the Construction Manager, and Contractor's representatives including subcontractors actively working together as partners.
- B. Avoidance of destructive confrontation and litigation among the parties.
- C. Mutual understanding on how the work is to be conducted.
- D. Establishment of mutual key results to facilitate project success.
- E. Establishment of an atmosphere of team work, trust, and open communication.

5-1.20 Removal of Asbestos and Hazardous Substances

When the presence of asbestos or hazardous substances is not shown on the plans or indicated in the specifications and Contractor encounters materials which Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, Contractor may continue work in the unaffected areas reasonably believed to be safe, and shall immediately cease work in the affected area and report the condition to the Engineer in writing.

After written notification, the Engineer will cause the asbestos or hazardous substance to be investigated by the MST environmental consultant, in consultation with EHS. A determination will be made whether to leave the suspect material in place and adequately protected, or to remove the material and store it elsewhere on site or off site and adequately protect it until the material may be characterized and its proper disposition is determined.

All handling, storage, transporting, and disposing of contaminated materials shall be performed by Contractor as extra work. Contractor shall ensure worker safety in accordance with the Health and Safety Plan as required by this Contract.

The MST Environmental Consultant shall be responsible for identifying, characterizing, and determining the extent of such asbestos or hazardous substance. After characterization, the environmental consultant shall designate materials to be removed and disposed of in accordance with all applicable regulatory requirements.

Payment for special training for all workers exposed to potentially hazardous substances, for special personnel required to monitor contamination levels, and for handling, storage, transporting, and disposing of contaminated material, shall be made in accordance with Section 4-1.03D, "Extra Work," of these General Provisions unless otherwise specified in the Contract.

5-1.21 Quality Control

Contractor shall develop a Construction Quality Control Plans (CQC Plan) pursuant to the Preconstruction Services Agreements, in accordance with MST's quality and construction plans and procedures, FTA's Quality Management System Guidelines, and this Contract with its Exhibit 1, and Contractor shall develop any additional CQC Plan Amendments required for completion of a Construction Supplement, as directed by MST, in accordance with the requirements herein, and shall provide such plan for review and approval by MST. Contractor shall, at all times, comply with the requirements of the applicable CQC Plan, including providing updates as determined necessary by the Engineer. International Organization for Standardization (ISO) registration will not be required.

Contractor shall implement the approved and applicable CQC Plan and any Amendments for all aspects of the Construction Supplement, including construction and contract administration. Contractor shall be responsible for

the quality of the work, including all work and products of subcontractors of all tiers, fabricators, suppliers, and vendors both on-site and off-site. MST reserves the right to conduct periodic audits and inspections of the Project and may sample, test, and measure material used and installed by Contractor, subcontractors of all tiers, suppliers, and vendors.

5-2.01 Measurement and Payment

Full compensation for conforming to the requirements of this Section 5 not otherwise provided for shall be considered as included in the TCP and no separate payment will be made.

END OF SECTION 5

SECTION 6: CONTROL OF MATERIALS

6-1.01 Source of Supply and Quality of Materials

Contractor shall furnish all materials required to complete the Work, except materials that are designated in the specifications to be furnished by MST and materials furnished by MST in conformance with Section 9-1.05, "Force Account Payment."

Only materials conforming to the requirements of the specifications and Quality Control shall be incorporated in the Work. The materials furnished and used shall be new, except as may be provided elsewhere in the specifications, on the plans or in these General Provisions. The materials shall be manufactured, handled and used in a workmanlike manner to ensure completed work in accordance with the plans and specifications.

Materials to be used in the Work will be subject to inspection and tests by the Engineer or the Engineer's designated representative. Contractor shall furnish without charge such samples as may be required.

Contractor shall furnish the Engineer a list of Contractor's sources of materials and the locations at which those materials will be available for inspection. The list shall be furnished to the Engineer in sufficient time to permit inspecting and testing of materials to be furnished from the listed sources in advance of their use. The Engineer may inspect, sample, or test materials at the source of supply or other locations, but the inspection, sampling or testing will not be undertaken until the Engineer is assured by Contractor of the cooperation and assistance of both Contractor and the supplier of the material. Contractor shall assure the Engineer or the Engineer's authorized representative has free access at all times to the material to be inspected, sampled or tested. It is understood that the inspections and tests if made at any point other than the point of incorporation in the Work in no way shall be considered as a guaranty of acceptance of the material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made, and that inspection and testing performed by MST shall not relieve Contractor or Contractor's suppliers of responsibility for quality control.

Manufacturers' warranties, guaranties, instruction sheets, and parts lists, which are furnished with certain articles or materials incorporated in the Work, shall be delivered to the Engineer before acceptance of the Contract.

Reports and records of inspections made and tests performed, when available at the site of the Work, may be examined by Contractor.

6-1.02 MST-Furnished Materials

Materials listed as MST-furnished materials in these General Provisions will be available to Contractor free of charge.

Contractor shall submit a written request to the Engineer for the delivery of MST-furnished material at least 15 days in advance of the date of its intended use, except that the written request for the delivery of MST-furnished sign panels for roadside signs and overhead sign structures shall be submitted at least 30 days in advance of their intended installation. The request shall state the quantity and the type of each material.

The locations at which MST-furnished materials will be available to Contractor free of charge will be designated in these General Provisions. In those cases the materials shall be hauled to the site of the Work by Contractor at Contractor's expense, including any necessary loading and unloading that may be involved. If the locations are not designated in these General Provisions, MST-furnished materials will be furnished to Contractor free of charge at the site of the project. In either case, all costs of handling and placing MST-furnished material shall be considered as included in the price paid for the Contract item involving MST-furnished material.

Contractor shall be responsible for all MST-furnished materials furnished to Contractor and shall pay all demurrage and storage charges. MST-furnished materials lost or damaged from any cause whatsoever shall be replaced by Contractor at Contractor's expense. Contractor shall be liable to MST for the cost of replacing MST-furnished material, and those costs may be deducted from any moneys due or to become due Contractor. All MST-furnished material that is not used on the Work shall remain the property of MST and shall be delivered to the Engineer.

The Engineer may increase the number of sign panels in any shipment to provide economical use of transportation facilities.

The quantity of each type of MST-furnished paint required shall be determined by Contractor subject to verification by the Engineer.

6-1.03 Storage of Materials

Articles or materials to be incorporated in the Work shall be stored in such a manner as to ensure the preservation of their quality and fitness for the Work, and to facilitate inspection.

6-1.04 Defective Materials

Contractor shall control all materials from acceptance through shipping and receiving to installation of work according to Contractor's CQC Plan and compliant with this Contract. All disposition of nonconforming items/materials will be approved by the Engineer. Upon failure of Contractor to comply promptly with any order of the Engineer made under the provisions in this Section, the Engineer shall have authority to cause the removal and

replacement of rejected material and to deduct the cost from any monies due or to become due Contractor.

6-1.05 Trade Names and Alternatives

For convenience in designation on the plans or in the specifications, certain articles or materials to be incorporated in the Work may be designated under a trade name or the name of a manufacturer and the manufacturer's catalog information. The use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

- I. The burden of proof as to the quality and suitability of alternatives shall be upon Contractor, and Contractor shall furnish all information necessary as required by the Engineer. The Engineer shall be the sole judge as to the quality and suitability of alternative articles or materials, and the Engineer's decision shall be final.
- II. Whenever the Specifications permit the substitution of a similar or equivalent material or article, no tests or action by the Engineer relating to the approval of the substitute material will be made until the request for substitution is made in writing by Contractor accompanied by complete data as to the equality of the material or article proposed. The request shall be made in ample time to permit approval without delaying the Work, and in no case later than 35 days after award of the Contract.

6-1.06 Plant Inspection

The Engineer may inspect the production of material or the manufacture of products at the source of supply.

Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to those parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. MST assumes no obligation to inspect materials at the source of supply.

6-1.07 Certificates of Compliance

A Certificate of Compliance shall be furnished prior to the use of any materials for which the Specifications or these General Provisions require that a certificate be furnished. In addition, when so authorized in the Specifications or in these General Provisions, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Specifications. A Certificate of Compliance shall be furnished with each lot of

material delivered to the Work and the lot so certified shall be clearly identified in the Certificate.

Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the plans and specifications, and any material not conforming to the requirements will be subject to rejection whether in place or not.

MST reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

6-1.08 Foreign Materials

Pursuant to FTA Buy America requirements, all iron, steel and manufactured products used on the Project must be produced in this United States. This provision applies only to materials not subject to Buy America. The Buy America requirements are contained in Exhibit A of this Agreement.

Materials which are manufactured, produced, or fabricated outside of the United States shall be delivered to a distribution point in California, unless otherwise required in the Specifications or these General Provisions, where they shall be retained for a sufficient period of time to permit inspection, sampling, and testing.

See Section 8-1.07, "Liquidated Damages." Contractor shall not be entitled to an extension of time for acts or events occurring outside of the United States, and it shall be Contractor's responsibility to deliver materials obtained from outside of the United States to the point of entry into the continental United States in sufficient time to permit timely delivery to the job site.

Contractor, at no cost to MST, shall supply the facilities and arrange for any testing required in California which MST is not equipped to perform. All testing by Contractor shall be subject to witnessing by the Engineer.

The manufacturer, producer or fabricator of foreign material shall furnish to the Engineer a Certificate of Compliance in conformance with the provisions in Section 6-1.07, "Certificates of Compliance." In addition, certified mill test reports clearly identifiable to the lot of material shall be furnished where required in the specifications or otherwise requested by the Engineer.

If the welding of steel for structural steel members or the casting and prestressing of precast prestressed concrete members is to be performed outside of the United States, the following requirements shall apply:

1. The fabrication shall be performed only within the plants and by fabricators who have previously established, to the satisfaction of the Engineer, that they have the experience, knowledge, trained manpower, quality controls, equipment, and other facilities required to produce the quality and quantity of work required. At the option of the Engineer, prequalification of the plant and fabricator will be established either by the submission of detailed written proof thereof or through in-plant inspection by the Engineer or the Engineer's representative, or both.
2. Contractor shall make written application to the Engineer for approval for the foreign fabrication at the earliest possible time and in no case later than 50 days in advance of the planned start of fabrication. The application shall list the specific units or portion of a work which will be fabricated outside of the United States.
3. Contractor shall advise the Engineer, in writing, at least 20 days in advance of the actual start of any of the foreign fabrication.
4. All documents pertaining to the contract and supplements, including but not limited to, correspondence, TCP documents, working drawings and data shall be written in the English language and all numerical data shall use the United States Customary units of measurement.

The use of steel manufactured outside of the United States as unidentified stock material, as provided in Section 55-1.02A(6), "Unidentified Stock Material," of the Caltrans Standard Specifications will not be allowed.

6-1.09 State Specification Numbers

The State Specification number of material furnished on the Contract shall conform to the number specified in the specifications or these General Provisions for the material involved, except that material conforming to a later specification issue will be acceptable.

6-2.01 Testing by MST

Unless otherwise specified, all Quality Assurance tests shall be performed in accordance with the methods used by the Caltrans and shall be made by the Engineer or the Engineer's designated representative.

The State has developed methods for testing the quality of materials and work. These methods are identified by number and are referred to in the specifications as California Test. Copies of individual California Tests are available at the Transportation Laboratory, Sacramento, California, and will be furnished to interested persons upon request.

Whenever the specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

Properties	California Test
Relative Compaction	216 or 231
Sand Equivalent	217
Resistance (R-value)	301
Grading (Sieve Analysis)	202
Durability Index	229

Whenever a reference is made in the specifications to a California Test by number, it shall mean the California Test in effect on the day the TCP Proposal for the Work is executed.

Whenever the specifications provide an option between two or more tests, the Engineer will determine the test to be used.

Whenever a reference is made in the specifications to a specification, manual or test designation either of the American Society for Testing and Materials, the American Association of State Highway and Transportation Officials, Federal Specifications, or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual or test designation in effect on the day the TCP Contract for the Work is executed. Whenever the specification, manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of those reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's test reports shall supplement the inspection, sampling and testing provisions in Section 6, "Control of Materials," and shall not constitute a waiver of the MST right to inspect. When material which cannot be identified with specific test reports is proposed for use, the Engineer may, at the Engineer's discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by Contractor at Contractor's expense. The number of the samples and test specimens shall be entirely at the discretion of the Engineer. Unidentified metal products, such as sheet, plate and hardware shall be subject to the requirements of Section 55-1.02A(6), "Unidentified Stock Material," of the Caltrans Standard Specifications.

When requested by the Engineer, Contractor shall furnish, without charge, samples of all materials entering into the Work, and no material shall be used prior to approval by the Engineer, except as provided in Section 6-1.07, "Certificates of Compliance." Samples of material from local sources shall be taken by or in the presence of the Engineer; otherwise, the samples will not be considered for testing.

6-2.02 Testing by Contractor

Contractor shall be responsible for controlling the quality (quality control or QC) of the material entering the Work and of the work performed, and shall perform testing as necessary to ensure control and contract compliance. The results of the testing shall be submitted to the Engineer. These tests are for Contractor's use in controlling the work and for use as Contractor's acceptance tests.

6-3.01 Measurement and Payment

Full compensation for conforming to the requirements of this Section 6 not otherwise provided for shall be considered as included in the TCP Item List in the Indirect Costs or as included in the price paid for the various items of work and no separate payment will be made.

END OF SECTION 6

SECTION 7: LEGAL RELATIONS AND RESPONSIBILITY

7-1.01 Laws to be Observed

Contractor shall keep fully informed of all existing and future State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Contractor shall at all times observe and comply with, and shall cause all Contractor's agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work; and shall protect and indemnify MST, TAMC, City of Marina, City of Seaside, Sand City, Caltrans, the United States Government, and any successors or assigns ("Covered Entities") and all officers and employees thereof connected with the Work, against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by Contractor or Contractor's employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contract for the Work in relation to any law, ordinance, regulation, order or decree, Contractor shall immediately report the same to the Engineer in writing.

Contractor must fully comply with all requirements and restrictions contained in the Project's environmental documents and all environmental laws and regulations.

This Agreement is funded in whole or in part with federal funds from the FTA. Exhibit A, attached to this Agreement and incorporated herein by reference, includes the FTA terms and conditions applicable to this Agreement. Exhibit K-1, which will be attached to any Construction Supplement using FHWA funds and incorporated therein by reference, includes the FHWA terms and conditions applicable to this Agreement. In the case of any conflict between the terms of this Agreement, and any of the federal term and conditions, the federal terms and conditions shall govern, except as expressly set forth herein (i.e., see Section 5-1.04).

7-1.01A Labor Code Requirements

7-1.01A(1) Hours Of Labor

Eight hours labor constitutes a legal day's work. Contractor or any subcontractor under Contractor shall forfeit, as a penalty to MST, \$25 for each worker employed in the execution of the Contract by the respective Contractor or subcontractor for each calendar day during which that worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the requirements of the Labor

CM/GC General Provisions

Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of Contractors in excess of eight hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay, as provided in Section 1815 thereof.

7-1.01A(2) Prevailing Wage

Both state and federal prevailing wage requirements apply to this Agreement. As between the state and federal prevailing wage rates, Contractor shall pay the higher of the two wage rates and conform to higher labor standards specified in Sections A and B following. This Agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Agreement and applicable law as part of the TCP for each Construction Supplement.

- I. **State Labor Code.** Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which rates shall be made available for each Construction Supplement at the MST offices or obtained online and which must be posted at the job site.

The wage rates determined by the Director of Industrial Relations refer to expiration dates. Prevailing wage determinations with a single asterisk after the expiration date are in effect on the date of execution of a Construction Supplement and are good for the life of that Construction Supplement. Prevailing wage determinations with double asterisks after the expiration date indicate that the wage rate to be paid for work performed after this date has been determined. If work is to extend past this date, the new rate shall be paid and incorporated in the Construction Supplement. Contractor shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage changes.

- II. **Federal Labor Code.** Contractor shall comply with current federal Labor Standards, portions of which are included as part of the FTA and FHWA Terms and Conditions (Exhibit A and K-1). The federal Davis Bacon rates shall be included with each Construction Supplement.

Contractor and any subcontractor under Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, Contractor and any subcontractor under Contractor shall forfeit to MST a penalty of \$200 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the Contract by Contractor or by any subcontractor under Contractor in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or

neglect of Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of Contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if Contractor or subcontractor had knowledge of the obligations under the Labor Code. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for the penalties described above unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

- A. The Contract executed between Contractor and the subcontractor for the performance of work on the public works project shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
- B. Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
- C. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
- D. Prior to making final payment to the subcontractor for work performed on the public works project, Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.

Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify Contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if MST did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, Contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the

general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. Contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by Contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, Contractor shall pay all moneys retained from the subcontractor to MST. These moneys shall be retained by MST pending the final decision of an enforcement action.

Changes in general prevailing wage determinations which conform to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204 shall apply to the project when issued by the Director of Industrial Relations at least ten days prior to the date of execution of the applicable Construction Supplement.

MST will not recognize any claim for additional compensation because of the payment by Contractor of any wage rate in excess of the prevailing wage rate applicable to a Construction Supplement. The possibility of wage increases is one of the elements to be considered by Contractor prior to executing a Construction Supplement, and will not under any circumstances be considered as the basis of a claim against MST on the Construction Supplement.

7-1.01A(2)(a) Travel and Subsistence Payments

Contractor shall make travel and subsistence payments to each workman, needed to execute the Work, in conformance with the requirements in Labor Code Section 1773 .8.

7-1.01A(3) DIR Registration and Labor Compliance

Contractor shall maintain a current DIR registration for the duration of this Agreement. Contractor shall sign and submit with this Agreement the Public Works Contractor Registration Certification (Exhibit I).

Contractor shall include the requirements of Labor Code sections 172 5.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of proposing on any Work under a Construction Supplement, and that subcontractors maintain valid registration status for the duration of the Work on any Construction Supplement.

Each Construction Supplement is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Agreement, the Construction Supplement and applicable law.

7-1.01A(3)(a) Payroll Records

Contractor shall adhere to the requirements in Labor Code Section 1776.

The penalties for noncompliance with the requirements in Section 1776 may be deducted from any moneys due or which may become due to Contractor.

A copy of all payrolls shall be submitted weekly to the MST. Payrolls shall contain the full name, address and Social Security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which that name appears. The submission shall be accompanied by a "Statement of Compliance" signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Contract.

Contractor and each subcontractor shall preserve their payroll records for a period of three years from the date of completion of the Contract.

7-1.01A(3)(b) Payroll Records - Additional Requirements

Contractor shall maintain its records in conformance with the following:

- I. Contractor and subcontractors shall submit their electronic certified payroll (eCPRs) directly to the DIR. All payrolls shall contain the full name, address and social security number of each employee, the employees correct classification/craft, rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid. The wage rates contained therein shall not be less than those determined by the DIR or DOL and Davis-Bacon Act.
- II. Contractor shall make its records available and is responsible for making its subcontractors' records available for inspection by authorized representatives of MST and shall permit such representatives to interview employees during working hours on the job. MST or the California Department of Industrial Relations may impose penalties upon Contractor and subcontractors for failure to comply with prevailing wage requirements

7-1.01A(4) Labor Nondiscrimination

I. Nondiscrimination Laws

- A. Contractor shall comply with Section 1735 of the Labor Code, which mandates it is an unlawful

employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California for an employer to discriminate on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment

B. Contractor shall comply with the nondiscrimination requirements located in Sections 11006 and 11100 of Title 2, California Code of Regulations, which prohibit discrimination based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, and sexual orientation. Specific requirements in Section 11105 that apply to Contractor and subcontractors are as follows:

1. During the performance of this Contract, Contractor and its subcontractors shall not deny the Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (40 years of age and over) or sex. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor also shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., Title 2, Section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, Section 11135-11139.5), and the regulations or standards adopted to implement such article.
2. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and MST upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.

Whenever Contractor or any subcontractor subcontracts a portion of the work, it shall physically include in each subcontract of \$5,000 or more the nondiscrimination clause in this Contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by

reference.

- C. Contractor and subcontractors shall implement the specific nondiscrimination standards provided in Paragraph F (1) through (5) below.
- D. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse Contractor's obligations under this Contract.
- E. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by Contractor during the training period, and Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the United States Department of Labor or the California Department of Industrial Relations.
- F. Contractor shall take specific actions to implement its nondiscrimination program. The evaluation of Contractor's compliance with the specifications shall be based upon its effort to achieve maximum results from its actions. Contractor must be able to demonstrate fully its efforts under Steps 1. through 5. below:
 - 1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which Contractor's employees are assigned to work. Contractor, where possible, will assign two or more women to each construction project. Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out Contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - 2. Provide written notification within seven days to the director of the California Department of Fair Employment and Housing when the union or unions with which Contractor has a collective bargaining agreement has not referred to Contractor a minority person or woman sent by Contractor, or when Contractor has other information that the union referral process has impeded Contractor's efforts to meet its obligations.
 - 3. Disseminate Contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting Contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.

4. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of Contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.
 5. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and Contractor's obligations under the specifications are being carried out.
- G. Contractor and subcontractors are encouraged to participate in voluntary associations which assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under the specifications provided that Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in Contractor's minority and female workforce participation, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of Contractor. The obligation to comply is Contractor's.
- H. Contractor shall provide equal employment opportunity for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, Contractor may be in violation of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) if a particular group is employed in a substantially disparate manner. To assist MST with monitoring compliance with Title VI of the Civil Rights Act of 1964, as well as to provide MST with information necessary to monitor the number and types of jobs provided by its projects, Contractor shall submit an Annual Employment Utilization Report in March of each year it is performing services under the Contract. Contractor shall cause all of its subcontractors to submit an Annual Employment Utilization Report in March of each year if the subcontractor has performed work under this Contract in the preceding 12 months. Contractor shall submit its own as well as reports from its subcontractors by no later than March 31 in March of each year it is performing services under the Contract.
- I. Contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code Section 12990.
- J. Contractor shall carry out such sanctions and penalties for violation of the specifications and the

nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by MST.

K. Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OC P and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

7-1.01A (5) Apprentices

MST, as the public lead agency for the Project, certifies that the project will be completed by a skilled and trained workforce in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code, and incorporates such requirements in bid documents and any qualifying positions, including bids for construction contracts, including those for contractors and subcontractors at every tier, as well as contracts that fall within an apprenticeship occupation in the building and construction trades.

It is MST policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

- In order to work on a public works project and receive apprenticeship prevailing wage rates, apprentices must be actively enrolled in a California Division of Apprenticeship Standards approved program.
- Apprentices who are not properly supervised and employed in the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.
- Contractors are required to submit DAS-140 and DAS-142 forms for all applicable projects (When the total amount of prime contract exceeds \$30,000).

7-1.01A(6) Workers' Compensation

Pursuant to the requirements in Section 1860 of the Labor Code, Contractor will be required to secure the payment of workers' compensation to Contractor's employees in conformance with the requirements in Section 3700 of the

Labor Code. Contractor certifies the following:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

This certification is included in the Contract, and signature and return of the Contract as provided in Section 3-1.04, "Execution of Contract and Construction Supplements," shall constitute signing and filing of the certificate.

7-1.01A(7) Suits To Recover Penalties and Forfeitures

Pursuant to Labor Code Sections 1729, inclusive, Contractor understands it is unlawful to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms Chapter 1, Division 2 of the Labor Code, and if payment has already been made to the subcontractor Contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

Submission of a claim under Section 9-1.09B, "Final Payment and Claims," for the amounts withheld from payment for those penalties and forfeitures is not a prerequisite for those suits, and these claims will not be considered.

7-1.01B Contractor's Licensing Laws; Iran Contracting Act

- I. All contractors shall be licensed in accordance with the laws and regulations of the State of California and with the requirements of this Contract and any Contractor not so licensed is subject to the penalties imposed by those laws. Contractor must also submit to the Engineer the license number for any subcontractor that will work on Construction Supplement a Construction Supplement prior to the subcontractor's commencement of work.
- II. Contractor shall submit the certification required by the Iran Contracting Act of 2010, Public Contract Code section 2200 et seq. with this Agreement (Exhibit H).

7-1.01C Vehicle Code

Contractor shall comply with all the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. This section shall not relieve Contractor or any person from the duty of exercising due care. Contractor shall take all necessary precautions for safe operation of his equipment and the protection of the public from injury and damage

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from such equipment.

7-1.01D Trench Safety

Contractor shall comply with Labor Code Section 6705 concerning trench excavation safety plans.

7-1.01E Air Pollution Control

Contractor shall comply with Section 508 of the federal Clean Water Act and Section 306 of the federal Clean Air Act

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

Unless otherwise provided in these General Provisions, material to be disposed of shall not be burned, either inside or outside the railway or highway right-of-way.

7-1.01F Water Pollution Control

For water pollution control, refer to Section 13 of the Construction Supplement(s) General Provisions for further details.

7-1.01G MST Storm Water Specification

If storm water issues apply, refer to Section 13 of the Construction Supplement(s) General Provisions for further details.

7-1.01H Use of Pesticides

Contractor shall comply with all rules and regulations of the Department of Food and Agriculture, the Department of Health, the Department of Industrial Relations and all other agencies which govern the use of pesticides required in the performance of the work on the Contract.

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

Any substance or mixture of substances intended for preventing, repelling, mitigating, or destroying weeds, insects,

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diseases, rodents, or nematodes and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant shall be considered a pesticide.

7-1.01I Sound Control Requirements

Contractor shall comply with all local sound control and noise level rules, regulations and ordinances, and the Technical Specifications included in the Construction Supplements which apply to any Work performed pursuant to the Contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without the muffler. This requirement in no way relieves Contractor from responsibility for complying with local ordinances regulating noise level.

7-1.01J Assignment of Antitrust Actions

Contractor's and Contractor's subcontractors shall comply with Public Contract Code 7103.5 and Government Code Sections 4553 and 4554.

7-1.02 Load Limitations

Unless expressly permitted in these General Provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project, whether or not the area is subject to weight limitations under Section 7-1.01C, "Vehicle Code," except as hereinafter provided in this Section 7-1.02.

After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or Contractor's equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent layer of pavement. Trucks used to haul treated base, portland cement concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 1,000 feet ahead of spreading equipment except in locations where specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In those locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by specifications and allowing safe operation of hauling

equipment. Damage to curing seal or base shall be repaired promptly by Contractor, at Contractor's expense, as directed by the Engineer.

Within the limits of the project and subject to the control of the Engineer, and provided that Contractor, at Contractor's expense, shall provide such protective measures as are deemed necessary by the Engineer and shall repair any damage caused by the operations, Contractor will be permitted to:

1. Make transverse crossings of those portions of an existing public road or street that are within the railway or highway right-of-way, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
2. Make transverse crossings of treated bases, surfacing or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
3. Cross bridge structures that are not open to public traffic or rail traffic and which are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the load limitations hereinafter specified, provided that Contractor furnishes to the Engineer the dimensions and maximum axle loadings of equipment proposed for use on bridge structures:
 - a. The maximum loading on bridge structures due to pneumatic-tired truck and trailer combinations shall not exceed (1) 28,000 pounds for single axles; (2) 48,000 pounds for tandem axles; nor (3) 60,000 pounds total gross load for single vehicles or 110,000 pounds total gross load for truck and trailer or semi-trailer combinations.
 - b. The loading on bridge structures due to 2 and 3 axle pneumatic-tired earthmovers shall not exceed that shown in the following table.

Allowable Construction Loading On Bridges For 2 and 3 Axle Earthmovers	
Spacing of Bridge Girders (Center to center in feet)	Maximum Axle Loading (in pounds)
4	28,000
5	29,000
6	30,000
7	32,000
8	34,000
9	37,000

10 and over	40,000
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Minimum axle spacing: For 3-axle earthmovers 1-or 2-axle earthmovers

Axles 1 to 2 = 8 feet Axles 1 to 2 = 20 feet

Axles 2 to 3 = 20 feet

4. Move equipment within the limits of the project over completed or existing base, surfacing, pavement and structures, whether or not open to the public, in accordance with the limitations and conditions in the "Permit Policy" of the Department of Transportation.

Within the limits of the project and subject to the condition that Contractor shall repair, at Contractor's expense, any damage caused thereby, Contractor will be permitted to cross culverts and pipes with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the plans. If the conditions are not set forth on the plans, the provisions in the first paragraph in this Section 7-1.02 will apply.

Should Contractor desire to increase the load carrying capacity of a structure or structures which are to be constructed as a part of the contract, in order to facilitate Contractor's own operations, Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by Contractor to increase the load carrying capacity of structures above 130,000 pounds per single axle or pair of axles less than 8 feet apart, or above 330,000 pounds total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that Contractor shall pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that Contractor agrees that no extension of time will be allowed by reason of any delay to the Work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the cost and date are satisfactory to Contractor, the Engineer will prepare a change order providing for the agreed upon alterations.

7-1.03 Payment of Taxes

The contract price paid for the Work shall include full compensation for all taxes which Contractor shall pay, whether imposed by federal, state, or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt Contractor from payment of any tax will be furnished to Contractor by MST, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract. MST is not exempt from sales taxes.

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7-1.04 Permits and Licenses

Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful prosecution of the Work.

Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the Work.

7-1.05 Patents

Contractor shall assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the Work, and shall indemnify, defend, and save harmless MST, its General Manager/CEO, the Engineer, and their duly authorized representatives, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices, or processes.

7-1.06 Safety and Health Provisions

Contractor shall conform to all applicable occupational safety and health standards, rules, regulations, and orders established by the State of California.

Contractor shall take all steps necessary to ensure that no one employed by either Contractor or a Subcontractor in the performance of the Contract works in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety, as established under construction safety and health standards, the United States Secretary of Labor as set forth in the "Safety and Health Regulations for Construction," 29 CFR 1926.

Working areas utilized by Contractor to perform work during the hours of darkness shall be lighted to conform to the minimum illumination intensities established by California Division of Occupational Safety and Health Construction Safety Orders.

All lighting fixtures shall be mounted and directed in a manner precluding glare to approaching traffic.

Contractor shall take all necessary precautions to protect workers in accordance with applicable regulations, law, and as directed by the Engineer. Contractor shall comply with all policies and regulations relevant to the Work that are imposed by an Affiliated Agency or Property Owner.

Full compensation for conforming to the requirements of this Section not otherwise provided for shall be considered as included in the TCP Item List in the Indirect Costs or as included in the price paid for the various items of work

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and no separate payment will be made therefore.

7-1.07 Contractor's Safety and Security Plan

Contractor shall take the necessary steps to prevent injury to the general public, MST employees, and MST patrons, or damage to public property. Contractor shall comply with all OSHA regulations and the Construction Safety and Security Plan accepted as a part of the Preconstruction Services Agreement. Contractor's Safety Program shall incorporate Contractor's safety practices and procedures, and, at a minimum, shall adhere to the requirements set forth in Exhibit _2_ "Contractor's Safety & Security Plan."

Contractor shall be subject to inspections by outside agencies, including Cal/OSHA. Contractor shall notify the Engineer immediately should citations, warnings or safety violations be issued. Copies of same shall be provided to the Engineer within 48 hours.

Within five days of execution of contract, Contractor shall submit Contractor's proposed Safety representative's resume identifying his or her work experience and qualifications. The minimum qualifications shall be five years of diversified construction safety experience, and two years' experience related to the Contract's scope of work. Contractor shall have received the Engineer's approval of Contractor's proposed Safety Representative prior to submitting the first monthly progress payment.

Within seven days of Notice to Proceed, Contractor shall submit two copies of Contractor's Safety Program.

7-1.08 Public Convenience

Except as modified in the Construction Supplements, this Section defines Contractor's responsibility with regard to convenience of the public and public traffic in connection with Contractor's operations.

Contractor shall conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.

Unless otherwise provided in these General Provisions, all public traffic or rail traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. Where possible public traffic or rail traffic shall be routed on new or existing paved surfaces.

Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by Contractor at Contractor's expense.

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Existing traffic signals and lighting shall be kept in operation for the benefit of the traveling public during progress of the Work, and other forces will continue routine maintenance of existing systems.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, and buildings along the line of the Work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the ROW line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

Contractor may be required to cover certain signs which regulate or direct public traffic or rail traffic to roadways or railways that are not open to traffic. The Engineer will determine which signs shall be covered. Except as otherwise provided for construction area signs in Caltrans Standard Specifications Section 12, "Temporary Traffic Control," of the Caltrans Standard Specifications furnishing, installing and removing covers will be paid for as extra work as provided by this Contract.

Roadway or railway excavation and the construction of embankments shall be conducted in such a manner as to provide a reasonably smooth and even surface satisfactory for use by public traffic or rail traffic at all times; sufficient fill at culverts and bridges to permit traffic to cross shall be placed in advance of other grading operations; and if ordered by the Engineer roadway or railway cuts shall be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the other and traffic routed over the side opposite the one under construction. Culvert installation or culvert construction shall be conducted on but one-half the width of the traveled way at a time, and that portion of the traveled way being used by public traffic or rail traffic shall be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic.

Upon completion of rough grading at the grading plane, or placing any subsequent layer thereon, the surface of the roadbed shall be brought to a smooth, even condition free of humps and depressions, satisfactory for the use of public traffic or rail traffic.

After the surface of the roadbed has been brought to a smooth and even condition for the passage of public traffic or rail traffic as above provided, any work ordered by the Engineer for the accommodation of public traffic or rail traffic prior to commencing subgrade operations will be paid for as extra work as provided by this Contract. After subgrade preparation for a specified layer of material has been completed, Contractor shall, at Contractor's expense, repair any damage to the roadbed or completed subgrade, including damage caused by Contractor's operations or use by public traffic or rail traffic.

While subgrade and paving operations are underway, public traffic or rail traffic shall be permitted to use the shoulders and, if half-width paving methods are used, shall also be permitted to use the side of the roadbed opposite the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least two lanes of traffic shall be kept open at locations where subgrade and paving operations are in active progress. Any shaping of shoulders or reshaping of subgrade necessary for the accommodation of public traffic or rail traffic thereon during subgrade preparation and paving operations will be paid for as extra work.

When ordered by the Engineer, Contractor shall furnish a pilot car and driver and flaggers for the purpose of expediting the passage of public traffic or rail traffic through the Work under one-way controls, and the cost thereof will be paid for as extra work, except that the cost of flaggers furnished for this purpose will be paid for as provided in Section 12-2.02, "Flagging Costs." of the Caltrans Standard Specifications. At locations where traffic is being routed through construction under one-way controls and when ordered by the Engineer, the movement of Contractor's equipment from one portion of the Work to another shall be governed in accordance with the one-way controls.

Water or dust palliative shall be applied if ordered by the Engineer for the alleviation or prevention of dust nuisance per "Dust Control," of the Caltrans Standard Specifications.

In order to expedite the passage of public traffic or rail traffic through or around the Work and where ordered by the Engineer, Contractor shall install signs, lights, flares, temporary railing (Type K), barricades and other facilities for the sole convenience and direction of public traffic or rail traffic. Also where directed by the Engineer, Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic or rail traffic through or around the Work. The cost of furnishing and installing the signs, lights, flares, temporary railing (Type K), barricades, and other facilities, not to be paid for as separate contract items, will be paid for as extra work.

The cost of furnishing flaggers for the sole convenience and direction of public traffic or rail traffic will be paid for as provided in Caltrans Standard Specifications Section 12-2.02, "Flagging Costs."

Contractor will be required to pay the cost of replacing or repairing all facilities installed under extra work for the convenience or direction or warning of public traffic or rail traffic that are lost while in Contractor's custody, or are damaged by reason of Contractor's operations to such an extent as to require replacement or repair, and deductions from any moneys due or to become due Contractor will be made to cover the cost.

Whenever a section of surfacing, pavement or the deck of a structure has been completed, Contractor shall open it to use by public traffic or rail traffic if the Engineer so orders or may open it to use by public traffic or rail traffic if the Engineer so consents. In either case Contractor will not be allowed any compensation due to any delay, hindrance,

or inconvenience to Contractor's operations caused by public traffic or rail traffic but will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic or rail traffic, within the limits of that use. Contractor will not be relieved of any other responsibility under the Contract, nor will Contractor be relieved of cleanup and finishing operations.

Contractor's attention is directed to the fact that LRT and freight trains may be operating through the project area daily. Contractor shall take all necessary precautions to protect workers in accordance with applicable regulations, law, and as directed by the Engineer.

Except as otherwise provided in these General Provisions, all costs for conforming to the provisions in this Section not otherwise provided for, shall be considered as included in the TCP Item List or as included in the price paid for the various items of work and no separate payment will be made.

7-1.09 Public Safety

It is Contractor's responsibility to provide for the safety of traffic and the public during construction.

Whenever Contractor's operations create a condition hazardous to traffic or to the public, Contractor shall, at Contractor's expense and without cost to MST, furnish, erect, and maintain those fences, temporary railing (Type K), barricades, lights, signs, and other devices and take such other protective measures that are necessary to prevent accidents or damage or injury to the public.

Fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by Contractor, at Contractor's expense, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the specifications.

Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered, and payment therefore will be made as provided in Section 12-1.03, "Flagging Costs," Caltrans Standard Specifications.

Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in Part 6 of the MUTCD and of the MUTCD California Supplement. Signs or other protective devices furnished and erected by Contractor, at Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the specifications. Signs furnished and erected by Contractor, at Contractor's expense, shall be approved by the Engineer as to size, wording and location. Contractor may be required to provide signage in languages other than English if Work will

occur in areas with Limited English Proficiency populations.

The installation of general roadway or railway illumination shall not relieve Contractor of the responsibility for furnishing and maintaining any of the protective facilities herein before specified.

Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic or rail traffic. All movements of workmen and construction equipment on or across lanes open to public traffic or rail traffic shall be performed in a manner that will not endanger public traffic or rail traffic.

Contractor's trucks or other mobile equipment which leave a freeway lane, that is open to public traffic or rail traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic or rail traffic an opportunity to slow down.

When leaving a work area and entering a roadway or railway carrying public traffic or rail traffic, Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic or rail traffic.

Lanes, ramps and shoulders shall be closed in accordance with the details shown on the plans and the Caltrans Standard Specifications and as provided in these General Provisions.

Contractor shall notify the Engineer not less than 18 days and not more than 90 days prior to the anticipated start of an operation that will change the vertical or horizontal clearance available to public traffic or rail traffic (including shoulders).

Pedestrian openings through falsework shall be paved or provided with full width continuous wood walks and shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less than 4 feet beyond the edge of the bridge deck. All pedestrian openings through falsework shall be illuminated in conformance with the Caltrans Standard Specifications.

When vertical clearance is temporarily reduced to 15 feet, or less, low clearance warning signs shall be placed in accordance with Part 2 of the MUTCD and the MUTCD California Supplement, and as directed by the Engineer. Signs shall conform to the dimensions, color, and legend requirements of the MUTCD, the MUTCD California Supplement, and the specifications except that the signs shall have black letters and numbers on an orange retroreflective background. W12-2P signs shall be illuminated so that the signs are clearly visible.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic or rail traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, Contractor shall remove all equipment and other obstructions from that portion of the roadway or railway

open for use by public traffic or rail traffic.

Temporary facilities which Contractor uses to perform the Work shall not be installed or placed where they will interfere with the free and safe passage of public traffic or rail traffic.

Temporary facilities which could be a hazard to public safety if improperly designed shall comply with design requirements specified in the Contract for those facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved. Working Drawings and design calculations for the temporary facilities shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California and shall be submitted to the Engineer for approval pursuant to Section 5-1.02, "Plans, Working Drawings, and Submittals." The submittals shall designate thereon the standard design criteria or codes used. Installation of the temporary facilities shall not start until the Engineer has reviewed and approved the drawings.

Should Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures as above provided, the Engineer may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed and protective measures taken by Contractor at Contractor's expense. Should the Engineer point out the inadequacy of warning devices and protective measures, that action on the part of the Engineer shall not relieve Contractor from responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.

Provision for the payment for signs, lights, flares, temporary railing (Type K), barricades, and other facilities by extra work shall in nowise relieve Contractor from the responsibility as provided in this Section 7-1.09.

Except as otherwise provided in this Section or in these General Provisions, full compensation for conforming to the requirements of this Section not otherwise provided for shall be considered as included in the TCP Item List in the Indirect Costs or as included in the price paid for the various items of work and no separate payment will be made therefore.

Contractor shall install Type K temporary railing or other authorized protective systems under any of the following conditions:

1. Excavations: Where the near edge of the excavation is within 15 feet from the edge of an open traffic lane
2. Temporarily unprotected permanent obstacles: When the work includes the installation of a fixed obstacle together with a protective system, such as a sign structure together with protective railing, and you elect to install the obstacle before installing the protective system; or you, for your

convenience and as authorized, remove a portion of an existing protective railing at an obstacle and do not replace such railing completely the same day

3. Storage areas: When material or equipment is stored within 15 feet of the edge of an open traffic lane and the storage is not otherwise prohibited by the Contract.
4. Height differentials: When construction operations create a height differential greater than 0.15 feet within 15 feet of the edge of traffic lane Installation of Type K temporary railing is not required if an excavation within 15 feet from the edge of an open traffic lane is protected by any of the following:
 - a. Steel plate or concrete covers of adequate thickness to prevent accidental entry by traffic or the public
 - b. Side slope where the downhill slope is 4:1 (horizontal: vertical) or less unless a naturally occurring condition.
 - c. Barrier or railing

Contractor shall offset the approach end of Type K temporary railing a minimum of 15 feet from the edge of an open traffic lane. Contractor shall install the temporary railing on a skew toward the edge of the traffic lane of not more than one foot transversely to ten feet longitudinally with respect to the edge of the traffic lane. If the 15-foot minimum offset cannot be achieved, the temporary railing must be installed on the 10 to 1 skew to obtain the maximum available offset between the approach end of the railing and the edge of the traffic lane, and an array of temporary crash cushion modules must be installed at the approach end of the temporary railing.

Contractor shall secure Type K temporary railing in place before starting work for which the temporary railing is required.

Where two or more lanes in the same direction are adjacent to the area where the work is being performed, including shoulders, the adjacent lane must be closed under any of the following conditions:

1. Work is off the traveled way but within six feet of the edge of the traveled way, and the approach speed is greater than 45 miles per hour
2. Work is off the traveled way but within three feet of the edge of the traveled way, and the approach speed is less than 45 miles per hour.

7.1.10 Use of Explosives

When explosives are used, Contractor shall exercise the utmost care not to endanger life or property.

In advance of doing any blasting work within 200 feet of any railroad's tracks or structures, Contractor shall notify MST, relevant Affiliated Agencies, and property owners of the location, date, time, and approximate duration of the blasting operations.

7-1.11 Preservation of Property

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

Trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all rail or highway facilities and any other improvements or facilities within or adjacent to the railway or highway shall be protected from injury or damage, and if ordered by the Engineer, Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect the objects from injury or damage. If the objects are injured or damaged by reason of Contractor's operations, the objects shall be replaced or restored at Contractor's expense. The facilities shall be replaced or restored to a condition as good as when Contractor entered upon the Work, or as good as required by the specifications accompanying the contract, if any of the objects are a part of the work being performed under the Contract. The Engineer may make or cause to be made those temporary repairs that are necessary to restore to service any damaged highway facility. The cost of the repairs shall be borne by Contractor and may be deducted from any moneys due or to become due to Contractor under the Contract.

The fact that any underground facility is not shown upon the plans shall not relieve Contractor of the responsibility under Section 8-1.09, "Utility, Non-Highway, and Non-Railway Facilities." It shall be Contractor's responsibility, pursuant thereto, to ascertain the location of those underground improvements or facilities which may be subject to damage by reason of Contractor's operations.

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

7-1.12 Indemnification and Insurance

Contractor shall maintain policy limits no less than the following or as described in any of the General Provisions of the Construction Supplements(s).

CM/GC General Provisions

a) Contractor Controlled Insurance Program (CCIP)

Contractor may, subject to the prior approval of MST, provide a Contractor Controlled Insurance Program (CCIP) to address On-site risk for Contractors and Subcontractors of every tier that perform Work on the project. The program must provide; Workers' Compensation & Employers Liability; General Liability, and Umbrella Liability coverage. General Liability and Excess coverage shall be written on an occurrence basis and shall be maintained, without interruption, from the date of commencement of the On-site work until the date of Final Completion and Acceptance of Work and a completed operations period of 10 years or Statue of Repose. The program shall provide coverage for the eligible Contractor, Subcontractors of every tier who have received confirmation of enrollment from the CCIP Administrator and provide the coverage on all CCIP coverages for MST as named insured, and for all Covered Entities and Indemnitees as herein defined as additional insured on ISO form CG 2010 11 85 or such alternative form pre-approved in writing by MST. Such insurance shall be primary insurance for the Project and any other similar insurance maintained by Contractor, Subcontractors, MST, Covered Entities and/or Indemnitees is excess and noncontributing with the CCIP insurance. Workers Compensation coverage shall meet statutory requirements and provide employers liability coverage for Contractor and all Subcontractors enrolled in the CCIP for On-site operations. To the extent that coverage is not afforded by the CCIP for all Covered Entities, Section 7-1.12B is applicable.

b) All Risks to the Extent MST Covered Entities and/or Indemnitees are not Covered by CCIP

Contractor and Subcontractors of every tier shall be required to procure and maintain General Liability and Workers' Compensation coverage for operations not covered by the CCIP (i.e., coverage for so called off-site exposures) and any other lines of coverage as required by MST which are not within the CCIP, including but not limited to Automobile Liability and Material and Equipment Floaters.

To the extent that Contractor and/or Subcontractors of any tier perform any operation or engage in any activity outside the scope of the coverage afforded by the CCIP, which operation or activity presents the risk of potential liability for damage or loss to MST, any Covered Entities and/or any Indemnitees, Sections 7-1.12A and 7-1.12B below shall apply.

7-1.12A Indemnification and Responsibility for Damage

Covered Entities (or any successors of the foregoing), and all officers and employees of any of the foregoing connected with the Work ("Indemnitees"), shall not be answerable or accountable in any manner; for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person, either workmen or the public;

or for damage to property from any cause which might have been prevented by Contractor, or its workmen, or anyone employed by it, except as otherwise specifically provided herein.

Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workmen and the public, or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Work or at any time before its completion and until two years after final acceptance by MST.

Contractor shall indemnify and save harmless the Indemnitees from all claims, suits or actions of every name, kind and description, brought forth, or on account of, injuries to or death of any person including but not limited to workmen and the public, or damage to property resulting from the performance of a contract, including all Construction Supplements, except as otherwise provided by statute.

The duty of Contractor to indemnify and save harmless as set forth herein shall include the duty to defend, as set forth in Section 2778 of the Civil Code. It is the intent of the parties that Contractor shall indemnify and hold harmless the Indemnitees from any and all claims, suits, or actions as set forth above except to the extent that the Indemnitees are actively negligent

With respect to third-party claims against Contractor, Contractor waives any and all rights of any type to express or implied indemnity against MST, its directors, officers, employees, or agents.

The obligations of Contractor under this Section shall not extend to the liability of the MST contractor for design, Contractor for design's consultants and agents or their successors, and all officers and employees thereof arising out of: (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; or (2) the giving of or the failure to give directions or instructions by the MST contractor for design, Contractor for design's consultants and agents or their successors, and all officers and employees thereof.

To the extent allowed by law, Contractor shall defend, indemnify and save harmless the Indemnitees from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever (Claims), arising out of or in connection with Contractor's performance of this Contract, and all Construction Supplements, for:

1. Bodily injury including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of Contractor, MST, or any other contractor.
2. Damage to property of anyone including loss of use thereof; caused or alleged to be caused in

whole or in part by any negligent or otherwise legally actionable act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

Except as otherwise provided by law, the indemnification provisions above shall apply regardless of the existence or degree of fault of Indemnitees. Contractor, however, shall not be obligated to indemnify Indemnitees for Claims arising from conduct delineated in Civil Code Section 2182. Further, Contractor's indemnity obligation shall not extend to Claims to the extent they arise from any defective or substandard condition of the project site which existed at or prior to the time Contractor commenced work, unless this condition has been changed by the Work or the scope of the Work requires Contractor to maintain existing project facilities and the claim arises from Contractor's failure to maintain. Contractor's indemnity obligation shall extend to Claims arising after the Work is completed and accepted only if these Claims are directly related to alleged acts or omissions of Contractor which occurred during the course of the Work. No inspection by MST, its employees or agents shall be deemed a waiver by MST of full compliance with the requirements of this Section. Contractor's obligation to defend and indemnify shall not be excused because of Contractor's inability to evaluate liability or because Contractor evaluates liability and determines that Contractor is not liable to the claimant. Contractor will respond within 30 days to the tender of any claim for defense and indemnity by MST, unless this time has been extended in writing by MST. If Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due Contractor under and by virtue of the Contract as shall reasonably be considered necessary by MST, may be retained by MST until disposition has been made of the claim or suit for damages, or until Contractor accepts or rejects the tender of defense, whichever occurs first.

7-1.12B Insurance

Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Contractor, his agents, representatives, employees, or subcontractors.

Prior to commencing work and within the timeframe otherwise provided for herein, Contractor shall furnish certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein.

For any claims related to this project, Contractor's insurance coverage shall be the primary insurance with respect to the Covered Entities and their officers, officials, employees, and volunteers. Any insurance or self- insurance maintained by Covered Entities, shall be excess of Contractor's insurance and shall not contribute to it.

Contractor's endorsement and insurance certificate should have the following language:

CM/GC General Provisions

For the MST SURF! Project, MST, TAMC, City of Marina, City of Seaside, Sand City, Caltrans, federal government, their directors, officers, agents, and employees are named as additional insureds on a Primary and noncontributory basis. Contractor waives any rights of subrogation against MST, TAMC, City of Marina, City of Seaside, Sand City, Caltrans.

Attached to and made a part of Policy No. _____ of the _____ Insurance Company.

Contractor shall require all subcontractors to obtain sufficient insurance to ensure Contractor and MST are adequately protected for their operations performed under this Agreement. Contractor shall not require subcontractors to maintain insurance amounts that are disproportionate to the scope and dollar value of work subcontracted. Contractor shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractors.

Any deductibles or self-insured retentions must be declared to and approved by MST. If a self-insured retention is used, the policy must be endorsed to allow any insured entity to satisfy the retention for the purposes of triggering coverage. Contractor shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects MST, its officers, officials, employees, and volunteers. If Contractor is unable to reduce or eliminate such deductibles or retentions, Contractor shall provide a financial guarantee satisfactory to MST guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

The policy limit requirements set forth in this Agreement do not constitute a limit on Contractor's liability.

I. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) or Insurance Services Office Form (CG 00 09 11 88 Owners and Contractors Protective Liability Coverage Form - Coverage for Operations of Designated Contractor).
- B. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- C. Workers' Compensation insurance as described below.
- D. Builder's Risk (Course of Construction) insurance covering all risks of loss.

- E. Surety bonds as described below.
- F. Professional Liability, as needed
- G. Contractors' Pollution Legal Liability and/or Asbestos Legal Liability (if project involves potential pollution issues)
- H. Railroad Protective Liability (in the event any work performed is within 50' of an operating railroad right-of- way).
- I. Acts of God Insurance (if required)

II. Minimum Limits of Insurance

Contractor shall maintain policy limits no less than the following or as described in the General Provisions of the Construction Supplement(s):

1. General Liability (Including operations, products and completed operations)	Unless covered by the CCIP, \$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 at \$10,000,000 or higher.
2. Automobile Liability	\$2,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation in accordance with all State and Federal Laws	Statutory for Workers Compensation.
4. Employers' Liability	Unless covered by the CCIP, \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease.
5. Builder's Risk - Installation Floater	Completed value of each Supplement with no

coinsurance penalty provisions.

6.	Professional Liability	\$10,000,000 each claim, \$10,000,000 aggregate,.
7.	Contractors Pollution - Asbestos Legal Liability	\$10,000,000 each occurrence/ \$10,000,000 policy aggregate
8.	Railroad Protective Liability	\$10,000,000 each claim/ \$10,000,000 aggregate.
9.	Acts of God Insurance	Not Used

III. Contract Requirements for General Insurance Provisions

- A. Evidence of Insurance. Prior to commencing work, Contractor shall cause Contractor's insurance agent(s) to furnish MST with certificate(s) of insurance by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein.
- B. Should any of the above described policies be cancelled before the expiration date thereof, notice must be delivered as a contractual obligation under this agreement, and sent to the MST Project Manager within 3 business days. Notice of cancellation sent by registered mail, postage prepaid, with a return receipt of addresses requested shall be sufficient notice.
- C. Each insurance company providing coverage shall, with the exception of the State Compensation Insurance Fund, have a minimum A.M. Best Rating of A:VII and be licensed to do business in the state of California.
- D. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the certificate form's cancellation provision.
- E. Failure of MST to demand such certificate or other evidence of full compliance with these insurance requirements or failure of MST to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- F. MST shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements and approved by MST.
- G. If at any time during the life of the agreement the Contractor fails to maintain in full force any insurance

required by the agreement documents, MST may terminate the agreement.

- H. If Contractor fails to maintain the insurance as set forth herein, MST shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.
- I. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided whenever requested.
- J. Contractor shall provide certified copies of all insurance policies required herein within 30 days of MST's written request for said copies.
- K. No Representation of Coverage Adequacy. By requiring insurance herein, MST does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to MST in this Contract.
- L. Cross-Liability Coverage. If Contractors' liability policies do not contain the standard ISO separation of insured's condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

The first certificate of insurance with required endorsements shall be submitted to MST. After the insurance language is reviewed and the certificate is deemed acceptable by MST, all future renewal certificates shall be sent to the following address below:

MST
19 Upper Ragsdale Drive, Suite 200
Monterey, CA 93940

IV. Contract Requirements for Workers Compensation Insurance

- A. Workers Compensation Insurance. Contractor shall maintain workers compensation and employers' liability insurance in accordance with all State and Federal laws.
- B. Employers' Liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease.
- C. Where applicable, the United States Longshore and Harbor Workers Compensation Act endorsement shall

be attached to the policy.

- D. Waiver of Subrogation. Contractor waives all rights against MST, Property Owner, and their agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employer's liability or commercial umbrella liability insurance obtained by Contractor pursuant to this agreement.

V. Contract Requirements for Commercial Auto and Umbrella Liability Insurance

MST, its directors, officers, agents, and employees, and as applicable, MTS and NCTD, and their directors, officers, agents, and employees, are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Contractor; and with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance, or as a separate owner's policy. The endorsement shall also cover the Covered Entities.

- A. Contractor shall maintain Business Auto Liability and, if necessary, Commercial Umbrella or Excess liability insurance with a limit of not less than \$2,000,000 each accident.
- B. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).
- C. Waiver of Subrogation. Contractor waives all rights against MST and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Agreement [or under any applicable auto physical damage coverage].
- D. Business auto coverage shall be written on Insurance Services Office form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- E. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

VI. Contract Requirements for Commercial General Liability and Umbrella Liability Insurance

Contractor shall obtain insurance of the types and in the amounts described below.

CM/GC General Provisions

- A. Commercial General and Umbrella Liability Insurance. Contractor shall maintain Commercial General Liability (CGL) and, if necessary, commercial excess or umbrella insurance with a limit of not less than \$5,000,000 (match to amount in B1 or as modified by the Construction Supplement(s)) each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project.
- B. CGL insurance shall be written on current Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent language) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- C. Covered Entities and Property Owner shall be included as an additional insured under the CGL, using ISO additional insured endorsements CG 20 10 and CG 20 37 or their equivalent, which endorsement shall include coverage for MST with respect to liability arising out of the completed operations of Contractor, and which coverage shall be maintained in effect for the benefit of MST, for a period of two years following the final acceptance of the work specified in Section 7-1.12A of this Contract. Insurance coverage as required in this subparagraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to MST.
- D. Waiver of Subrogation. Contractor waives all rights against MST and Property Owner, and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement.
- E. The CGL policy shall be endorsed to include professional liability coverage as least as broad as ISO form CG 22 80 07 98, or its equivalent.
- F. Continuing Completed Operations Liability Insurance. Contractor shall maintain commercial general liability (CGL) in compliance with this Insurance section for at least two (2) years following Final Acceptance of the work.
- G. With respects to the Commercial General Liability Insurance, the policy must also have Explosion, Collapse, and Underground (UCX) exclusion deleted.

VII. Builder's Risk (Course of Construction) Insurance

- A. Contractor may submit evidence of Builder's Risk insurance in the form of "Course of Construction"

coverage. In either case, such coverage shall contain the following: MST shall be named as loss payee.

If the scope of work does not involve new construction or major reconstruction (as determined by MST), at the option of MST, an "Installation Floater" will be acceptable to meet this requirement. For such projects, a property installation floater shall be obtained that provide for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing at the project site(s).

- B. Contractor shall purchase and maintain in force until Final Completion and Acceptance of Work, a Builders Risk Policy, on an "all risk" basis, in an amount equal to the replacement cost of the completed Work.
- C. Insured property shall include material or portions of the Work located away from the project site but intended for use at the project site, and shall also cover material or portions of the Work in transit.
- D. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the project site. The policy shall cover the cost of removing debris, including demolition, as may be legally necessary by operation of any law, ordinance, or regulation.
- E. The policy shall provide that all proceeds thereunder shall be payable by the insurer directly to MST and shall name Contractor and the Covered Entities as Additional Insureds.
- F. Except as otherwise specifically provided herein, MST shall be entitled to recover 100 percent of its loss from any insurance triggering event. Any portion of that loss not covered because of a deductible, exclusion, exception or policy limit, shall be paid to MST by Contractor at the same time the proceeds of the insurance are paid to MST.
- G. Waiver of Subrogation. The policy shall be endorsed to state that the insurer will waive all rights of subrogation against Covered Entities, their governing bodies, elected officials, officers, agents and representatives for losses paid under the terms of the policy which arise from the work performed in accordance with the Contract.

VIII. Contractors Pollution Legal Liability Insurance

- A. Contractor shall maintain in force, for the full period of this Contract, insurance covering losses caused by pollution conditions that arise from the operations of Contractor described under the scope of services of

this Contract, with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 policy aggregate. MST and Property Owner shall be included as insureds under Contractor's Pollution Liability Policy.

- B. Insurance shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
- C. The policy of insurance shall be endorsed to include as an additional insured MST, its Board of Directors, agents, officers, and employees.
- D. If General Liability, Contractor's Pollution Liability and/or Asbestos Pollution Liability and/or Errors and Omissions coverages are written on a claims-made form:
 - 1. The retroactive date must be shown, and must be before the date of the Contract or the beginning of contract work.
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of contract work.
 - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract effective date, Contractor must purchase extended reporting period coverage for a minimum of five years after completion of contract work.
- E. If coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract, and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five years beginning from the time that Work under the Construction Supplement is completed.
- F. If the scope of services as defined in this Contract includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Contractor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this Contract.
- G. If the services involve lead-based paint or asbestos identification/remediation, Contractor's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, Contractor's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

H. A copy of the claims reporting requirements must be submitted to MST for review.

IX. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII and licensed to do business in the State of California, unless otherwise acceptable to MST. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

X. Verification of Coverage

Contractor shall furnish MST with certificates of insurance and endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. All endorsements are to be received and approved by MST before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.

XI. Waiver of Subrogation

Contractor shall waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor shall obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of MST and Property Owner for all work performed by the "Contractor," its employees, agents, and subcontractors.

XII. Railroad Protective Liability Insurance (if required)

Contractor shall maintain railroad protective liability insurance on behalf of Covered Entities as named insured. The Railroad Protective Liability Insurance policy shall have limits of liability of not less than \$10,000,000 [match this to B8] per occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. A \$20,000,000 annual aggregate shall apply.

XIII. Acts of God Insurance (if required)

Contractor shall obtain insurance to indemnify MST for any damage to the work caused by an act of God as defined in Public Contract Code Section 7105. This insurance is supplemental to Builder's Risk (Course of Construction) Insurance. The amount of insurance that is acquired shall be sufficient to pay for any repairs in excess of five

percent of the contracted amount of the work.

The premium for this insurance shall be reflected as a separate TCP Bid Item and the price shown shall constitute full compensation for providing the indemnification insurance and no additional payment will be made therefor.

XIV. Endorsements

Endorsements must specifically state that they modify the policy language. A supplement to the certificate of insurance shall be sufficient to serve as an endorsement.

XV. Waiver

Acceptance by MST of a certificate of insurance or endorsement that varies from requirements in this Contract shall not constitute a waiver by MST of Contractor's obligation to strictly comply with the provisions herein.

7-2.01 Compromise and Settlement of Third-Party Claims

MST shall have full authority to compromise or otherwise settle any claim relating to this Contract at any time. MST shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. MST shall be entitled to recover its reasonable costs incurred in providing the notification.

7-2.02 Audit and Inspection of Records

MST shall for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts with regard to this Agreement, including any Construction Supplements issued pursuant to this Agreement. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Further, Contractor shall maintain all required records for at least four years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor shall maintain same until MST, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

7-2.03 Sensitive Security information

Contractor shall protect and take measures to ensure that its subcontractors at each tier protect "sensitive security information" made available during the administration of the Contract. Such sensitive security information includes, but is not limited to, information obtained or developed in the conduct of security activities, including research and development, the disclosure of which the Secretary of the United States Department of Transportation has

determined would (1) Constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file); or (2) Reveal trade secrets or privileged or confidential information obtained from any person; or (3) Be detrimental to transportation safety.

7-3.01 Disadvantaged Business Enterprise

- I. Federal Financial Assistance Agreement Assurance:
The Parties shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. Contractor's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Contract. I. 1. Upon notification to MST of its failure to carry out its approved Program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- II. Contractor shall implement the Final DBE and SB Subcontracting Plan approved as a part of the Preconstruction Services Agreement, as well as amendments to the Plan made by Contractor to update the Plan's contents as each Construction Supplement is awarded.
- III. Contractor shall provide monthly status reports to track payments to subcontractors, and attend meetings to confirm program compliance, report DBE and SB firm participation, and provide necessary support as required. Contractor shall submit the Monthly DBE Status report by the second Friday of the following month. Monthly Status report shall include: updated subcontractor list; payments made to DBE and non-DBE subcontractors for work performed, including backup documentation such as copies of invoices submitted to Contractor from subcontractors and copies of checks paid to subcontractors for work performed; all additions or terminations of subcontractors and reason for changes; and revised dollar amount of work committed to DBE firms. If any required report is not received by the designated due date, MST may withhold five (5) percent of the estimated value of the work during the month from the next monthly estimate, except that such retentions shall not exceed \$5,000, nor be less than \$1,000. Withholdings for failure to submit DBE related reports will be additional to all other retentions or withholdings provided for in this Contract. Withholdings for failure to submit DBE related reports will be released for payment on the monthly estimate for partial payments next following the date that all the delinquent reports for which the withholding was made are submitted.
- IV. Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR 26

in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate," which may include, but is not limited to:

- (1) Withholding monthly progress payments
- 2) Assessing sanctions
- (3) Liquidated damages
- (4) Disqualifying Contractor from future bidding as non-responsible

- V. Contractor must take necessary and reasonable steps to ensure that DBEs have an opportunity to participate each Construction Supplement (49 CFR 26).
- VI. A DBE must be a small business firm defined pursuant to 13 CFR 121 and certified through the California Unified Certification Program (CUCP). A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP.
- VII. Contractor and subcontractors also are encouraged to use services offered by financial institutions owned and controlled by DBEs.
- VIII. Prompt Payment to Subcontractors
Contractor agrees to pay to each subcontractor under this contract for satisfactory performance of its contract no later than thirty (30) days from receipt of each progress payment Contractor receives from MST. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause and with prior written approval from MST. This clause applies to both DBE and non-DBE subcontracts.
- IX. Prompt and Full Payment of Retainage to Subcontractors
Five percent retainage will be held by MST from progress payments due the prime contractor.

Any retainage kept by prime contractor must be paid in full to subcontractor within thirty (30) days after subcontractor's work is satisfactorily completed. Any delay or postponement of this retainage payment may take place only for good cause and with the agency's prior written approval.
- X. Work Deemed Satisfactorily Completed

Subcontractor's work shall be deemed satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by MST. When MST has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

XI. Prompt Payment Enforcement Mechanisms and Penalties

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

XII. Demonstration of Good Faith Efforts

To ensure there is equal participation of the DBE groups specified in 49 CFR 26.5, MST has specified an overall DBE goal for itself on an agency-wide basis. Contractor must Certify that it will exercise good faith effort (GFE) to meet or exceed the established DBE goal inclusive of amendments, modifications, options, and change orders prior to the commencement of work by either: proposing sufficient DBE participation to meet the respective DBE goal or if the Contractor is unable to meet sufficient DBE participation, Contractor will shall provide a showing of GFE undertaken to do so.

XIII. Equal Employment Opportunity

MST is an Equal Opportunity Employer. As such, MST will not use any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications in accordance with 49 U.S.C. § 5323(h) (3).

Under this Agreement, Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for A-26 employment because of race, color, religion, national origin, sex, disability, or age. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

IVX. Subcontractor and DBE Records

- A. Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of each Construction Supplement, a summary of these records shall be prepared on the "Final Utilization of DBE and SB, First-Tier Subcontractors" form and certified correct by Contractor or Contractor's authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within 90 days from the date of contract acceptance. The amount of \$5,000 will be withheld from payment until a satisfactory form is submitted.

XV. DBE Certification

- A. If a DBE subcontractor is decertified during the term of the applicable Construction Supplement, the decertified subcontractor shall notify Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify Contractor in writing with the date of certification. Contractor shall furnish the written documentation to the Engineer.
- B. Upon completion of the contract, "DBE Certification Status Change" Form CEM-2403(F) indicating the DBEs' existing certification status shall be signed and certified correct by Contractor. The certified form shall be furnished to the Engineer within 90 days from the date of contract acceptance.
- C. In the event Contractor identifies additional DBE subcontractors not previously identified by Contractor for race neutral DBE participation, or if a subcontractor becomes certified during the term of an applicable Construction Supplement, Contractor shall notify MST in writing in a timely manner. Such notification will enable MST to capture all race neutral DBE participation. Contractor shall submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the Contract for a specified value, including the corresponding scope of work.

XVI. Performance of DBE Subcontractors

A. Contractor shall not terminate a DBE listed subcontractor for convenience and perform the work with its own forces or by using another subcontractor, or obtain materials from other sources, without prior written authorization from MST.

MST may consider authorization to use other forces or sources of materials for requests that show any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulate a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE delays or disrupts the progress of the work.
7. Listed DBE becomes bankrupt or insolvent.

B. If a listed DBE subcontractor is terminated, Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the Construction Supplement.

C. The substitute DBE must be certified as a DBE at the time of request for substitution.

D. DBE Crediting Provisions

1. In this Section, the term 'bidder' also means 'proposer' or 'Contractor.' The term 'Small Business' or 'SB' is as defined in 49 CFR 26.65, and is the not the same thing as a DBE firm.
2. A DBE may participate as a Prime Contractor, subcontractor, joint venture partner, supplier, or trucker. A proposed DBE must be responsible for a commercially useful function (i.e., a distinct

element of the actual scope of work) and must carry out its responsibility by actually performing, managing, and supervising such work; in order to be credited toward DBE participation.

7-3.02 Contractor's DBE Reporting Requirements (Post-Award)

Contractor shall complete and submit the following DBE reporting forms and/or information at the times and using the methods specified below.

- I. Contractor shall report both DBE and non-DBE subcontractor payment details to MST biweekly.
 - Subconsultant name and contact information
 - Subconsultant percent amount
 - Type of participation
 - NAICS codes
 - Subconsultant award date
 - Estimated work start and end date
 - Biweekly payments to all subconsultants

- III. Contractor shall not count the participation of DBE subcontractors until the amount being counted toward the DBE participation has been paid to the DBE.

- IV. If subcontractor is a DBE and is decertified during the life of the Construction Supplement, the decertified subcontractor shall notify Contractor in writing of the date of the decertification. If a subcontractor becomes a certified DBE during the life of the Construction Supplement, the subcontractor shall notify Contractor in writing of the date of the certification. Contractor shall furnish the written documentation to MST in a timely manner.

- V. Failure to submit required DBE reports may result in the delay of processing Contractor's invoices for payment.

7-3.03 Designation of DBE Participation Forms

Contractor shall execute and return Contractor's List of Subcontractors (DBE and Non-DBE) Parts I and II (Exhibit K-15), even if no DBE or DBE participation will be reported.

Contractor's List of Subcontractors (DBE and Non-DBE) Parts I and II (Exhibit K-15) shall include the names, addresses, and phone numbers of all firms that will participate, including DBE firms that will participate, with a

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complete description of work or supplies to be provided by each, and the dollar value of each transaction. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A Contractor certified as a DBE should describe the work it has committed to performing with its own forces as well as any other work that it has committed to be performed by DBE subcontractors, suppliers, and trucking companies in the "Local Agency Bidder DBE Commitment (Construction Contracts) (Exhibit K-16)" form.

Contractor is encouraged to provide written confirmation from each DBE or DBE that the DBE or DBE is participating in a Construction Supplement. A copy of a DBE's or DBE's quote will serve as written confirmation that the DBE or DBE is participating in the Construction Supplement. If a DBE is participating as a joint venture partner, Contractor will be required to submit a copy of the joint venture agreement.

7-3.04 Commercially Useful Function Standards

- I. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SAND AG will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- II. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, MST must examine similar transactions, particularly those in which DBEs do not participate.
- III. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.
- IV. When a DBE is presumed not to be performing a commercially useful function as provided in the previous bullet, the DBE may present evidence to rebut this presumption. MST may determine that the firm is

performing a commercially useful function given the type of work involved and normal industry practices.

V. MST decisions on commercially useful function matters are subject to review by FTA and Caltrans.

7-3.05 DBE "Fronts" and Frauds

Only legitimate DBEs are eligible to participate in any federally funded contract. Contractor shall not knowingly or willingly use "fronts" or do business with DBEs in a manner which could compromise the DBE's continued eligibility and DBE participation credit. Any indication of fraud, waste, abuse, or mismanagement of federal funds shall be immediately reported to the Office of Inspector General, U.S. DOT at the toll-free hotline (800) 424-9071.

7-4.01 Funds Withheld For Suits or Claims For Damages

In addition to any remedy authorized by law, money due Contractor under a Construction Supplement, as shall be considered necessary by MST, may be retained by MST until disposition has been made of such suits or claims for damages.

The retention of money due Contractor shall be subject to the following:

- Unless otherwise provided by the General Provisions or laws, MST will give Contractor 30 days' notice of its intention to withhold funds from any partial payment, which may become due to Contractor prior to acceptance by MST of the Construction Supplement. Withholding of funds from any payment made after acceptance of the Construction Supplement may be made without such prior notice to Contractor.

7-4.02 Legal Actions against MST

In the event litigation is brought against MST concerning compliance by MST with state or federal laws, rules, or regulations applicable to highway work, the provisions of this Section shall apply.

- I. If, pursuant to court order, MST prohibits Contractor from performing all or any portion of the Work, the delay will be considered a ROW delay within the meaning of this Contract unless the Contract is terminated.
- II. If, pursuant to court order (other than an order to show cause) MST is prohibited from requiring Contractor to perform all or any portion of the Work, MST may, if it so elects, eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the Contract.

- III. If the final judgment in the action prohibits MST from requiring Contractor to perform all or any portion of the Work, MST will either eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the Contract.
- IV. If the Contract is to be terminated, the termination and the determination of the total compensation payable to Contractor shall be governed by the provisions in Section 8-1.13, "Termination of Contract and Construction Supplement."

7-5.01 Disposal of Material Outside the Railway or Highway Right-of-Way

If Contractor elects to dispose of materials at locations other than those where arrangements have been made by MST, or, if material is to be disposed of and MST has not made arrangements for disposal of the material, Contractor shall make arrangements for disposing of the materials outside the railway or highway right-of-way. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses and environmental clearances. Before disposing of any material outside the railway or highway ROW, Contractor shall furnish to the Engineer satisfactory evidence that Contractor has entered into agreements with the property owners of the site involved and has obtained the permits, licenses, and clearances.

When any material is to be disposed of outside the railway or highway ROW, and MST has not made arrangements for disposal of the material, Contractor shall first obtain written authorization from the property owner on whose property the disposal is to be made and Contractor shall file with the Engineer the authorization or a certified copy thereof together with a written release from the property owner absolving MST from any and all responsibility in connection with the disposal of material on the property. Before any material is disposed of on the property, Contractor shall obtain written permission from the Engineer to dispose of the material at the location designated in the authorization.

When material is disposed of and the disposal location is visible from a highway, Contractor shall dispose of the material in a neat and uniform manner to the satisfaction of the Engineer. Where MST has made arrangements with owners of land in the vicinity of a project for the disposal of materials on an owner's property, the arrangements are made solely for the purpose of providing Contractor an opportunity to dispose of the materials on the property. Contractor may, upon written request, inspect the documents evidencing the arrangements between property owners and MST. Contractor may, if Contractor so elects, exercise any rights that have been obtained, which may be exercised by a Contractor under the arrangements, subject to and upon the conditions hereinafter set forth.

Such arrangements are not a part of the Contract and MST assumes no responsibility to Contractor whatsoever in respect to the arrangements made with the property owner to dispose of materials thereon and that Contractor shall assume all risks in connection with the use of the property, the terms upon which the use shall be made, and there is no warranty or guaranty, either express or implied, as to the quantity or types of materials that can be disposed of

on the property.

In those instances in which MST has compiled "Materials Information, the compilation will include the documents setting forth the arrangement made with some of the property owners for the disposal of material on those owners' properties. The inclusion of the documents therein shall not in any respect operate as a waiver concerning the documents.

Notwithstanding that Contractor may elect to dispose of materials on any such property owner's property, no material may be disposed of on that property unless Contractor has first either:

- A. Executed a document that will guarantee to hold the owner harmless from all claims for injury to persons or damage to property resulting from Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between MST and the property owner. The document will be prepared by the Engineer for execution by Contractor; or
- B. Entered into an agreement with the owner of the disposal site on any terms mutually agreeable to the owner and Contractor; provided that Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving MST of any and all obligations under the MST arrangement with the owner.

If Contractor elects to dispose of material under (A), the use of the site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and MST and Contractor shall pay those charges that are provided for in the arrangement made by MST with the property owner, and deductions will be made from any moneys due or that may become due Contractor under the Contract sufficient to cover the charges for the material disposed of.

If Contractor elects to dispose of material under (B), Contractor shall pay those charges that are provided for in the agreement between the owner and Contractor and deductions will not be made from any moneys due or that may become due Contractor under the Contract to cover the charges.

Before acceptance of the contract, the Engineer may require Contractor to submit written evidence that the owner of the disposal site is satisfied that Contractor has satisfactorily complied with the provisions of either (1) the arrangement between MST and the owner; and/or (2) the agreement between the owner and Contractor, as the case may be.

Full compensation for all costs involved in disposing of materials as specified in this Section, including all costs of

hauling, shall be considered as included in the price paid for the TCP Item of work involving the materials and no additional compensation will be allowed.

7-6.01 Coordination and Cooperation

- I. A preconstruction meeting shall be held after award of the Contract. Contractor shall be prepared to discuss the following aspects of the project at this meeting: lines of authority and communication, plans and specifications, unusual conditions, equal opportunity and civil rights requirements, project schedule, sequence and staging of construction; submission of shop drawings, and administrative procedures.
- II. Contractor shall attend weekly meetings and conferences arranged by the RE for the purpose of coordinating project work. Contractor shall conduct weekly meetings shall review current job issues, work status and a three-week look-ahead schedule of planned activities and shall include Quality Control, Safety and railroad flagging requirements along with Public Outreach. Contractor shall prepare and distribute an Agenda and Meeting Minutes within 48 hours of when meeting is scheduled to occur.
- III. Should construction be under way by other forces or by other contractors within or adjacent to the limits of the Work specified or should work of any other nature be under way by other forces within or adjacent to those limits, Contractor shall cooperate with all the other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.
- IV. Each contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by their operations, and for loss caused the other due to unnecessary delays or failure to finish the Work within the time specified for completion.
- V. When two or more contractors are employed on related or adjacent work, or obtain materials from the same material source, each shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

7-6.02 Relief from Maintenance and Responsibility

Upon the request of Contractor, MST may, in its own discretion, relieve Contractor of the duty of maintaining and protecting certain portions of the Work as described below, which have been completed in all respects in accordance with the requirements of the Contract Documents and to the satisfaction of the Engineer, and thereafter except with Contractor's consent, Contractor will not be required to do further work thereon. In addition, the action by MST will relieve Contractor of responsibility for damage to those completed portions of the Work resulting from use by public traffic or rail traffic or from the action of the elements or from any other cause but not from injury or

damage resulting from the Contractor's own operations or from Contractor's negligence.

Portions of the Work for which Contractor may be relieved of the duty of maintenance and protection as provided in the above paragraph include, but are not limited to, the following:

- A. The completion of 0.3-mile of roadway or 0.3-mile of one roadway of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection work, lighting, and any required traffic control and access facilities.
- B. A bridge or other structure of major importance.
- C. A complete unit of a traffic control signal system or of a highway lighting system.
- D. Facilities constructed for other agencies.

However, nothing in this Section providing for relief from maintenance and responsibility will be construed as relieving Contractor of full responsibility for making good any defective work or materials.

7-6.03 Contractor's Responsibility for the Work and Materials

Until the Acceptance of a Construction Supplement, Contractor shall have the charge and care of the Work and of the materials to be used therein (including materials for which Contractor has received partial payment as provided in Section 9-1 "Partial Payments," or materials which have been furnished by MST) and shall bear the risk of injury, loss or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work, except as provided in Sections 7-1.08, "Public Convenience," and 7-6.02, "Relief From Maintenance and Responsibility." Contractor shall rebuild, repair, restore, and make good all injuries, losses or damages to any portion of the Work or the materials occasioned by any cause before its Acceptance and shall bear the expense thereof, except as otherwise expressly provided herein Section 7-6.04, "Damage by Acts of God," and in Section 19-2, "Slides and Slipouts," of the Caltrans Standard Specifications and except for those injuries, losses, or damages that are directly and proximately caused by acts of the Federal Government or the public enemy.

Where necessary to protect the Work or materials from damage, Contractor shall, at Contractor's expense, provide suitable drainage of the roadway or railway and erect those temporary structures that are necessary to protect the Work or materials from damage. The suspension of the Work from any cause whatever shall not relieve Contractor of the responsibility for the Work and materials as herein specified. If ordered by the Engineer, Contractor shall, at

Contractor's expense, properly store materials which have been partially paid for by MST or which have been furnished by MST. Storage by Contractor shall be on behalf of MST and MST shall at all times be entitled to the possession of the materials, and Contractor shall promptly return the materials to the site of the Work when requested. Contractor shall not dispose of any of the materials so stored except on written authorization from the Engineer.

7-6.04 Damage by Acts of God

In the event damage to the Work is caused by an Act of God, the following shall be applicable:

- I. **Act of God.** "Act of God" as defined in Public Contract Code Section 7105 shall include only the following, earthquakes in excess of a magnitude of 3.5 on the Richter Scale, and tidal waves.
- II. **Compensation.** In the absence of a TCP Item for Acts of God Insurance which indemnifies MST for such costs, MST shall bear the burden of the costs for repair to damaged work in excess of five percent of the total TCP. Contractor shall submit a request in writing to MST to pay for this repair or restoration to the damaged work. This request must be submitted prior to performing work, other than emergency work.
- III. **Protecting the Work from Damage.** Nothing shall be construed to relieve Contractor of the responsibility to protect the Work from damage. Contractor shall bear the entire cost of repairing damage to the Work caused by an Act of God which the Engineer determines was due to the failure of Contractor to comply with the requirements of the Plans and Specifications, take reasonable and adequate measures to protect the Work or exercise sound engineering and construction practices in the conduct of the Work, and those repair costs shall be excluded from consideration under the provisions of this Section.
- IV. **Repair Work.** If approved, the repair of damaged work shall be pursuant to a contract change order issued hereunder and mutually agreed to by the parties. Such change order shall specify the repair work to be performed on the damaged facility and the agreed upon costs for such work. Such repair work may consist of restoring the in-place construction (for the purposes of this Section 7-6.04 erected falsework and formwork shall be considered in-place construction) to the same state of completion to which the Work had advanced prior to the Act of God. Emergency work which the Engineer determines would have been part of the repair work if it had not previously been performed will be considered to be part of the repair work.

MST reserves the right to make changes in the plans and specifications applicable to the portions of the Work to be repaired, and if those changes will increase the cost of repairing the damage over the TCP Schedule of Values of the cost of repair without the changes, Contractor will be paid for the increased costs.

Nothing shall be construed to relieve Contractor of full responsibility for the risk of injury, loss or damage to materials not yet incorporated in the work and to materials, tools and equipment (except erected falsework and formwork) used to perform the Work, or to relieve Contractor of responsibility under Section 7-1.12, "Indemnification and Insurance." This Section 7-6.04 shall not be applicable to the repair of damage caused by an Act of God to any portion of the Work as to which Contractor has been granted relief from maintenance and responsibility pursuant to this Section or to the removal of slides and slipouts or the repair and restoration of damage to the Work resulting from slides and slipouts pursuant to Section 19-2, "Slides and Slipouts," of the Caltrans Standard Specifications.

- V. **Determination of Costs.** Unless otherwise agreed between the Engineer and Contractor, the cost of the work performed, if any, will be determined in conformance with the provisions in Section 9-1.05, "Force Account Payment," except there shall be no markup allowance. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed, will be determined in the same manner as the authorized repair work. The cost of repairing damaged work which was not in compliance with the requirements of the plans and specifications shall be borne solely by Contractor, and those costs shall not be considered in determining the cost of repair.
- VI. **Termination of Contract.** In the event of an Occurrence, MST may, at its sole discretion, terminate the Contract and relieve Contractor of further obligation to perform the Work. If MST elects to terminate the contract, the termination and the determination of the total compensation payable to Contractor shall be governed by the provisions of Section 8-1.13, "Termination of Contract and Construction Supplement."

7-6.05 Acceptance of Construction Supplement

When the Engineer has made the final inspection as provided in Section 5-1.15, "Final Inspection," and determines that the Construction Supplement Work has been completed in accordance with the IFC Drawings and General Provisions, the Engineer will recommend that MST formally accept the Construction Supplement, and immediately after the Acceptance by MST, Contractor will be relieved of the duty of maintaining and protecting the Work as a whole.

When the Engineer has made the final inspection and determines that the Construction Supplement work (except for the requirements to maintain landscaping or environmentally sensitive areas (ESA) for plant establishment and monitoring) has been completed in all respects in accordance with the plans and specifications, the Engineer will recommend to the General Manager/CEO that said portion of the Work be accepted as an initial acceptance and that Contractor be relieved of the duty of maintaining and protecting the Work (except for the landscaped and ESA areas). Upon approval by the General Manager/CEO, the Engineer will notify Contractor in writing of the

acceptance and that he has been relieved of the duty of maintenance and protection of all of the Work except the landscaped areas.

When the Engineer determines the requirement to maintain the landscaped areas for the plant establishment period has been completed in accordance with the plans and specifications, he will recommend that the General Manager/CEO or designee formally accept the Construction Supplement.

In accordance with Section 1741.1 of the California Labor Code, MST shall provide a notice of acceptance of the Construction Supplement to the Labor Commissioner.

7-6.06 Property Rights in Materials

All the material to be provided under the Contract Documents shall become the property of MST upon being so attached or affixed or upon payment for materials delivered on the ground or stored subject to or under the control of MST and unused, as provided in Section 9-1.07, "Partial Payments."

7-6.07 Rights in Land and Improvements

Nothing in the General Provisions shall be construed as allowing Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the Work for any purpose whatsoever, either with or without compensation, in conflict with any agreement between MST and any owner, former owner, or tenant of the land, structure, or building. Contractor shall not occupy property outside the defined limits of work as shown on the plans unless Contractor enters into a rental agreement with the property owner.

7-6.08 Personal Liability

Neither the General Manager/CEO, the Engineer, nor any other officer or authorized employee of the Covered Entities, nor any officer or employee of the Covered Entities, nor any officer or employee of any county, city, or district shall be personally responsible to Contractor for any liability arising under or by virtue of the Construction Supplement.

7-6.09 Repair of Equipment

The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment or tools used in or upon the Work shall be considered a part of the Work to be performed under the Construction Supplement and any laborers, workers, or mechanics working on the machinery, equipment or tools shall be subject to all the requirements relating to labor set forth in these General Provisions and the Construction Supplement, unless employed by bona fide commercial repair shops, garages, blacksmith shops, or machine

shops, which have been established and operating on a commercial basis for a period of at least two months prior to the award of the supplement.

7-6.10 Material Plants

The construction, erection, and operation of material production, proportioning or mixing plants from which material is used wholly on the Supplement or on contracts under the supervision of MST shall be considered a part of the work to be performed under the Construction Supplement and any laborers, workers or mechanics working on those plants shall be subject to all of the requirements relating to labor set forth in the General Provisions and the Construction supplement.

7-7.01 Prompt Progress Payment to Subcontractors

Contractor or subcontractor shall pay any subcontractor not later than seven days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The seven days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the prior written approval of MST. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.

7-7.02 Prompt Payment of Withheld Funds to Subcontractors

MST shall hold five percent retainage from Contractor and shall make prompt and regular incremental acceptances of Construction Supplements, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within seven days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies allowed by law. This shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by Contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

7-7.03 Prohibited Interests

1. The following MST Procurement Policy applies to conflicts of interest:

No person shall participate in procedures, tasks, or decisions relative to initiation, award, or administration of a contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when any of the following has a financial or other interest in an entity that participates in a District bidding process or is selected for a contract award involving:

- a. The Director, officer, employee, or agent;
- b. Immediate family of a., above;
- c. A business associate of a. or b., above; or
- d. An organization that employs, or is about to employ, a current District employee.

The standards governing the determination as to whether such an interest exists are set forth in Government Code section 1090 et. seq., as may be amended.

2. Gratuities and Contingent Fees

No District Director, officer, employee or agent shall knowingly solicit, accept, or agree to accept gratuities, favors, or anything of more than a nominal monetary value in connection with actual or potential procurement and contracting activities. Under this policy, the term "nominal monetary value" shall be defined as a value of fifty dollars (\$50) or less.

3. Confidential Information

No District Director, officer, employee or agent involved in purchasing shall use confidential information for their actual, anticipated, or apparent personal gain, or for the actual, anticipated, or apparent personal gain of any person's immediate family. "Confidential Information" is defined as any proprietary, privileged, or nonpublic information coming to the employee's attention as a result of their employment, the knowledge of which makes financial gain possible.

"Ineligible" firms shall include the prime contractor for the services, subcontractors for portions of the services, and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.

If there is any doubt by a firm regarding a potential conflict of interest for a specific project or function, the appropriate member of management staff, depending on type of project, will, upon written request, provide a written ruling. This procedure is encouraged prior to submittal of a TCP. In the event a conflict of interest is determined to exist, a written appeal may be made by the affected firm to the General Manager/CEO within five calendar days of notice from MST the conflict. The General Manager/CEO shall determine the adequacy of the appeal and make a

subsequent final decision. No further appeal shall be considered.

7-8.01 Measurement and Payment

Full compensation for conforming to the requirements of this Section not otherwise provided for, shall be considered as included in the TCP Item List or as included in the price paid for the various items of work and no separate payment will be made.

END OF SECTION 7

SECTION 8: PROSECUTION AND PROGRESS

8-1.01 Subcontracting

Contractor shall give personal attention to the fulfillment of the Contract and shall keep the Work under Contractor's control.

Contractor shall comply with and carryout the DBE/SB Subcontracting Plan, including Pre-Qualification Standards and the Trade Subcontractor Bid Packages developed and accepted under the Preconstruction Services Agreement and incorporated herein, including all current and future revisions.

No subcontractor will be recognized as such, and all persons engaged in the work of construction will be considered as employees of Contractor and Contractor will be held responsible for their work, which shall be subject to the provisions of the Contract, Construction Supplement(s), and specifications.

Contractor shall perform, with Contractor's own organization, contract work amounting to not less than 40 percent of the total TCP for the Work. Where an entire work item is subcontracted, the value of work subcontracted will be based on the TCP Item. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the TCP Item price, determined from information submitted by Contractor, subject to approval by the Engineer.

Any material purchased by Contractor will only be counted towards the 40 percent of the original total contract price if the material is installed by Contractor with his own forces.

Subcontracts shall include provisions that the Contract between MST and Contractor is part of the subcontract, and that all terms and provisions of the Contract are incorporated in the subcontract.

Subcontracts shall also contain certification by the subcontractor that the subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted work. Copies of subcontracts shall be available to the Engineer upon written request, and shall be provided to the Engineer at the time any litigation against MST concerning the project is filed.

Before work is started on a subcontract, Contractor shall file with the Engineer a written statement showing the work to be subcontracted, the names of the subcontractors, and the description of each portion of the work to be subcontracted.

Pursuant to the provisions of Section 6109 of the Public Contract Code, Contractor shall not perform work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to

CM/GC General Provisions

Section 1777 .1 or 1777.7 of the Labor Code

When a portion of the Work which has been subcontracted by Contractor is not being prosecuted in a manner satisfactory to MST, the subcontractor shall be removed immediately on the requisition of the Engineer and shall not again be employed on the Work.

The roadside production of materials produced by other than Contractor's forces shall be considered as subcontracted. Roadside production of materials shall be construed to be production of aggregates of all kinds with portable, semiportable, or temporary crushing or screening, proportioning and mixing plants established or reopened for the purpose of supplying aggregate or material for a particular project or projects. The erection, establishment or reopening of the plants and the operation thereof in the production of materials for use on the Work shall conform to the requirements relating to labor set forth in the specifications and in these General Provisions.

8-1.02 Assignment

Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any Construction Supplement or any part thereof including any claims, without prior written consent of MST.

Any assignment without the written consent of MST shall be void. Any assignment of money due or to become due under this Contract or any Construction Supplement shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

8-1.03 Beginning of Work

Contractor shall receive a Notice To Proceed (NTP) from MST after execution of the Construction Supplement including submission and acceptance of all insurance certificates and bonds by Contractor. MST will issue the NTP within 30 days of the execution of the Construction Supplement. The NTP will specify the first contract working day of a Construction Supplement. Contractor shall begin work within 15 calendar days of first working day specified in the NTP and shall diligently prosecute the same to completion within the time limit provided in the Construction Supplement.

All work, except the requirement to maintain the landscaped areas for the plant establishment period as herein specified, shall be completed in place and ready for initial acceptance before the expiration of (TBD) working days from the start date specified in the NTP. Acceptance shall be as provided in Subsection 7-6.05, "Acceptance of the Work," of these General Provisions. Upon receipt of written notice of such initial acceptance, Contractor shall

CM/GC General Provisions

initiate and diligently prosecute maintaining the landscaped areas for a plant establishment period as defined in the Construction Supplement.

8-1.04 Progress Schedule for Construction supplements

I. Progress Schedule for Projects over \$5,000,001 (Critical Path Method)

Contractor shall submit to the Engineer in an electronic format practicable Critical Path Method (CPM) progress schedules in conformance with these General Provisions. Whenever the term "schedule" is used in this Section, it shall mean CPM progress schedule.

A. Definitions

The following definitions shall apply to this Section:

1. Activity. A task, event or other project element on a schedule that contributes to completing the project. Activities have a description, start date, finish date, duration and one or more logic ties.
2. Baseline Schedule. The initial schedule representing Contractor's work plan on the first working day of the project.
3. Construction Supplement Completion Date. The current extended date for completion of the Construction Supplement shown on the weekly statement of working days furnished by the Engineer in conformance with the provisions in Section 8-1.06, "Time of Completion."
4. Critical Path. The longest continuous chain of activities for the project that has the least amount of total float of all chains. In general, a delay on the critical path will extend the scheduled completion date.
5. Critical Path Method. A network based planning technique using activity durations and the relationships between activities to mathematically calculate a schedule for the entire project.
6. Data Date. The day after the date through which a schedule is current. Everything occurring earlier than the data date is "as-built" and everything on or after the data date is "planned."
7. Early Completion Time. The difference in time between an early scheduled completion date and the Construction Supplement completion date.

8. Float. The difference between the earliest and latest allowable start or finish times for an activity.
9. Milestone. Event activity that has zero duration and is typically used to represent the beginning or end of a certain stage of the project.
10. Narrative Report. A document submitted with each schedule that discusses topics related to project progress and scheduling.
11. Near Critical Path. A chain of activities with total float exceeding that of the critical path but having no more than twenty (20) working days of total float.
12. Scheduled Completion Date. The planned project finish date shown on the current accepted schedule.
13. MST-Owned Float Activity. The activity documenting time saved on the critical path by actions of MST. It is the last activity prior to the scheduled completion date.
14. Time Impact Analysis (TIA). A schedule and narrative report developed specifically to demonstrate what effect a proposed change or delay has on the current scheduled completion date.
15. Total Float. The amount of time that an activity or chain of activities can be delayed before extending the scheduled completion date.
16. Update Schedule. A current schedule developed from the baseline or subsequent schedule through regular monthly review to incorporate as-built progress and any planned changes.

B. General Requirements

The Preliminary CPM Construction Schedule as submitted and approved by the Engineer under the Preconstruction Services Agreement as the time basis for the negotiated TCP lump sum price shall be included herein as Contractor's Baseline Schedule. The Baseline Schedule shall include milestones, activities, and logic links to all future supplement construction work, third party interfaces and access requirements for all work contemplated in the original CM/GC procurement and as required by the Engineer.

Contractor may provide one schedule for all work as contemplated in the original CM/GC procurement or

separate logically linked and updated schedules for each construction supplement issued by MST for all work as contemplated in the original CM/GC procurement.

Contractor shall submit to the Engineer a baseline, monthly update and final update schedules, each consistent in all respects with the time and order of work requirements of the Construction Supplement. The project work shall be executed in the sequence indicated on the current accepted schedule.

Schedules shall show the order in which Contractor proposes to carry out the work with logical links between time-scaled work activities, and calculations made using the critical path method to determine the controlling operation or operations. Contractor is responsible for assuring that all activity sequences are logical and that each schedule shows a coordinated plan for complete performance of the Work.

Contractor shall produce schedules using computer software and shall furnish compatible software for the Engineer's exclusive possession and use. Contractor shall furnish network diagrams, narrative reports, tabular reports and schedule data as parts of each schedule submittal.

Schedules shall include, but not be limited to, activities that show the following that are applicable to the project:

1. Project characteristics, salient features, or interfaces, including those with outside entities that could affect time of completion.
2. Project start date, scheduled completion date, and other milestones.
3. Work performed by Contractor, subcontractors and suppliers.
4. Submittal development, delivery, review, and approval, including those from Contractor, subcontractors and suppliers.
5. Procurement, delivery, installation and testing of materials, plants, and equipment.
6. Testing and settlement periods.
7. Utility notification and relocation.
8. Erection and removal of falsework and shoring.

9. Major traffic stage switches.
10. Finishing roadway and final cleanup.
11. MST-owned float as the predecessor activity to the scheduled completion date.

Schedules shall have not less than 50 and not more than 500 activities, unless otherwise authorized by the Engineer. The number of activities shall be sufficient to assure adequate planning of the project, to permit monitoring and evaluation of progress, and to do an analysis of time impacts.

Schedule activities shall include the following:

1. A clear and legible description.
2. Start and finish dates.
3. A duration of not less than one working day, except for event activities, and not more than 20 working days, unless otherwise authorized by the Engineer.
4. At least one predecessor and one successor activity, except for project start and finish milestones.
5. Required and known constraints.
6. Codes for responsibility, stage, work shifts, location and contract pay item numbers unless a Schedule of Values with TCP Items is submitted.

Contractor may show early completion time on any schedule provided that the requirements of the Construction Supplement are met. Early completion time shall be considered a resource for the exclusive use of Contractor. Contractor may increase early completion time by improving production, reallocating resources to be more efficient, performing sequential activities concurrently or by completing activities earlier than planned.

Contractor may show a scheduled completion date that is later than a Construction Supplement completion date on an updated schedule, after the baseline schedule is accepted. Contractor shall provide an explanation for a late scheduled completion date in the narrative report that is included with the schedule.

MST-owned float shall be considered a resource for the exclusive use of MST. The Engineer may accrue

MST-owned float by the early completion of review of any type of required submittal when it saves time on the critical path. Contractor shall prepare a time impact analysis, when requested by the Engineer, to determine the effect of the action in conformance with the provisions in "Time Impact Analysis" specified herein. The Engineer will document MST-owned float by directing Contractor to update the MST-owned float activity on the next update schedule. Contractor shall include a log of the action on the MST-owned float activity and include a discussion of the action in the narrative report. The Engineer may use MST-owned float to mitigate past, present or future MST delays by offsetting potential time extensions for contract change orders.

The Engineer may adjust working days for ordered changes that affect the scheduled completion date, in conformance with the Contract. Contractor shall prepare a time impact analysis to determine the effect of the change in conformance with the provisions in "Time Impact Analysis" specified herein, and shall include the impacts acceptable to the Engineer in the next update schedule. Changes that do not affect the controlling operation on the critical path will not be considered as the basis for a time adjustment. Changes that do affect the controlling operation on the critical path will be considered by the Engineer in decreasing time or granting an extension of time for completion of the Construction Supplement. Time extensions will only be granted if the total float is absorbed and the scheduled completion date is delayed one or more working days because of the ordered change.

The Engineer's review and acceptance of schedules shall not waive any contract requirements and shall not relieve Contractor of any obligation thereunder or responsibility for submitting complete and accurate information. Schedules that are rejected shall be corrected by Contractor and resubmitted to the Engineer within five (5) working days of notification by the Engineer, at which time a new review period of one (1) week will begin.

Errors or omissions on schedules shall not relieve Contractor from finishing all work within the time limit specified for completion of the Construction. If, after a schedule has been accepted by the Engineer, either Contractor or the Engineer discover that any aspect of the schedule has an error or omission, it shall be corrected by Contractor on the next update schedule.

C. Computer Software

Contractor shall use software that is compatible with Primavera 6.0.

D. Network Diagrams, Reports, and Data

Contractor shall include the following for each schedule submittal:

1. Two sets of originally plotted, time-scaled network diagrams.
2. Two copies of a narrative report.
3. Two copies of each of three sorts of the CPM software-generated tabular reports.
4. One Read Only Non-Rewritable CD (CD-ROM).

The time-scaled network diagrams shall conform to the following:

1. Show a continuous flow of information from left to right.
2. Be based on early start and early finish dates of activities.
3. Clearly show the primary paths of criticality using graphical presentation.
4. Be prepared on E-size sheets, 34-inch x 44-inch or approved equivalent.
5. Include a title block and a timeline on each page.

The narrative report shall be organized in the following sequence with all applicable documents included:

1. Contractor's transmittal letter.
2. Work completed during the period.
3. Identification of unusual conditions or restrictions regarding labor, equipment or material; including multiple shifts, six-day work weeks, specified overtime or work at times other than regular days or hours.
4. Description of the current critical path.
5. Changes to the critical path and scheduled completion date since the last schedule submittal.
6. Description of problem areas.

7. Current and anticipated delays:
 - a. Cause of delay.
 - b. Impact of delay on other activities, milestones and completion dates.
 - c. Corrective action and schedule adjustments to correct the delay.

8. Pending items and status thereof:
 - a. Permits.
 - b. Change orders.
 - c. Time adjustments.
 - d. Noncompliance notices.

9. Reasons for an early or late scheduled completion date in comparison to the Contract completion date.

Tabular reports shall be software-generated and provide information for each activity included in the project schedule. Three different reports shall be sorted by (1) activity number; (2) early start; and (3) total float. Tabular reports shall be 8-1/2-inch by 11-inch in size and shall include, as a minimum, the following applicable information:

1. Data date.
2. Activity number and description.
3. Predecessor and successor activity numbers and descriptions.
4. Activity codes.
5. Scheduled, or actual and remaining durations (work days) for each activity.
6. Earliest start (calendar) date.
7. Earliest finish (calendar) date.
8. Actual start (calendar) date.

9. Actual finish (calendar) date.
10. Latest start (calendar) date.
11. Latest finish (calendar) date.
12. Free float (work days).
13. Total float (work days).
14. Percentage of activity complete and remaining duration for incomplete activities.
15. Lags.
16. Required constraints.

Schedule submittals will only be considered complete when all documents and data have been provided as described above. Submission by email will not be accepted.

E. Pre-Construction Scheduling Conference

Contractor shall schedule and the Engineer will conduct a pre-construction scheduling conference with Contractor's project manager and construction scheduler within 10 working days of the approval of the Construction Supplement.

Contractor shall submit a general time-scaled logic diagram displaying the major activities and sequence of planned operations and shall be prepared to discuss the proposed work plan and schedule methodology that comply with the requirements of these General Provisions. If Contractor proposes deviations to the construction staging of the project, then the general time-scaled logic diagram shall also display the deviations and resulting time impacts. Contractor shall be prepared to discuss the proposal.

At this meeting, Contractor shall submit the alphanumeric coding structure and the activity identification system for labeling the work activities. To easily identify relationships, each activity description shall indicate its associated scope or location of work by including such terms as quantity of material, type of work, bridge number, station to station location, side of highway (such as left, right, northbound, southbound), lane number, shoulder, ramp name, ramp line descriptor or mainline.

The Engineer will review the logic diagram, coding structure, and activity identification system, and provide any required baseline schedule changes to Contractor for implementation.

F. Baseline Schedule

The baseline schedule as accepted by the Engineer in the preconstruction services TCP negotiations shall be the Baseline Schedule and made part of the Construction Supplement.

Contractor shall submit to the Engineer any proposed changes to the baseline schedule within 20 working days of approval of the Construction Supplement. Contractor shall allow three weeks for the Engineer's review after the proposed changes to the baseline schedule and all supporting data is submitted. In addition, the baseline schedule submittal will not be considered complete until the computer software is delivered and installed for use in review of the schedule.

The baseline schedule shall include the entire scope of work and how Contractor plans to complete all work contemplated. The baseline schedule shall show the activities that define the critical path. Multiple critical paths and near-critical paths shall be kept to a minimum. A total of not more than 50 percent of the baseline schedule activities shall be critical or near critical, unless otherwise authorized by the Engineer. In addition, the baseline schedule shall provide either one schedule for all work as contemplated in the original CM/GC procurement or logically linked interfacing activities to separate schedules for each construction contract or major contract work package issued by MST for all work as contemplated in the original CM/GC procurement.

The baseline schedule shall not extend beyond the number of working days specified in these General Provisions. The baseline schedule shall have a data date of the first working day of the Construction Supplement and not include any completed work to date. The baseline schedule shall not attribute negative float or negative lag to any activity.

Subsequent to the time that submittal of a progress schedule is required in accordance with these specifications, no progress payments will be made for any work until a satisfactory schedule has been submitted by the Engineer.

G. Update Schedule

Contractor shall submit an update schedule and meet with the Engineer to review progress, on or before the first day of each month. Contractor shall allow two weeks for the Engineer's review after the update

schedule and all support data are submitted, except that the review period shall not start until the previous month's required schedule is accepted. Update schedules that are not accepted or rejected within the review period will be considered accepted by the Engineer.

The update schedule shall have a data date of the 21st day of the month or other date established by the Engineer. The update schedule shall show the status of work actually completed to date and the work yet to be performed as planned. Actual activity start dates, percent complete and finish dates shall be shown as applicable. Durations for work that has been completed shall be shown on the update schedule as the work actually occurred, including Engineer submittal review and Contractor resubmittal times.

Contractor may include modifications such as adding or deleting activities or changing activity constraints, durations or logic that do not (1) alter the critical path(s) or near critical path(s); or (2) extend the scheduled completion date compared to that shown on the current accepted schedule. Contractor shall state in writing the reasons for any changes to planned work. If any proposed changes in planned work will result in (1) or (2) above, then Contractor shall submit a time impact analysis as described herein.

H. **Time Impact Analysis (TIA)**

Contractor shall submit a written TIA to the Engineer with each request for adjustment of contract time, or when Contractor or Engineer consider that an approved or anticipated change may impact the critical path or contract progress.

The TIA shall illustrate the impacts of each change or delay on the current scheduled completion date or internal milestone, as appropriate. The analysis shall use the accepted schedule that has a data date closest to and prior to the event. If the Engineer determines that the accepted schedule used does not appropriately represent the conditions prior to the event, the accepted schedule shall be updated to the day before the event being analyzed. The TIA shall include an impact schedule developed from incorporating the event into the accepted schedule by adding or deleting activities, or by changing durations or logic of existing activities. If the impact schedule shows that incorporating the event modifies the critical path and scheduled completion date of the accepted schedule, the difference between scheduled completion dates of the two schedules shall be equal to the adjustment of contract time. The Engineer may construct and utilize an appropriate project schedule or other recognized method to determine adjustments in contract time until Contractor provides the TIA.

Contractor shall submit a TIA in duplicate within 15 working days of receiving a written request for a TIA from the Engineer. Contractor shall allow the Engineer two weeks after receipt to approve or reject the submitted TIA. All approved TIA schedule changes shall be shown on the next update schedule.

If a TIA submitted by Contractor is rejected by the Engineer, Contractor shall meet with the Engineer to discuss and resolve issues related to the TIA. If agreement is not reached, Contractor will be allowed 15 days from the meeting with the Engineer to give notice in conformance with the provisions in Section 8-1.15, "Notice of Potential Claim," of these General Provisions. Contractor shall only show actual as-built work, not unapproved changes related to the TIA, in subsequent update schedules. If agreement is reached at a later date, approved TIA schedule changes shall be shown on the next update schedule. The Engineer will withhold remaining payment on the schedule contract item if a TIA is requested by the Engineer and not submitted by Contractor within 15 working days. The schedule item payment will resume on the next estimate after the requested TIA is submitted. No other Construction Supplement payment will be retained regarding TIA submittals.

I. Final Update Schedule

Contractor shall submit a final update, as-built schedule with actual start and finish dates for the activities, within 30 days after completion of contract work. Contractor shall provide a written certificate with this submittal signed by Contractor's project manager and an officer of the company stating, "To my knowledge and belief, the enclosed final update schedule reflects the actual start and finish dates of the actual activities for the project contained herein." An officer of the company may delegate in writing the authority to sign the certificate to a responsible manager.

J. Withholding for Failure to Submit an Acceptable Schedule

MST may withhold an amount up to 25 percent of the estimated value of the work performed during each estimate period in which Contractor fails to submit an acceptable schedule conforming to the requirements of these General Provisions as determined by the Engineer. Schedule withholdings will be released for payment on the next monthly estimate for partial payment following the date that acceptable schedules are submitted to the Engineer or as otherwise specified herein. Upon completion of all Construction Supplement work and submittal of the final update schedule and certification, any remaining retained funds associated with this Section will be released for payment. Withholdings held in conformance with this Section 8-1.04 shall be in addition to other retentions or withholds provided for in the Construction. No interest will be due Contractor on withhold amounts.

K. Payment

Contractor shall include a lump sum TCP Item for Progress schedule (critical path method) in their TCP. Progress schedule (critical path method) will be paid at the lump sum TCP Item price. The TCP lump sum

item price paid for progress schedule (critical path method) shall include full compensation for furnishing all labor, material, tools, equipment, and incidentals, including computer software, and for doing all the work involved in preparing, furnishing, and updating schedules, and instructing and assisting the Engineer in the use of computer software, as specified in the Standard Specifications and these General Provisions, and as directed by the Engineer.

Payments for the progress schedule (critical path method) TCP Item will be made progressively as follows:

1. A total of 25 percent of the lump sum amount listed for progress schedule (critical path method) in the TCP will be paid upon achieving all of the following:
 - a. Completion of five percent of all TCP Item work.
 - b. Acceptance of all schedules and TIAs required to the time when five percent of all TCP Item work is complete.
 - c. Delivery of schedule software to the Engineer.
 - d. Completion of required schedule software training.
2. A total of 50 percent of the lump sum amount listed for progress schedule (critical path method) in the TCP will be paid upon completion of 25 percent of all contract item work and acceptance of all schedules and TIAs required to the time when 25 percent of all TCP Item work is complete.
3. A total of 75 percent of the lump sum amount listed for progress schedule (critical path method) in the TCP will be paid upon completion of 50 percent of all TCP Item work and acceptance of all schedules and TIAs required to the time when 50 percent of all TCP Item work is complete.
4. A total of 100 percent of the lump sum amount listed for progress schedule (critical path method) in the TCP will be paid upon completion of all TCP Item work, acceptance of all schedules and TIAs required to the time when all TCP Item work is complete, and submittal of the certified final update schedule.

If Contractor fails to complete any of the Work or provide any of the schedules required by this Section, the Engineer shall make an adjustment in compensation in conformance with this Contract for the work not performed. Adjustments in compensation for schedules will not be made for any increased or decreased work ordered by the Engineer in furnishing schedules.

8-1.05 Temporary Suspension of Work

The Engineer shall have the authority to suspend the Work wholly or in part, for any time period as the Engineer deems necessary, due to unsuitable weather, or to such other conditions considered unfavorable for the suitable prosecution of the Work, or for any time period as the Engineer deems necessary due to the failure on the part of Contractor to carry out orders given, or to perform any provision of the Construction Supplement. Contractor shall immediately comply with the written order of the Engineer to suspend the Work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Engineer.

In the event that a suspension of work is ordered as provided above, and should that suspension be ordered by reason of the failure of Contractor to carry out orders or to perform any provision of the supplement; or by reason of weather conditions being unsuitable for performing any item or items of work, which work, in the sole opinion of the Engineer, could have been performed prior to the occurrence of the unsuitable weather conditions had Contractor diligently prosecuted the Work when weather conditions were suitable; Contractor, at Contractor's expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic or rail traffic during the period of that suspension as provided in the Contract. If Contractor fails to perform the work above specified, MST will perform that work and the cost thereof will be deducted from moneys due or to become due Contractor.

In the event that a suspension of work is ordered by the Engineer due to unsuitable weather conditions, and in the sole opinion of the Engineer, Contractor has prosecuted the work with energy and diligence prior to the time that operations were suspended, the cost of providing a smooth and unobstructed passageway through the Work will be paid for as Extra Work as provided in this Contract or, at the option of the Engineer, that work will be performed by MST at no cost to Contractor.

If the Engineer orders a suspension of all of the Work or a portion of the Work which is the current controlling operation or operations, due to unsuitable weather or to other conditions considered unfavorable to the suitable prosecution of the Work, the days on which the suspension is in effect shall not be considered working days as defined in Section 8-1.06, "Time of Completion." If a portion of work at the time of the suspension is not a current controlling operation or operations, but subsequently does become the current controlling operation or operations, the determination of working days will be made on the basis of the then current controlling operation or operations.

If a suspension of work is ordered by the Engineer, due to the failure on the part of Contractor to carry out orders given or to perform any provision of the contract, the days on which the suspension order is in effect shall be considered working days if those days are working days within the meaning of the definition set forth in Section 8-

1.06, "Time of Completion."

In addition to the requirements specified above, the following shall apply:

- A. If the performance of all or any portion of the Work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and Contractor believes that additional compensation or contract time or additional compensation and contract time is due as a result of that suspension or delay, Contractor shall submit to the Engineer in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for the adjustment.
- B. Upon receipt, the Engineer will evaluate Contractor's request. If the Engineer agrees that the cost or time or cost and time required for the performance of the Construction Supplement has increased as a result of the suspension and the suspension was caused by conditions beyond the control of and not the fault of Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the Construction in writing accordingly. The Engineer will notify Contractor of the Engineer's determination whether or not an adjustment of the Construction Supplement is warranted.
- C. No supplement adjustment will be allowed unless Contractor has submitted the request for adjustment within the time prescribed.
- D. No supplement adjustment will be allowed under the provisions specified in this Section to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any term or condition of this Construction Supplement.
- E. Any supplement adjustment warranted due to suspension of work ordered by the Engineer will be made in the same manner as provided for ROW delays in Section 8-1.08, "Right-of-Way Delays."

In the event of a suspension of work under any of the conditions set forth in this Section, the suspension of work shall not relieve Contractor of the responsibilities as set forth in Section 7, "Legal Relations and Responsibility."

8-1.06 Time Of Completion

Contractor shall complete all or any designated portion of the Work called for under the Construction Supplement in all parts and requirements within the time set forth in these General Provisions.

A working day is defined as any day, except as follows:

- A. Saturdays, Sundays, and legal holidays.
- B. Days on which Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on that operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.
- C. Days on which Contractor is prevented, by reason of requirements in "Maintaining Rail and Traffic" of these General Provisions, from working on the controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.

Should Contractor prepare to begin work at the regular starting time of any day on which inclement weather, or the conditions resulting from the weather, or the condition of the Work, prevents the Work from beginning at the usual starting time and the crew is dismissed as a result thereof and Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, Contractor will not be charged for a working day whether or not conditions should change thereafter during that day and the major portion of the day could be considered to be suitable for those construction operations.

The current controlling operation or operations is to be construed to include any feature of the Work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer and Contractor, which, if delayed or prolonged, will delay the time of completion of the Contract.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer. Contractor will be allowed fifteen days from the issuance of the weekly statement of working days in which to file a written protest setting forth in what respects Contractor differs from the Engineer; otherwise, the decision of the Engineer shall be deemed to have been accepted by Contractor as correct. The Engineer will furnish Contractor a weekly statement showing the number of working days charged to the Construction Supplement for the preceding week, the number of working days of time extensions being considered or approved, the number of working days originally specified for the completion of the Construction Supplement and the number of working days remaining to complete the Construction Supplement and the extended date for completion thereof, except when working days are not being charged in conformance with the provisions in Section 8-1.05, "Temporary Suspension of Work."

8-1.07 Liquidated Damages

Contractor shall pay to MST the sum of \$15,000 for each and every day's delay in finishing the Work in excess of the date prescribed above for completing all of the Work except the requirement to maintain the landscaped areas for the plant establishment period.

The time limit specified for the completion of the Work contemplated herein is, in the opinion of the Engineer, sufficient to permit completion of the Work by Contractor working at least one shift per day five days each week. Should Contractor fail to maintain the progress of the Work in accordance with the Progress Schedule required in these General Provisions, additional overtime and/or additional crews will be required to the extent necessary to ensure that the progress conforms to the above-mentioned schedule and that the Work will be completed within the time limit specified.

In the event that all the Work called for under the Construction Supplement in all parts and requirements is not finished or completed within the number of working days as set forth in these General Provisions, damage will be sustained by MST, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which MST will sustain in the event of and by reason of the delay; and it is therefore agreed that Contractor will pay to MST, the sum set forth in these General Provisions per day for each and every calendar day's delay in finishing the Work in excess of the number of working days prescribed; and Contractor agrees to pay the liquidated damages herein provided for, and further agrees that MST may deduct the amount thereof from any moneys due or that may become due Contractor under the Construction Supplement.

If the Work called for under the Construction Supplement is not finished and completed in all parts and requirements within the number of working days specified, the Engineer shall have the right to increase the number of working days or not, as the Engineer may deem best to serve the interest of MST, and if the Engineer decides to increase the number of working days, the Engineer shall further have the right to charge to Contractor, or Contractor's heirs, assigns or sureties and to deduct from the final payment for the Work all or any part, as the Engineer may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Construction Supplement, and which accrue during the period of the extension, except that cost of final surveys and preparation of final estimate shall not be included in the charges.

Contractor will be granted an extension of time and will not be assessed liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the Work beyond the time named in these General Provisions for the completion of the Work caused by acts of God or of the public enemy, fire, floods, tsunamis, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, provided that Contractor shall notify the Engineer in writing of the causes of delay within five calendar days from the beginning of that delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

CM/GC General Provisions

No extension of time will be granted for a delay caused by a shortage of materials unless Contractor furnishes to the Engineer documentary proof that Contractor has made every effort to obtain the materials from all known sources within reasonable reach of the Work in a diligent and timely manner, and further proof in the form of supplementary progress schedules, as required in Section 8-1.04, "Progress Schedule for Construction Supplements," that the inability to obtain the materials when originally planned, did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of Contractor's operations. The term "shortage of materials" shall apply only to materials, articles, parts or equipment which are standard items and are to be incorporated in the Work; "shortage of materials" shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the Construction Supplement. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.

If Contractor is delayed in completion of the Work by reason of changes made under Section 4-1.03, "Changes," or by failure of MST to acquire or clear ROW, or by any act of the Engineer or of MST, not contemplated by the Construction Supplement, an extension of time commensurate with the delay in completion of the Work thus caused will be granted, and Contractor shall be relieved from any claim for liquidated damages, or engineering and inspection charges or other penalties for the period covered by that extension of time; provided that Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of the delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

Except for the additional compensation provided for in Section 8-1.08, "Right-of-Way Delays," and except as provided in Public Contract Code Section 7102, Contractor shall have no claim for damage or compensation for any delay or hindrance.

It is the intention of the above provisions that Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in completion of the Work in excess of that expressly provided for in this Section.

8-1.08 Right-of-Way Delays

If, through the failure of MST to acquire or clear ROW, Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to Contractor that amount that the Engineer may find to be a fair and reasonable compensation for that part of Contractor's actual loss, that, in the opinion of the Engineer, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis, as provided in Section 9-1.05A(3), "Equipment Rental," with the following exceptions:

- A. The right-of-way delay factor for each classification of equipment shown in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is a part of the Construction Supplement, will be applied to that equipment rental rate.
- B. The time for which the compensation will be paid will be the actual normal working time during which the delay condition exists, but in no case will exceed eight hours in any one day.
- C. The days for which compensation will be paid will be the calendar days, excluding Saturdays, Sundays, and legal holidays, during the existence of the delay, except that when rental of equipment is paid for under the provisions in Section 9-1.05A (3b), "Equipment Not on the Work," no payment will be made for right-of-way delays in conformance with this Section.

Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of workers, cost of extra moving of equipment, and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this Section 8-1.08 and compensation for idle time of workers will be determined as provided in Section 9-1.05A(1), "Labor," and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided in Section 4-1.03D, "Extra Work."

If performance of Contractor's work is delayed as the result of the failure of MST to acquire or clear right-of-way, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages" will be granted.

8-1.09 Utility, Non-Highway, and Non-Railway Facilities

Contractor shall protect from damage utility and other non-highway on non-railway facilities that are to remain in place, be installed, relocated, or otherwise rearranged.

It is anticipated that some or all of the utility and other non-highway, non-railway facilities, both above ground and below ground, that are required to be rearranged (as used herein, rearrangement includes installation, relocation, alteration, or removal) as a part of the railway or highway improvement will be rearranged in advance of construction operations. Where it is not anticipated that the rearrangement will be performed prior to construction, or where the rearrangement must be coordinated with Contractor's construction operations, the existing facilities

that are to be rearranged will be indicated on the plans or in these General Provisions. Where a rearrangement is indicated on the plans or in these General Provisions, Contractor will have no liability for the costs of performing the work involved in the rearrangement.

The right is reserved to MST and the owners of facilities, or their authorized agents, to enter upon the railway or highway right-of-way for the purpose of making those changes that are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. Contractor shall cooperate with forces engaged in this work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by the other forces. Wherever necessary, the work of Contractor shall be coordinated with the rearrangement of utility or other non-highway, non-railway facilities, and Contractor shall make arrangements with the owner of those facilities for the coordination of the Work.

Attention is directed to the possible existence of underground main or trunk line facilities not indicated on the plans or in these General Provisions and to the possibility that underground main or trunk lines may be in a location different from that which is indicated on the plans or in these General Provisions. Contractor shall ascertain the exact location of underground main or trunk lines whose presence is indicated on the plans or in these General Provisions, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters and junction boxes prior to doing work that may damage any of the facilities or interfere with their service.

If Contractor cannot locate an underground facility whose presence is indicated on the plans or in these General Provisions, Contractor shall so notify the Engineer in writing. If the facility for which the notice is given is in a substantially different location from that indicated on the plans or in these General Provisions, the additional cost of locating the facility will be paid for as extra work as provided in Section 4, "Scope of Work."

If Contractor discovers underground main or trunk lines not indicated on the plans or in these General Provisions, Contractor shall immediately give the Engineer and the Utility Company written notification of the existence of those facilities. The main or trunk lines shall be located and protected from damage as directed by the Engineer, and the cost of that work will be paid for as extra work as provided in Section 4, "Scope of Work."

Contractor shall, if directed by the Engineer, repair any damage which may occur to the main or trunk lines. The cost of that repair work, not due to the failure of Contractor to exercise reasonable care, will be paid for as extra work as provided in Section 4-1.03D, "Extra Work." Damage due to Contractor's failure to exercise reasonable care shall be repaired at Contractor's cost and expense.

Where it is determined by the Engineer that the rearrangement of an underground facility is essential in order to

accommodate the railway or highway improvement and the plans and specifications do not provide that the facility is to be rearranged, the Engineer will provide for the rearrangement of the facility by other forces or the rearrangement shall be performed by Contractor and will be paid for as extra work as provided in Section 4, "Scope of Work."

When ordered by the Engineer in writing, Contractor shall rearrange any utility or other non-highway, non-railway facility necessary to be rearranged as a part of the highway improvement, and that work will be paid for as extra work as provided in Section 4, "Scope of Work."

Should Contractor desire to have any rearrangement made in any utility facility, or other improvement, for Contractor's convenience in order to facilitate Contractor's construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the plans or in these General Provisions, Contractor shall make whatever arrangements are necessary with the owners of the utility or other non-highway, non-railway facility for the rearrangement and bear all expenses in connection therewith.

Contractor shall immediately notify the Engineer of any delays to Contractor's operations as a direct result of underground main or trunk line facilities which were not indicated on the plans or in these General Provisions or were located in a position substantially different from that indicated on the plans or in these General Provisions, or as a direct result of utility or other non-highway facilities not being rearranged as herein provided (other than delays in connection with rearrangements made to facilitate Contractor's construction operations or delays due to a strike or labor dispute). These delays will be considered ROW delays within the meaning of Section 8-1.08, "Right-of-Way Delays," and compensation for the delay will be determined in conformance with the provisions in this Section 8-1.09. Contractor shall be entitled to no other compensation for that delay.

Any delays to Contractor's operations as a direct result of utility or other non-highway, non-railway facilities not being rearranged as provided in this Section 8-1.09, due to a strike or labor dispute, will entitle Contractor to an extension of time as provided in Section 8-1.07, "Liquidated Damages." Contractor shall be entitled to no other compensation for that delay.

8-1.10 Notice of Potential Claim

Disputes between the parties arising under and by virtue of the Construction Supplement shall be brought to the attention of the Engineer at the earliest possible time in order that the matters may be resolved, if possible, or other appropriate action promptly taken.

Disputes will not be considered unless Contractor has first complied with specified notice or protest requirements, including:

- Section 4-1.03 "Changes;"
- Section 5-1.13 "Differing Site Conditions;"
- Section 8-1.06 "Time of Completion;"
- Section 8-1.07 "Liquidated Damages;" and
- Section 8-1.09 "Utility, Non Highway, and Non-Railway Facilities."

For disputes arising under and by virtue of the Agreement or Construction Supplement, including an act or failure to act by the Engineer, Contractor shall provide a signed written initial notice of potential claim to the Engineer within five days from the date the dispute first arose. The initial notice of potential claim shall provide the nature and circumstances involved in the dispute which shall remain consistent through the dispute. The Initial Notice of Potential Claim shall be submitted on the form furnished by MST (see Exhibit D for sample) and shall be certified with reference to the California False Claims Act, Government Code Sections 12650-12655. Contractor shall assign an exclusive identification number for each dispute, determined by chronological sequencing, based on the date of the dispute.

The exclusive identification number for each dispute shall be used on the following corresponding documents:

- Initial notice of potential claim
- Supplemental notice of potential claim
- Full and final documentation of potential claim
- Corresponding claim included in Contractor's written statement of claims

Contractor shall provide the Engineer the opportunity to examine the site of work within five days from the date of the initial notice of potential claim. Contractor shall proceed with the performance of work unless otherwise specified or directed by the Engineer.

Throughout the performance of the disputed work, Contractor shall maintain records that provide a clear distinction between the incurred direct costs of disputed work and that of undisputed work. Contractor shall allow the Engineer access to Contractor's project records deemed necessary by the Engineer to evaluate the potential claim within 20 days of the date of the Engineer's written request.

Within 15 days of submitting the initial notice of potential claim, Contractor shall provide a signed supplemental notice of potential claim to the Engineer that provides the following information:

- A. The complete nature and circumstances of the dispute which caused the potential claim.
- B. The Contract provisions that provide the basis of claim.
- C. The estimated cost of the potential claim, including an itemized breakdown of individual costs and

how the estimate was determined.

- D. A time impact analysis of the project schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of Construction Supplement time is made.

The information provided in items A and B above shall provide Contractor's complete reasoning for additional compensation or adjustments.

The Supplemental Notice of Potential Claim shall be submitted on that form furnished by MST (see Exhibit D for sample) and shall be certified with reference to the California False Claims Act, Government Code Sections 12650-12655. The Engineer will evaluate the information presented in the supplemental notice of potential claim and provide a written response to Contractor within 20 days of its receipt. If the estimated cost or effect on the scheduled completion date changes, Contractor shall update information in items C and D above as soon as the change is recognized and submit this information to the Engineer.

Within 30 days of the completion of work related to the potential claim, Contractor shall provide the full and final documentation of potential claim to the Engineer that provides the following information:

- I. A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of work affected by the dispute.
- II. The specific provisions of the Construction Supplement that support the potential claim and a statement of the reasons these provisions support and provide a basis for entitlement of the potential claim.
- III. When additional monetary compensation is requested, the exact amount requested calculated in conformance with Section 9-1.05 "Force Account Payment," or Section 8-1.08 "Right-of-Way Delays," including an itemized breakdown of individual costs. These costs shall be segregated into the following cost categories:
 - A. Labor - A listing of individuals, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information related to the requested reimbursement of labor costs.
 - B. Materials - Invoices, purchase orders, location of materials either stored or incorporated into the Work, dates materials were transported to the project or incorporated into the Work, and other pertinent information related to the requested reimbursement of material costs.
 - C. Equipment - Listing of detailed description (make, model, and serial number), hours of use, dates of use and equipment rates. Equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation publication entitled "Labor Surcharge and Equipment Rental

Rates," in effect when the affected work related to the dispute was performed.

D. Other categories as specified by Contractor or the Engineer.

IV. When an adjustment of contract time is requested, the following information shall be provided:

A. The specific dates for which contract time is being requested.

B. The specific reasons for entitlement to a contract time adjustment.

The specific provisions of the Contract and/or Construction Supplement that provide the basis for the requested contract time adjustment.

C. A detailed time impact analysis of the project schedule. The time impact analysis shall show the effect of changes or disruptions on the scheduled completion date to demonstrate entitlement to a contract time adjustment.

V. The identification and copies of Contractor's documents and the substance of oral communications that support the potential claim.

The Full and Final Documentation of the Potential Claim shall be submitted on that form furnished by MST (see Exhibit D for form) and shall be certified with reference to the California False Claims Act, Government Code Sections 12650-12655.

Pertinent information, references, arguments, and data to support the potential claim shall be included in the full and final documentation of potential claim. Information submitted subsequent to the full and final documentation submittal will not be considered. Information required in the full and final documentation of potential claim, as listed in items A to E above, that is not applicable to the dispute may be exempted as determined by the Engineer. No full and final documentation of potential claim will be considered that does not have the same nature and circumstances, and basis of claim as those specified on the initial and supplemental notices of potential claim.

The Engineer will evaluate the information presented in the full and final documentation of potential claim and provide a written response to Contractor within thirty (30) days of its receipt unless otherwise specified. The Engineer's receipt of the full and final documentation of potential claim shall be evidenced by postal receipt or the Engineer's written receipt if delivered by hand. If the full and final documentation of potential claim is submitted by Contractor after acceptance of the Work by the General Manager/CEO or designee, the Engineer need not provide a written response.

Provisions in this Section shall not apply to those claims for overhead costs and administrative disputes that occur after issuance of the proposed final estimate. Administrative disputes are disputes of administrative deductions or retentions, contract item quantities, contract item adjustments, interest payments, protests of contract change

orders as provided in Section 4-1.03A "Procedure and Protest," and protests of the Weekly Statement of Working Days as provided in Section 8-1.06 "Time of Completion." Administrative disputes that occur prior to issuance of the proposed final estimate shall follow applicable requirements of this Section. Information listed in the supplemental notice and full and final documentation of potential claim that is not applicable to the administrative dispute may be exempted as determined by the Engineer.

Unless otherwise specified in these General Provisions, Contractor may pursue the administrative claim process pursuant to Section 9-1.09B "Final Payment and Claims," for any potential claim found by the Engineer to be without merit.

Failure of Contractor to conform to specified dispute procedures shall constitute a failure to pursue diligently and exhaust the administrative procedures in the Contract and/or Construction Supplement, and is deemed as Contractor's waiver of the potential claim and a waiver of the right to a corresponding claim for the disputed work in the administrative claim process in conformance with Section 9-1.09B "Final Payment and Claims," and shall relieve MST from any liability for damages allegedly arising from such claims.

8-1.11 Government Code Claim

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

8-1.12 Termination

8-1.12A Termination for Default

MST may, by written notice of default to Contractor, terminate the whole or any part of this Contract and/or Construction Supplement in any one of the following circumstances:

- A. If Contractor fails to perform services within the time specified or any extension thereof.
- B. If Contractor fails to perform any of the provisions of this Contract and/or Construction Supplement, or so

fails to make progress as to endanger performance of this Contract and/or Construction Supplement in accordance with its terms, and in either of these two later circumstances does not cure such failure within a period of ten calendar days after receipt of written notice from MST specifying such failure.

- C. Should MST terminate this Contract and/or Construction Supplement in whole or in part as provided for in this Section, MST may procure, upon reasonable terms and in a reasonable manner as determined by the Engineer, services and materials similar to those so terminated so as to carry out the intent of this Contract and/or Construction Supplement. Contractor shall be liable for all costs and damages incurred by MST in procuring such similar service and materials, and this Contract and/or Construction Supplement shall be in full force and effect to the extent not so terminated. MST may utilize payments due Contractor towards reimbursement of MST cost and damages.
- D. If after notice of termination of this Contract and/or Construction Supplement it is determined for any reason that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8-1.12B, "Termination for Convenience," of these General Provisions, and Contractor shall be reimbursed for reasonable costs incurred under the terms of this Section.

8-1.12B Termination for Convenience

MST may terminate this Contract and/or Construction Supplement, in whole or in part, at any time by written notice to Contractor upon a determination by the General Manager/CEO or designee that termination of the Contract and/or Construction Supplement is in the best interest of MST. Contractor shall be paid its costs, including allowable contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to be paid to the Engineer.

8-1.13 Termination of Contract and Construction Supplement

The Contract and/or Construction Supplement may be terminated by the General Manager/CEO when termination is authorized by Section 7-4.02, "Legal Actions Against MST," Section 7-6.04, "Damage by Acts of God," or by other provisions of the Contract and/or Construction Supplement which authorize termination.

If the General Manager/CEO elects to terminate the Contract and/or Construction Supplement, the termination of the Contract and/or Construction Supplement and the total compensation payable to Contractor shall be governed by the following:

- I. The Engineer will issue Contractor a written notice signed by the General Manager/CEO, specifying that the Contract and/or Construction Supplement is to be terminated. Upon receipt of the written notice,

Contractor will be relieved of further responsibility for damage to the Work (excluding materials) as specified in Section 7-6.03, "Contractor's Responsibility for the Work and Materials," and, except as otherwise directed in writing by the Engineer, Contractor shall:

- A. Stop all work under this Contract and/or Construction Supplement except that specifically directed to be completed prior to acceptance.
- B. Perform work the Engineer deems necessary to secure the project for termination.
- C. Remove equipment and plant from the site of the Work.
- D. Take action that is necessary to protect materials from damage.
- E. Notify all subcontractors and suppliers that the Contract and/or Construction Supplement is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
- F. Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the Engineer may request.
- G. Dispose of materials not yet used in the Work as directed by the Engineer. It shall be Contractor's responsibility to provide MST with good title to all materials purchased by MST hereunder, including materials for which partial payment has been made as provided in Section 9-1.07, "Partial Payments," and with bills of sale or other documents of title for those materials.
- H. Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, Contractor shall assign to MST all the right, title and interest of the Contract and/or Construction Supplement or under subcontracts or orders for materials terminated hereunder.
- I. Furnish the Engineer with the documentation required to be furnished by the or under the provisions of the Contract and/or Construction Supplement including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the Contract and/or Construction Supplement.
- J. Take other actions directed by the Engineer.

Acceptance of the Contract and/or Construction Supplement as hereinafter specified shall not relieve Contractor of responsibility for damage to materials. Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

- A. Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 9-1.07, "Partial Payments," and for materials furnished by MST for use in the Work and unused shall terminate when the Engineer certifies that those materials have been stored in the manner and at the locations the Engineer has directed.
- B. Contractor's responsibility for damage to materials purchased by MST subsequent to the issuance of the notice that the Contract and/or Construction Supplement is to be terminated shall terminate when title and delivery of those materials has been taken by MST.
- C. When the Engineer determines that Contractor has completed the Work under the Contract and/or Construction Supplement directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Engineer will recommend that the General Manager/CEO formally accept the Contract and/or Construction Supplement, and immediately upon and after the acceptance by the General Manager/CEO, Contractor will not be required to perform any further work thereon and shall be relieved of the contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the General Manager/CEO.

Termination of the Contract and/or Construction Supplement shall not relieve the surety of its obligation for any just claims arising out of the Work performed.

The total compensation to be paid to Contractor shall be determined by the Engineer on the basis of the following:

- A. The reasonable cost to Contractor, without profit, for all work performed under the Contract and/or Construction Supplement, including mobilization, demobilization and work done to secure the project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. Deductions will also be made, when the Contract and/or Construction Supplement is terminated under the authority of Section 7-6.04, "Damage by Acts of God," for the cost of materials damaged by the "occurrence."
- B. When, in the opinion of the Engineer, the cost of a Construction Supplement item of work is

excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

- C. A reasonable allowance for profit on the cost of the work performed as determined under Subsection 1, provided Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that Contractor would have made a profit had the Construction Supplement been completed and provided further, that the profit allowed shall in no event exceed 4 percent of the cost.
- D. The reasonable cost to Contractor of handling material returned to the vendor, delivered to MST or otherwise disposed of as directed by the Engineer.
- E. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Contract and/or Construction Supplement.

All records of Contractor and Contractor's subcontractors, necessary to determine compensation in conformance with the provisions in this Section, shall be open to inspection or audit by representatives of MST at all times after issuance of the notice that the Contract and/or Construction Supplement is to be terminated and for a period of three years, thereafter, and those records shall be retained for that period.

After acceptance of the Work by the General Manager/CEO or designee, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate in conformance with the provisions in Section 9-1.09B, "Final Payment and Claims," when, in the Engineer's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the Contract and/or Construction Supplement. The provisions in this Section shall be included in all subcontracts.

8-1.14 Dispute Resolution

Unless otherwise directed by MST, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

- V. **Claims Less Than \$375,000.** In accordance with Public Contract Code sections 20104 et seq. and other applicable law, public works claims of \$375,000 or less which arise between

Contractor and MST shall be resolved under the following the statutory procedure unless MST has elected to resolve the dispute pursuant to Public Contract Code section 10240 et seq.

- II. **Claims Under \$50,000.** MST shall respond in writing to the claim within 45 days of receipt of the claim, or, MST may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims MST may have. If additional information is needed thereafter, it shall be provided promptly upon written request by MST. MST's written response shall be submitted 15 days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.
- III. **Claims over \$50,000 but less than or equal to \$375,000.** MST shall respond in writing within 60 Days of receipt, or, may request in writing within 30 Days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims MST may have against the claimant. If additional information is needed thereafter, it shall be provided upon request. MST's response shall be submitted within 30 Days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. Contractor shall make these records and documents available at all reasonable times, without any direct charge.

8-1.14A Resolution of Disputes, Breaches, and/or Other Litigation

At all times during the dispute resolution process Contractor shall continue with work as stated in the Construction Supplement and as directed by the Engineer in a diligent manner and without delay.

Disputes— Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the MST General Manager/CEO. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the General Manager/CEO requesting a hearing before the Dispute Review Board.

The General Manager/CEO may decline to issue a decision on any dispute, and may at his or her own direction, refer the matter to the Dispute Review Board.

Claims for Damages— Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Rights and Remedies— The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and

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remedies otherwise imposed or available by law. No action or failure to act by the MST, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

8-1.14B Dispute Review Board

A Dispute Review Board shall be established, if necessary, to assist in the resolution of disputes, claims, and other controversies arising under or related to performance of the Construction Supplement. The purpose of the Dispute Review Board will be to assist in facilitating the timely and equitable resolution of disputes between MST and Contractor in order to avoid construction delays and costly litigation.

The Dispute Review Board shall fairly and impartially consider disputes referred to it and shall provide written recommendations in a timely manner, generally within 30 calendar days, based upon a best interpretation of the Construction Supplement Plans and General Provisions, and not just a division of the differences between the parties. The recommendations shall be supported by reasons for each recommendation. Recommendations made by the Dispute Review Board will be nonbinding to either party. However, the recommendations will be discoverable in the event of litigation by either party.

The Dispute Review Board will consist of one member selected by MST and approved by Contractor, one member selected by Contractor and approved by MST, and a third member selected by the first two members and approved by both MST and Contractor. Normally, the third member will act as the Chairman for all Dispute Review Board activities.

All Dispute Review Board members shall have had substantial experience with the type of construction involved in the Construction Supplement and in interpretation of Construction Supplement documents. The goal in selecting the third member is to complement the construction experience of the first two and to provide leadership for the Dispute Review Board activities.

It is imperative that the Dispute Review Board members show no partiality to either Contractor or MST or have any conflicts of interest. During the members tenure on the Dispute Review Board, no member shall be employed by any party to the Construction Supplement. No member shall have a financial or personal interest in any party to the Construction Supplement except for payment of services as a member of the Dispute Review Board.

MST and Contractor shall each select and negotiate a working agreement with their respective member within 15 calendar days after either party decides that the Construction Supplement requires the services of a Dispute Review Board. Immediately after approval of their respective members, MST and Contractor shall notify their

members to begin selection of the third member. The third member shall be selected within three weeks after the first two members are notified to proceed establishing the Board. In the event of an impasse in selection of the third member, that member shall be selected by mutual agreement of MST and Contractor. In so doing, MST and Contractor may consider all offered nominees.

MST shall initiate the Dispute Review Board Three Party Agreement by preparing a Construction Supplement change order in cooperation with Contractor and in accordance with Section 4, "Scope of Work" All three members of the Dispute Review Board shall provide written assurance that they will abide by the Construction Supplement change order requirements within 15 calendar days after the execution of the change order and the selection of the third panel member.

Fees and expenses of all three members of the Board shall be shared equally by MST and Contractor. MST will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services. If the Dispute Review Board desires special services, such as legal consultation, accounting, and data research, both parties must agree, and the cost shall be shared by them as mutually agreed.

Contractor shall pay the invoices of the Dispute Review Board members and any special services the Board requires. Contractor will then receive payment from MST for 50 percent of such invoices billed against the approved change order. No member of the Dispute Review Board can be unilaterally removed without prior written consent of the other party.

8-1.15 Notice of Potential Claim

It is the intention of this Section 8-1.15 that disputes between the parties arising under and by virtue of the Construction Supplement be brought to the attention of the Engineer at the earliest possible time in order that the matters may be resolved, if possible, or other appropriate action promptly taken.

- Disputes will not be considered unless the Contractor has first complied with specified notice or protest requirements, including Section 4-1.03 "Changes" Section 5-1.13 "Differing Site Conditions"
- Section 8-1.06 "Time of Completion" Section 8-1.07 "Liquidated Damages" and Section 8-1.09 "Utility, Non Highway, and Non-Railway Facilities"

For disputes arising under and by virtue of the Agreement or Construction Supplement, including an act or failure to act by the Engineer, the Contractor shall provide a signed written initial notice of potential claim to the Engineer within five days from the date the dispute first arose. The initial notice of potential claim shall provide the nature and

circumstances involved in the dispute which shall remain consistent through the dispute. The Initial Notice of Potential Claim shall be submitted on the form furnished by MST (see Exhibit D for sample) and shall be certified with reference to the California False Claims Act, Government Code Sections 12650-12655. The Contractor shall assign an exclusive identification number for each dispute, determined by chronological sequencing, based on the date of the dispute.

The exclusive identification number for each dispute shall be used on the following corresponding documents:

- Initial notice of potential claim
- Supplemental notice of potential claim
- Full and final documentation of potential claim
- Corresponding claim included in the Contractor's written statement of claims

The Contractor shall provide the Engineer the opportunity to examine the site of work within five days from the date of the initial notice of potential claim. The Contractor shall proceed with the performance of work unless otherwise specified or directed by the Engineer.

Throughout the performance of the disputed work, the Contractor shall maintain records that provide a clear distinction between the incurred direct costs of disputed work and that of undisputed work. The Contractor shall allow the Engineer access to the Contractor's project records deemed necessary by the Engineer to evaluate the potential claim within 20 days of the date of the Engineer's written request.

Within 15 days of submitting the initial notice of potential claim, the Contractor shall provide a signed supplemental notice of potential claim to the Engineer that provides the following information:

- The complete nature and circumstances of the dispute which caused the potential claim.

The Contract provisions that provide the basis of claim.

-

The estimated cost of the potential claim, including an itemized breakdown of individual costs and how the estimate was determined.

-

A time impact analysis of the project schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of Construction Supplement time is made.

-

The information provided in items A and B above shall provide the Contractor's complete reasoning for additional compensation or adjustments.

The Supplemental Notice of Potential Claim shall be submitted on that form furnished by MST (again, see Exhibit D for sample) and shall be certified with reference to the California False Claims Act, Government Code Sections 12650-12655. The Engineer will evaluate the information presented in the supplemental notice of potential claim and provide a written response to the Contractor within 20 days of its receipt. If the estimated cost or effect on the scheduled completion date changes, the Contractor shall update information in items C and D above as soon as the change is recognized and submit this information to the Engineer.

Within 30 days of the completion of work related to the potential claim, the Contractor shall provide the full and final documentation of potential claim to the Engineer that provides the following information:

- V. A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of work affected by the dispute.

- II. The specific provisions of the Construction Supplement that support the potential claim and a statement of the reasons these provisions support and provide a basis for entitlement of the potential claim.

- III. When additional monetary compensation is requested, the exact amount requested calculated in conformance with Section 9-1.05 "Force Account Payment" or Section 8-1.08 "Right-of-Way Delays" including an itemized breakdown of individual costs. These costs shall be segregated into the following cost categories:
 - V. Labor-- A listing of individuals, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information related to the requested reimbursement of labor costs.

 - B. Materials-- Invoices, purchase orders, location of materials either stored or incorporated into the Work, dates materials were transported to the project or incorporated into the Work, and other pertinent information related to the requested reimbursement of material costs.

 - C. Equipment-- Listing of detailed description (make, model, and serial number), hours of use, dates of use and equipment rates. Equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates" in effect when the affected work related to the dispute was performed.

 - D. Other categories as specified by the Contractor or the Engineer.

- IV. When an adjustment of contract time is requested the following information shall be provided:
 - V. The specific dates for which contract time is being requested.

 - B. The specific reasons for entitlement to a contract time adjustment.

The specific provisions of the Contract and/or Construction Supplement that provide the basis for the requested contract time adjustment.

 - C. A detailed time impact analysis of the project schedule. The time impact analysis shall show the effect of changes or disruptions on the scheduled completion date to demonstrate entitlement to a contract time adjustment.

- V. The identification and copies of the Contractor's documents and the substance of oral communications that support the potential claim.

The Full and Final Documentation of the Potential Claim shall be submitted on that form furnished by MST (see Exhibit D again for form) and shall be certified with reference to the California False Claims Act, Government Code Sections 12650-12655.

Pertinent information, references, arguments, and data to support the potential claim shall be included in the full and final documentation of potential claim. Information submitted subsequent to the full and final documentation submittal will not be considered. Information required in the full and final documentation of potential claim, as listed in items A to E above, that is not applicable to the dispute may be exempted as determined by the Engineer. No full and final documentation of potential claim will be considered that does not have the same nature and circumstances, and basis of claim as those specified on the initial and supplemental notices of potential claim.

The Engineer will evaluate the information presented in the full and final documentation of potential claim and provide a written response to the Contractor within thirty (30) days of its receipt unless otherwise specified. The Engineer's receipt of the full and final documentation of potential claim shall be evidenced by postal receipt or the Engineer's written receipt if delivered by hand. If the full and final documentation of potential claim is submitted by the Contractor after acceptance of the Work by the General Manager/CEO or designee, the Engineer need not provide a written response.

Provisions in this Section shall not apply to those claims for overhead costs and administrative disputes that occur after issuance of the proposed final estimate. Administrative disputes are disputes of administrative deductions or retentions, contract item quantities, contract item adjustments, interest payments, protests of contract change orders as provided in Section 4-1.03A "Procedure and Protest," and protests of the Weekly Statement of Working

Days as provided in Section 8-1.06 "Time of Completion." Administrative disputes that occur prior to issuance of the proposed final estimate shall follow applicable requirements of this Section 8-1.15. Information listed in the supplemental notice and full and final documentation of potential claim that is not applicable to the administrative dispute may be exempted as determined by the Engineer.

Unless otherwise specified in these General Provisions, the Contractor may pursue the administrative claim process pursuant to Section 9-1.09B "Final Payment and Claims," for any potential claim found by the Engineer to be without merit.

Failure of the Contractor to conform to specified dispute procedures shall constitute a failure to pursue diligently and exhaust the administrative procedures in the Contract and/or Construction Supplement, and is deemed as the Contractor's waiver of the potential claim and a waiver of the right to a corresponding claim for the disputed work in the administrative claim process in conformance with Section 9-1.10B "Final Payment and Claims," and shall relieve MST from any liability for damages allegedly arising from such claims.

8-1.16 Measurement and Payment

Full compensation for conforming to the requirements of this Section 8, not otherwise provided for, shall be considered as included in the TCP Item List in the Indirect Costs or as included in the price paid for the various items of work and no separate payment will be made therefore.

END OF SECTION 8

SECTION 9: PAYMENT

9-1.01 Measurement and Determination of Quantities

All work in the TCP Item list will be paid for at the TCP Item price per unit of measurement that is in accordance with the United States Customary units of measurement. The amount to be paid will be representative of the work performed and shall be as determined by the Engineer. A ton shall consist of 2,000 pounds avoirdupois.

Unless shipped by rail, material paid for by weight shall be weighed on scales furnished by and at the expense of the Contractor or on other sealed scales regularly inspected by the Division of Measurement Standards or its designated representative.

Weighing, measuring, and metering devices used to measure the quantity of materials used in the Work shall be suitable for the purpose intended and shall conform to the tolerances and specifications as outlined in Title 4, Chapter 9 of the California Code of Regulations, the provisions of the California Business and Professions Code, Division 5, and the specifications. Devices not Type-approved by the Division of Measurement Standards shall be Type-approved in conformance with the requirements in California Test 109.

Elements of the material plant controller which affect the accuracy or delivery of data shall be made available for the application of security seals. These devices will be inspected and adjusting elements sealed prior to the first production of materials for the Contract and/or Construction Supplement. The security seals will be furnished by the Engineer. Material production shall cease when alteration, disconnection or otherwise manipulation of the security seals occur, and production shall not resume until the device is inspected and resealed by the Engineer.

Weighing, measuring or metering devices used to determine the quantity of materials to be paid for will be considered to be "commercial devices" and shall be sealed by the Division of Measurement Standards or its authorized representative as often as the Engineer may deem necessary. The installation of all portable vehicle scales must be approved by the Engineer prior to sealing.

Vehicle scales shall be of sufficient size to permit the entire vehicle or combination of vehicles to rest on the scale deck while being weighed. Combination vehicles may be weighed as separate units provided they are disconnected while being weighed. The maximum concentrated load shall not exceed the manufacturer's designed sectional capacity of the scale.

Weighing, measuring, or metering devices required by the specifications for the purpose of proportioning a material or product will be considered to be "non-commercial devices" and shall be tested and approved in conformance

with the requirements in California Test 109. This testing shall be done by one of the following, in the presence of the Engineer, as often as the Engineer deems necessary:

- A. A County Sealer of Weights and Measures
- B. A Scale Service Agency
- C. A Division of Measurement Standards Official

Contractor shall notify the Engineer at least 24 hours in advance of testing the device.

Under supports for scale bearing points shall be constructed of portland cement concrete produced from commercial quality aggregates and cement, which contains not less than 470 pounds of cement per cubic yard. Under supports shall be constructed in a manner to prevent any shifting or tilting of the support and shall have a minimum height of 14 inches above ground line. The footings shall have a minimum depth of six inches below the ground line. The bearing surface of the footings shall have a minimum width of 30 inches and shall be of sufficient area so the pressure does not exceed 4,000 pounds per square foot. Adequate drainage shall be provided to prevent saturation of the ground under the scale. Scale bulkheads shall be of adequate material and strength to resist displacement. If timber bulkheads are used, the minimum cross section shall be eight-inch by eight-inch. Wedges shall not be used to shim the supports. If shimming is necessary, the shimming shall be done by securely attached metal shims, or by grouting. Shimming shall not exceed three inches. The approach ramps shall be level with the scale deck for a distance of not less than one-half the length of the scale deck. The mechanical indicating elements shall be installed level and plumb and shall be rigidly mounted upon a concrete foundation.

The lever system and mechanical indicating elements of hopper scales shall be rigidly attached to non-yielding supports in such a manner as to prevent any loss in weight due to bending and distortion of the supports.

When a multiple beam type scale is used in proportioning materials, an over and under indicator shall be provided which will give positive visible evidence of the amount of any over and underweight. The indicator shall be so designed that the indicator will operate during the addition of the last 200 pounds of any weighing. The over-travel of the indicator shall be at least one-third of the loading travel. Indicators shall be enclosed against moisture and dust.

Over and under dials, and other indicators for weighing and measuring systems used in proportioning materials shall be grouped so that the smallest increment for each indicator can be accurately read from the point at which the proportioning operation is controlled.

Contractor shall bear the expense of all service fees for testing and approving of "non-commercial devices." The cost of the equipment, labor and materials furnished by Contractor to assist in the testing of weighing, measuring or metering devices will be considered as included in the Construction Supplement prices paid for the various Construction Supplement items of work requiring the weighing, measuring or metering and no separate payment will be made therefore.

Whenever pay quantities of material are based upon weight, the scales used for weighing shall be operated by a weighmaster licensed in conformance with the requirements in the California Business and Professions Code, Division 5, Chapter 7. Contractor shall furnish a Public weighmasters certificate or certified daily summary weigh sheets. A representative of MST may, at the discretion of the Engineer, be present to witness the weighing and to check and compile the daily record of the scale weights.

When required by the Engineer, the operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver that slip to the Engineer at the point of delivery of the material.

If material is shipped by rail, the car weight will be accepted provided that actual weight of material only will be paid for and not minimum car weight used for assessing freight tariff and provided further that car weight will not be acceptable for material to be passed through mixing plants.

Vehicles used to haul material being paid for by weight shall be weighed empty daily and at additional times as the Engineer may direct. Each vehicle shall bear a plainly legible identification mark. Vehicles may from time to time be required by the Engineer to have the weight of the material to be paid for verified by weighing the empty and loaded vehicle on such other scales as the Engineer may designate.

Materials subject to payment by the cubic yard "measured in the vehicle" shall be hauled in vehicles of such type and size that the actual contents may be readily and accurately determined. Unless all vehicles are of uniform capacity, each vehicle must bear a plainly legible identification mark indicating its water level capacity. Vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery. Loads hauled in vehicles not meeting the above requirements or loads of a quantity less than the capacity of the vehicle, measured after being leveled off as above provided, will be subject to rejection, and no compensation will be allowed for that material.

When material is subject to be paid for on a volume basis and it is impractical to determine the volume by an appropriate method of measurement, or when requested by Contractor in writing and approved by the Engineer in writing, the material will be weighed in accordance with the requirements specified for weight measurement and the weight will be converted to volume measurement for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer before that method of determining pay

quantities will be adopted.

Quantities of material wasted or disposed of in a manner not called for under the Construction Supplement; or rejected loads of material, including material rejected after it has been placed by reason of the failure of Contractor to conform to the provisions of the Construction Supplement; or material not unloaded from the transporting vehicle; or material placed outside of the lines indicated on the plans or established by the Engineer; or material remaining on hand after completion of the Work will not be paid for, and those quantities will be deducted from the final total quantities. No compensation will be allowed for hauling and disposing of rejected material.

The weight of all aggregate or other roadway or railway material which is to be paid for on a weight basis, except imported borrow, imported topsoil, straw, fiber, aggregate subbases, aggregate bases or aggregate for cement treated bases, will be determined by deducting from the weight of material, the weight of water in the material at the time of weighing in excess of three percent at the dry weight of the material. When imported borrow, imported topsoil or aggregate subbase is being paid for on a weight basis, the weight to be paid for will be determined by deducting from the weight of the material, the weight of water in the material at the time of weighing in excess of six percent of the dry weight of the material. When straw is being paid for on a weight basis, the weight to be paid for will be determined by deducting from the weight of straw, the weight of water in the straw at the time of weighing in excess of 15 percent of the dry weight of the straw. When fiber is being paid for on a weight basis, the weight of water in the fiber at the time of weighing shall not exceed 15 percent of the dry weight of the fiber. No deduction will be made for the weight of water in fiber. The percentage of water in the material shall be determined by California Test 226. The weight of aggregate base and aggregate for cement treated bases which are to be paid for on a weight basis, will be determined as provided in Section 26, "Aggregate Bases," and Section 27, "Cement Treated Bases," of the Caltrans Standard Specifications respectively.

The weight of water deducted as provided in this Section will not be paid for.

Full compensation for all expense involved in conforming to the requirements specified in this Section shall be considered as included in the TCP Item prices paid for the materials subject to being measured or weighed and no additional compensation will be allowed.

9-1.02 Final Pay Items

Unless modified in a Construction Supplement, the quantity for all items of work in the TCP shall be the final pay quantity for that TCP Item, unless the dimensions of any portion of that item are revised by the Engineer, or the item or any portion of the item is eliminated. If the dimensions of any portion of the item are revised, and the revisions result in an increase or decrease in the estimated quantity of that item of work, the final pay quantity for the item will be revised in the amount represented by the changes in the dimensions. If a final pay item is

eliminated, the estimated quantity for the item will be eliminated. If a portion of a final pay item is eliminated, the final pay quantity will be revised in in the amount represented by the eliminated portion of the item of work.

The estimated quantity for each item of work in the TCP Item list shall be considered as approximate only, and no representation is made from the Engineer or Contractor that the quantity which can be measured or determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantity in the TCP Items list. No change in compensation will be made in the event that the quantity based on computations or as installed does not equal the quantity in the TCP Item list.

In case of discrepancy between the quantity shown in the TCP Item list and the quantity or summation of quantities for the same item shown on the IFC Plans, payment will be based on the quantity shown in the TCP Item list.

9-1.03 Scope of Payment

Contractor shall accept the compensation provided in the Construction Supplement as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the Construction Supplement; also for loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the acceptance by the General Manager/CEO or designee and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the Work as provided in the Construction Supplement; and for completing the Work according to the plans and specifications. Neither the payment of any estimate nor of any retained percentage shall relieve Contractor of any obligation to make good any defective work or material.

No compensation will be made in any case for loss of anticipated profits.

9-1.04 Payment Schedule

Payments are made to Contractor on a monthly basis. Each payment period is from the second Friday of the month to the second Thursday of the following month. Contractor shall be paid not more than 30 calendar days after the establishment by MST of a written estimate pursuant to Section 9-1.07, "Partial Payments."

9-1.05 Force Account Payment

When extra work is to be paid for on a force account basis, the labor, materials, and equipment used in the performance of that work shall be subject to the approval of the Engineer and compensation will be determined as follows:

9-1.05A Work Performed By Contractor

Contractor will be paid the direct costs for labor, materials and equipment used in performing the Work determined as provided in Section 9-1.05A(1) "Labor," Section 9-1.05A(2) "Materials," and Section 9-1.05A(3) "Equipment Rental," except where agreement has been reached to pay in conformance with the provisions in Section 9-1.05B, "Work Performed by Special Forces or Other Special Services."

To the total of the direct costs computed as provided in Section 9-1.05A(1) "Labor," Section 9-1.05A(2) "Materials," and Section 9-1.05A(3) "Equipment Rental," there will be added a markup of up to 33 percent to the cost of labor, up to 15 percent to the cost of materials and up to 15 percent to the equipment rental. The above markups shall constitute full compensation for all delay costs, overhead costs, and profit which shall be deemed to include all items of expense not specifically designated as cost or equipment rental in Section 9-1.05A(1) "Labor," Section 9-1.05A(2) "Materials," and Section 9-1.05A(3) "Equipment Rental." The total payment made as provided above shall be deemed to be the actual cost of the work and shall constitute full compensation, therefore.

When extra work to be paid for on a force account basis is performed by a subcontractor, approved in conformance with this Contract, an additional markup of up to five percent will be added to the total cost of that extra work including all markups specified in this Section 9-1.05A. The additional markup of up to five percent shall reimburse Contractor for additional administrative costs, and no other additional payment will be made by reason of performance of the extra work by a subcontractor.

All percentage of cost markups shall be negotiated on a case-by-case basis, taking into consideration factors such as risk, level of supervision, complexity of the work, and other relevant factors.

9-1.05A(1) Labor

Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the Work. The cost of labor, whether the employer is Contractor, subcontractor or other forces, will be the sum of the following:

9-1.05A(1a) Actual Wages

The actual wages paid shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes.

9-1.05A(1b) Labor Surcharge

To the actual wages, as defined in Section 9-1.05A(1a) "Labor," will be added a labor surcharge set forth in the

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Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the Contract and/or Construction Supplement. The labor surcharge shall constitute full compensation for all payments imposed by state and federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Section 9-1.05A(1a) "Labor," and subsistence and travel allowance as specified in Section 9-1.05A(1c) "Subsistence and Travel Allowance."

9-1.05A(1c) Subsistence And Travel Allowance

The actual subsistence and travel allowance paid to the workers.

9-1.05A(2) Materials

MST reserves the right to furnish any materials it deems advisable, and Contractor shall have no claims for costs and markup on those materials. For purposes of this Section 9, the term "purchaser" shall mean Contractor, subcontractor or other person or entity, making a purchase for the Work from a supplier.

Only materials furnished by Contractor and necessarily used in the performance of the work will be paid for. The cost of those materials will be the cost to the purchaser, except as the following are applicable:

9-1.05A(2a) Offered Discounts

If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to MST notwithstanding the fact that the discount may not have been taken.

9-1.05A(2b) Indirect Procurements

If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of the materials.

9-1.05A(2c) Self-Supplied Materials

If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the price paid by the purchaser for similar materials furnished from that source on Construction Supplement items or the current wholesale price for those materials delivered to the jobsite, whichever price is lower.

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9-1.05A(2d) Excessive-Priced Materials

If the cost of the materials is, in the opinion of the Engineer, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities concerned delivered to the jobsite, less any discounts as provided in Section 9-1.05A(2a), "Offered Discounts."

9-1.05A(2e) Evidence of Cost of Materials

If Contractor does not furnish satisfactory evidence of the cost of the materials from the actual supplier thereof within 60 days after the date of delivery of the material or within 15 days after acceptance of the Construction Supplement, whichever occurs first, MST reserves the right to establish the cost of the materials at the lowest current wholesale prices at which the materials were available in the quantities concerned delivered to the location of the Work, less any discounts as provided in Section 9-1.05A(2a), "Offered Discounts."

9-1.05A(3) Equipment Rental

Contractor will be paid for the use of equipment at the rental rates listed for that equipment in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the Construction Supplement, regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by Contractor, except that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge And Equipment Rental Rates publication and which are rented from a local equipment agency, other than Contractor owned, Contractor will be paid at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 9-1.05A(3a), "Equipment on the Work." If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged will be paid to Contractor.

If it is deemed necessary by the Engineer to use equipment not listed in the Labor Surcharge and Equipment Rental Rates publication, a suitable rental rate for that equipment will be established by the Engineer. Contractor may furnish any cost data which might assist the Engineer in the establishment of the rental rate. If the rental rate established by the Engineer is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Operators of rented equipment will be paid for as provided in Section 9-1.05A(1) "Labor."

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

Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

Individual pieces of equipment or tools not listed in the Labor Surcharge and Equipment Rental Rate publication and having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore.

Rental time will not be allowed while equipment is inoperative due to breakdowns.

9-1.05A(3a) Equipment on the Work

The rental time to be paid for equipment on the Work shall be the time the equipment is in operation on the extra work being performed, and in addition, shall include the time required to move the equipment to the location of the extra work and return the equipment to the original location or to another location requiring no more time than that required to return the equipment to its original location, except that moving time will not be paid for if the equipment is used at the site of the extra work on other than the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the site of the extra work on other than the extra work.

The following shall be used in computing the rental time of equipment on the Work:

- A. When hourly rates are listed, less than 30 minutes of operation shall be considered to be 0.5-hour of operation.
- B. When daily rates are listed, less than four hours of operation shall be considered to be 0.5-day of operation.

9-1.05A(3b) Equipment Not on the Work

For the use of equipment moved in on the Work and used exclusively for extra work paid for on a force account basis, Contractor will be paid the rental rates listed in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the Construction Supplement, or determined as provided in Section 9-1.05A(3) and for the cost of transporting the equipment to the location of the Work and its return to its original location, all in accordance with

the following provisions:

- I. The original location of the equipment to be hauled to the location of the Work shall be agreed to by the Engineer in advance.
- II. MST will pay the costs of loading and unloading the equipment.
- III. The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
- IV. The rental period shall begin at the time the equipment is unloaded at the site of the extra work, shall include each day that the equipment is at the site of the extra work, excluding Saturdays, Sundays and legal holidays unless the equipment is used to perform the extra work on those days, and shall terminate at the end of the day on which the Engineer directs Contractor to discontinue the use of the equipment. The rental time to be paid per day will be in accordance with the following:

Hours Equipment is in Operation	Hours to be Paid
0	4.00
0.5	4.25
1.0	4.50
1.5	4.75
2.0	5.00
2.5	5.25
3.0	5.50
3.5	5.75
4.0	6.00
4.5	6.25
5.0	6.50
5.5	6.75
6.0	7.00
6.5	7.25
7.0	7.50
7.5	7.75
8.0	8.00
Over 8	Hours in operation

The hours to be paid for equipment which is operated less than eight hours due to breakdowns, shall not exceed

eight less the number of hours the equipment is inoperative due to breakdowns.

When hourly rates are listed, less than thirty (30) minutes of operation shall be considered to be 0.5-hour of operation.

When daily rates are listed, payment for 0.5-day will be made if the equipment is not used. If the equipment is used, payment will be made for one day.

The minimum rental time to be paid for the entire rental period on an hourly basis shall not be less than eight hours or if on a daily basis shall not be less than one day.

Should Contractor desire the return of the equipment to a location other than its original location, MST will pay the cost of transportation in accordance with the above provisions, provided the payment shall not exceed the cost of moving the equipment to the Work.

Payment for transporting and loading /unloading equipment, as above provided, will not be made if the equipment is used on the Work in any other way than upon extra work paid for on a force account basis.

When extra work, other than work specifically designated as extra work in the plans and specifications, is to be paid for on a force account basis and the Engineer determines that the extra work requires Contractor to move on to the Work equipment which could not reasonably have been expected to be needed in the performance of the Construction Supplement, the Engineer may authorize payment for the use of the equipment at equipment rental rates in excess of those listed as applicable for the use of that equipment subject to the following additional conditions:

- A. The Engineer shall specifically approve the necessity for the use of particular equipment on that work.
- B. Contractor shall establish to the satisfaction of the Engineer that the equipment cannot be obtained from Contractor's normal equipment source or sources and those of Contractor's subcontractors.
- C. Contractor shall establish to the satisfaction of the Engineer that the proposed equipment rental rate for the equipment from the proposed source is reasonable and appropriate for the expected period of use.
- D. The Engineer shall approve the equipment source and the equipment rental rate to be paid by MST before Contractor begins work involving the use of that equipment.

9-1.05A(3c) Owner-Operated Equipment

When owner-operated equipment is used to perform extra work to be paid for on a force account basis, Contractor will be paid for the equipment and operator, as follows:

- I. Payment for the equipment will be made in conformance with this Contract.
- II. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by Contractor to other workers operating similar equipment already on the project or, in the absence of other workers operating similar equipment, at the rates for that labor established by collective bargaining agreements for the type of workers and location of the Work, whether or not the owner-operator is actually covered by an agreement. A labor surcharge will be added to the cost of labor described herein, in conformance with Section 9-1.05A(1b) "Labor Surcharge."
- III. To the direct cost of equipment rental and labor, computed as provided herein, will be added the markups for equipment rental and labor as provided in Section 9-1.05A "Work Performed by Contractor."

9-1.05A(3d) Dump Truck Rental

Dump truck rental shall conform to the provisions in Section 9-1.05A(3) "Equipment Rental," Section 9-1.05A(3a) "Equipment on the Work," and Section 9-1.05A(3b) "Equipment not on the Work," except as follows:

- I. Fully maintained and operated rental dump trucks used in the performance of extra work paid for on a force account basis will be paid for at the same hourly rate paid by Contractor for use of fully maintained and operated rental dump trucks in performing Construction Supplement item work.
- II. In the absence of Construction Supplement item work requiring dump truck rental, the Engineer will establish an hourly rental rate to be paid. Contractor shall provide the Engineer with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks.
- III. The provisions in Section 9-1.05A(1) "Labor," shall not apply to operators of rented dump trucks.
- IV. The rental rates listed for dump trucks in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates shall not apply.
- V. To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a negotiated markup of up to 15 percent. An additional negotiated markup of up to five percent will be added by reason of performance of the work by a subcontractor. No separate markup will be made for labor.

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VI. The provisions in Section 9-1.05A(3c) "Owner-Operated Equipment," shall not apply to dump truck rentals.

9-1.05B Work Performed by Special Forces or Other Special Services

When the Engineer and Contractor, by agreement, determine that a special service or an item of extra work cannot be performed by the forces of Contractor or those of any of Contractor's subcontractors, that service or extra work item may be performed by a specialist. Invoices for the service or item of extra work on the basis of the current market price thereof may be accepted without complete itemization of labor, material and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide a complete itemization.

In those instances wherein a Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the jobsite, the charges for that portion of the extra work performed in the facility may, by agreement, be accepted as a specialist billing.

To the specialist invoice price, less a credit to MST for any cash or trade discount offered or available, whether or not the discount may have been taken, will be added up to 15 percent in lieu of the percentages provided in Section 9-1.05A "Work Performed by Contractor."

9-1.05C Records

Contractor shall maintain records in such a manner as to provide a clear distinction between the direct costs of extra work paid for on a force account basis and the costs of other operations.

From the above records, Contractor shall furnish the Engineer completed daily extra work reports, either on forms furnished by MST or on computerized facsimiles of MST forms acceptable to the Engineer, for each day's extra work to be paid for on a force account basis. The daily extra work reports shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by Contractor, subcontractor or other forces, except for charges described in Section 9-1.05B "Work Performed by Special Forces or Other Special Services." The daily extra work reports shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated.

Material charges shall be substantiated by valid copies of vendor's invoices. The invoices shall be submitted with the daily extra work reports, or if not available, the invoices shall be submitted with subsequent daily extra work reports. Should the vendor's invoices not be submitted within 60 days after the date of delivery of the material or within 15 days after the acceptance of the Construction Supplement, whichever occurs first, MST reserves the right

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to establish the cost of the materials at the lowest current wholesale prices at which those materials were available in the quantities concerned delivered to the location of work less any discounts as provided in Section 9-1.05A(2a) "Offered Discounts."

Daily extra work reports shall be signed by Contractor or Contractor's authorized representative.

The Engineer will compare the Engineer's records with the completed daily extra work reports furnished by Contractor and make any necessary adjustments. When these daily extra work reports are agreed upon and signed by both parties, the reports shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit by MST.

Contractor's cost records pertaining to work paid for on a force account basis shall be open to inspection or audit by representatives of MST, during the life of the Construction Supplement and for a period of not less than four years after the date of acceptance thereof, and Contractor shall retain those records for that period. Where payment for materials or labor is based on the cost thereof to forces other than Contractor, Contractor shall make every reasonable effort to ensure that the cost records of those other forces will be open to inspection and audit by representatives of MST on the same terms and conditions as the cost records of Contractor. If an audit is to be commenced more than 60 days after the acceptance date of the Construction Supplement, Contractor will be given a reasonable notice of the time when the audit is to begin.

9-1.05D Payment

Payment shall constitute full compensation to Contractor for performance of work paid for on a force account basis and no additional compensation will be allowed. The payment will be made in conformance with the provisions in Section 9-1.07 "Partial Payments."

9-1.06 Stop Payment Notices

MST will, at any time, withhold out of any amounts due Contractor sums sufficient to cover claims, including the reasonable cost of any litigation, filed pursuant to Section 9000 et seq. of the Civil Code.

9-1.07 Partial Payments

9-1.07A General

MST, once in each month, shall cause an estimate in writing to be made by the Engineer. The estimate shall include the total amount of work done and acceptable materials furnished, provided the acceptable materials are listed as eligible for partial payment as materials in these General Provisions and are furnished and delivered by

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Contractor on the ground and not used or are furnished and stored for use on the contract, if the storage is within the State of California and Contractor furnishes evidence satisfactory to the Engineer that the materials are stored subject to or under the control of MST, to the time of the estimate, and the value thereof.

The estimate shall also include any amounts payable for mobilization. Daily extra work reports furnished by Contractor less than five days, not including Saturdays, Sundays, and legal holidays, before the preparation of the monthly progress estimate shall not be eligible for payment until the following month's estimate.

The amount of any material to be considered in making an estimate will in no case exceed the amount which has been reported by Contractor to the Engineer on MST-furnished forms properly filled out and executed, including accompanying documentation as therein required, less the amount of the material incorporated in the Work to the time of the estimate. Only materials to be incorporated in the Work will be considered. The estimated value of the material established by the Engineer will in no case exceed the TCP Item price for the item of work for which the material is furnished.

MST shall retain five percent of the estimated value of the work done and five percent of the value of materials so estimated to have been furnished and delivered and unused or furnished and stored as aforesaid as part security for the fulfillment of the Construction Supplement by Contractor, except that at any time after 50 percent of the work has been completed, if the Governing Board finds that satisfactory progress is being made, MST may, at its discretion, reduce the total amount being retained from payment to less than five percent of the total estimated value of the work and materials and may also reduce the amount retained from any of the remaining partial payments to less than five percent of the estimated value of the work and materials. The reduction will only be made upon the written request of the Contractor and shall be approved in writing by the surety on the Performance Bond and by the surety on the Payment Bond. The approval of the surety shall be submitted to the MST Resident Engineer for the project; the signature of the person executing the approval for the surety shall be properly acknowledged and the power of attorney authorizing the person to give that consent must either accompany the document or be on file with MST.

MST shall pay monthly to Contractor, while carrying on the Work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Construction Supplement. Monthly estimates or payments shall be reduced when, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract and/or Construction Supplement.

No monthly estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

Attention is directed to the prohibitions and penalties pertaining to unlicensed contractors as provided in Business

and Professions Code Sections 7028.1 S(a) and 7031.

9-1.07B Schedule of Values

For lump sum TCP Items, a schedule of values is required to be submitted. The sum of the amounts for the work units listed in the schedule of values must equal the lump sum price for the TCP Item. The schedule of values must be accepted by MST before any work is performed on the lump sum TCP Item. MST will not provide any reimbursement for any lump sum item without an accepted schedule of values.

Indirect Costs (General Conditions) may be paid by lump sum or distributed proportionally among the TCP Items. Indirect Costs to be paid as a lump sum TCP Item will be either paid on an agreed schedule or as a percentage completion of an item(s) or Construction Supplement value. As required, to adjust payment for only the cost incurred, the Engineer may adjust lump sum payments or the payment schedule. Where indirect costs are to be included in one or more of the direct cost items, the Schedule of Values shall indicate the item or items that include compensation for the indirect costs. The Engineer may withhold final payment for an indirect cost item until acceptance of the completed item or Construction Supplement.

As determined by MST, Contractor's Risk shall be included as a lump sum TCP item and either paid per an agreed Schedule of Value or as a fixed percentage applied to the balance of the pay estimate.

Contractor's Fix Fee shall be included as a lump sum TCP Item and either paid per an Agreed Schedule of Value or as a fixed percentage applied to the balance of the pay estimate.

For ordered changes in the quantities of the work units listed in the schedule of values, the Engineer will adjust payments in the same manner as specified for changed unit quantities of TCP Items under Section 4- 1.

9-1.08 Escrow In Lieu of Retention

Contractor may use securities or an escrow to obtain release of retained funds do not apply to amounts withheld by MST due to Contractor's failure to submit satisfactory labor data, payroll data, DBE data or reports, or meet licensing or DIR registration requirements. Furthermore, any amounts released to Contractor due to use of the securities or escrow provisions in this section shall be treated as payment to Contractor for purposes of Contractor's obligation to pay subcontractors in accordance with Sections 7-7.01 and 7-7.02.

Pursuant to Public Contract Code section 22300, Contractor may substitute securities for any moneys withheld as a retention by MST to ensure performance under Contractor. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with MST, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to Contractor. Upon satisfactory completion of the

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Contract, the securities shall be returned to Contractor.

Alternatively, Contractor may request, and MST shall make payment of retentions earned directly to the escrow agent selected by Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and Contractor shall receive the interest earned on the investments upon the same terms provided for in Public Contract Code Section 22300 for securities deposited by Contractor. Upon satisfactory completion of the Contract, Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent when MST authorizes release of the funds to Contractor, pursuant to the terms of Public Contract Code Section 22300.

Securities eligible for investment shall include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and MST.

Contractor shall be the beneficial MST of any securities substituted for moneys withheld and shall receive any interest thereon.

The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents. Contractor shall obtain the written consent of the surety to the agreement.

9-1.09 Payment After Acceptance

After the Work has been accepted by the General Manager/CEO or designee, as provided in Section 7-6.05 "Acceptance of Construction Supplement," payments will be made to Contractor subject to the following:

9-1.09A Payment Prior To Proposed Final Estimate

After acceptance of the Work by the General Manager/CEO or designee, the Engineer will make an estimate of the total amount of work done under the Construction Supplement and MST will make a final monthly payment pending issuance of the proposed final estimate. MST will pay the balance thereon found to be due after deduction of all previous payments, all amounts to be kept or retained under the provisions of the Construction Supplement and those further amounts that the Engineer determines to be necessary pending issuance of the proposed final estimate and payment thereon.

9-1.09B Final Payment and Claims

After acceptance by the General Manager/CEO or designee, the Engineer will make a proposed final estimate in writing of the total amount payable to Contractor, including an itemization of the total amount, segregated by TCP

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Item quantities, extra work and other basis for payment, and shall also show each deduction made or to be made for prior payments and amounts to be kept or retained under the provisions of the Construction Supplement. Prior estimates and payments shall be subject to correction in the proposed final estimate. Contractor shall submit written approval of the proposed final estimate or a written statement of claims arising under or by virtue of the Construction Supplement so that the Engineer receives the written approval or statement of claims no later than close of business of the thirtieth day after receiving the proposed final estimate. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, then receipt of the written approval or statement of claims by the Engineer shall not be later than close of business of the next business day. Contractor's receipt of the proposed final estimate shall be evidenced by postal receipt. The Engineer's receipt of Contractor's written approval or statement of claims shall be evidenced by postal receipt or the Engineer's written receipt if delivered by hand.

On Contractor's approval, or if Contractor files no claim within the specified period of 30 days, the Engineer will issue a final estimate in writing in conformance with the proposed final estimate submitted to Contractor, and within 30 days thereafter MST will pay the entire sum so found to be due. That final estimate and payment thereon shall be conclusive and binding against both parties to the Construction Supplement on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided in Sections 9-1.05C "Records," and 9-1.10 "Clerical Errors."

If Contractor within the specified period of 30 days files claims, the Engineer will issue a semifinal estimate in conformance with the proposed final estimate submitted to Contractor and within 30 days thereafter MST will pay the sum found to be due. The semifinal estimate and corresponding payment shall be conclusive and binding against both parties to the Construction Supplement on each question relating to the amount of work done and the compensation payable therefore, except insofar as affected by the claims filed within the time and in the manner required hereunder and except as otherwise provided in Section 9-1.05C "Records," and Section 9-1.10 "Clerical Errors."

Except for claims for overhead costs and administrative disputes that occur after issuance of the proposed final estimate, Contractor shall only provide the following two items of information for each claim:

1. The exclusive identification number that corresponds to the supporting full and final documentation of potential claim.
2. The final amount of requested additional compensation.

If the final amount of requested additional compensation is different than the amount of requested compensation included in the full and final documentation of potential claim, Contractor shall provide the reasons for the changed amount, the specific provisions of the Construction Supplement which support the changed amount, and a

statement of the reasons the provisions support and provide a basis for the changed amount. If Contractor's claim fails to provide an exclusive identification number or if there is a disparity in the provided exclusive identification number, the Engineer will notify Contractor of the omission or disparity. Contractor shall have fifteen (15) days after receiving notification from the Engineer to correct the omission or disparity. If after the fifteen (15) days has elapsed, there is still an omission or disparity of the exclusive identification number assigned to the claim, the Engineer will assign the number. No claim will be considered that has any of the following deficiencies:

- The claim does not have the same nature, circumstances, and basis as the corresponding full and final documentation of potential claim.
- The claim does not have a corresponding full and final documentation of potential claim.
- The claim was not included in the written statement of claims.
- Contractor did not comply with applicable notice or protest requirements of Section 4-1.03, "Changes," Section 5-1.13, "Differing Site Conditions," Section 8-1.06, "Time of Completion," Section 8-1.07, "Liquidated Damages," Section 8-1.09, "Utility, Non Highway, and Non-Railway Facilities." and Section 8-1.15, "Notice of Potential Claim."

Administrative disputes that occur after issuance of the proposed final estimate shall be included in Contractor's written statement of claims in sufficient detail to enable the Engineer to ascertain the basis and amounts of those claims.

Contractor shall keep full and complete records of the costs and additional time incurred for work for which a claim for additional compensation is made. The Engineer or designated claim investigators or auditors shall have access to those records and any other records as may be required by the Engineer to determine the facts or contentions involved in the claims. Failure to permit access to those records shall be sufficient cause for denying the claims.

The written statement of claims submitted by Contractor shall be accompanied by a notarized certificate containing the following language:

Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et. seq., the undersigned,

(name)

(title)

(company)

hereby certifies that the claim for the additional compensation and time, if any, made herein for the Work on this Construction Supplement is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Construction Supplement between parties.

Dated

/s/

Subscribed and sworn before me this day of

(Notary Public)

My Commission Expires

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

Any claim for overhead, in addition to being certified as stated above, shall be supported and accompanied by an audit report of an independent Certified Public Accountant. Omission of a supporting audit report of an independent Certified Public Accountant shall result in denial of the claim and relieve MST from any liability for damages allegedly arising from such claim. Any claim for overhead shall be subject to audit by MST at its discretion. The costs of performing an audit examination and submitting the report shall be borne by Contractor. MST will deduct an offset amount for field and home office overhead paid on all added work from any claim for overhead as appropriate, as determined by MST. The value of the added work equals the value of the work completed minus the total TCP. The home office overhead offset equals five percent of the added work. The field office overhead offset equals 5.5 percent of the added work. The Certified Public Accountant's audit examination shall be performed in conformance with the requirements of the American Institute of Certified Public Accountants Attestation Standards. The audit examination and report shall depict Contractor's project and company-wide financial records and shall specify the actual overall average daily rates for both field and home office overhead for the entire duration of the project, and whether the costs have been properly allocated. The rates of field and home office overhead shall exclude unallowable costs as determined in Title 48 of the Federal Acquisition Regulations, Chapter 1, Part 31. The audit examination and report shall determine if the rates of field and home office overhead are:

- A. Allowable in conformance with the requirements in Title 48 of the Federal Acquisition Regulations, Chapter 1, Part 31.
- B. Adequately supported by reliable documentation.
- C. Related solely to the project under examination.

Costs or expenses incurred by MST in reviewing or auditing claims that are not supported by Contractor's cost accounting or other records shall be deemed to be damages incurred by MST within the meaning of the California False Claims Act.

If the Engineer determines that a claim requires additional analysis, the Engineer will schedule a board of review meeting. Contractor shall meet with the review board or person and make a presentation in support of the claim. Attendance by Contractor at the board of review meeting shall be mandatory.

The General Manager/CEO or designee will make the final determination of any claims which remain in dispute after completion of claim review by the Engineer or board of review meeting.

The final determination of claims will be sent to Contractor by hand delivery or deposit in the United States mail. The Engineer will then make and issue the Engineer's final estimate in writing and within 30 days thereafter MST will pay the entire sum, if any, found due thereon. That final estimate shall be conclusive and binding against both parties to the Construction Supplement on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided in Section 9-1.05C "Records," and Section 9-1.10 "Clerical Errors."

Failure of Contractor to conform to the specified dispute procedures shall constitute a failure to pursue diligently and exhaust the administrative procedures and shall relieve MST from any liability for damages allegedly arising from such claim.

9-1.10 Clerical Errors

Notwithstanding the provisions in Section 9-1.09, "Payment After Acceptance," for a period of three years after acceptance of the Work, all estimates and payments made, including the final estimate and payment, shall be subject to correction and adjustment for clerical errors in the calculations involved in the determination of quantities and payments. Contractor and MST agree to pay to the other any sum due, provided, however, if the total sum to be paid is less than \$200, no payment shall be made.

END OF SECTION 9

EXHIBIT 1 - QUALITY CONTROL

I. Purpose

As a means of ensuring that the performance of the Work fulfills the requirements of the Contract and that the materials, equipment, and all elements of the Work will perform satisfactorily for the purposes intended, Contractor has developed a Construction Quality Control Plans (CQC Plan) pursuant to the Preconstruction Services Agreements, in accordance with MST's quality and construction plans and procedures, FTA's Quality Management System Guidelines, and this Section 5-1.22, and Contractor shall develop any additional CQC Plan Amendments required for completion of a Construction Supplement, as directed by MST, in accordance with the requirements herein, and shall provide such plan for review and approval by MST. Contractor shall, at all times, comply with the requirements of the applicable CQC Plan, including providing updates as determined necessary by the Engineer. International Organization for Standardization (ISO) registration will not be required.

Contractor shall implement the approved and applicable CQC Plan and any Amendments for all aspects of the Construction Supplement, including construction and contract administration. Contractor shall be responsible for the quality of the work, including all work and products of subcontractors of all tiers, fabricators, suppliers, and vendors both on-site and off-site. MST reserves the right to and will conduct periodic audits and inspections of the Project and will sample, test, and measure material used and installed by Contractor, subcontractors of all tiers, suppliers, and vendors.

II. MST Organization For Quality

A. Roles of MST

MST will perform a Quality Assurance (QA) role, closely monitoring performance of Contractor's QC program to verify its effectiveness. The basic measure of effectiveness is that the work is performed correctly the first time. Secondly, if a problem does occur, action(s) must be immediately taken, not only to correct the problem, but to ensure it does not occur again. MST QA inspection does not supplement Contractor's QC inspection.

All items of materials and equipment may be subject to inspection by MST at the point of production, manufacture, or shipment to determine if the producer, manufacturer, or shipper maintains an adequate quality control system which ensures conformance to the applicable specifications and drawings with respect to materials, workmanship, construction, finish, functional performance, and identification. In addition, all items of materials, equipment, ongoing work, as well as work already in place may be subject to inspection by MST at the site for the same purposes.

Audits of Contractor, subcontractor, and supplier activities will be performed by MST QA staff to verify compliance

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with the Project approved work plans and construction specifications and all referenced standards. Audits will be performed on a systematic basis, coordinated with the CQC Plan or as warranted by general quality trends.

B. Non-Compliance with the CQC Plan

The Engineer (or designee) will notify Contractor of any non-compliance with the requirements of this Section 5-1.22. Contractor shall, after receipt of such notice, immediately take corrective action. Any notice, when delivered to Contractor, will be considered sufficient notice. If Contractor fails or refuses to comply promptly, MST may take any of the following actions:

1. Order a suspension of work, or portions thereof, until satisfactory corrective action has been taken. Any suspension of the work must take into consideration any safety issues and ensure that the safety of the workers and or public is not jeopardized. It is understood and agreed that time lost due to any suspension will not entitle Contractor to any of the following:
 - a. Extension of time
 - b. Compensation for excess costs incurred by Contractor
2. Repair, replace, or otherwise remedy the defective work at Contractor's expense. Should MST incur any cost to correct defective work, the costs will be withheld from any amount due, or that may become due, to Contractor;
3. Withhold a portion or entire amount from the monthly progress payment due Contractor as may be deemed necessary to obtain compliance, at the discretion of the Engineer; and/or
4. Terminate Contractor for default after providing proper notice.

In cases where implementation of the QC program does not comply with either Contractor's CQC Plan or the Contract, or where Contractor fails to properly operate and maintain an effective QC program, the Engineer may order Contractor to replace ineffective or unqualified QC personnel or subcontractors.

Contractor shall maintain and submit to the Engineer a detailed record of every non-compliance and corrective action taken. See also Content of the CQC Plan, D.11 "Nonconformance," and Section K., "Nonconformance."

III. Contractor's Responsibilities

Contractor is responsible for implementing Quality Control services including inspections and tests and related requirements, administration, management, supervision, reports, record-keeping, use of independent testing agencies and laboratories, and other services. Quality Control services do not include QA or Contract Acceptance

activities performed by MST. The QC requirements described herein are a minimum and do not limit Contractor's QC responsibility to provide whatever QC is necessary to achieve full compliance with the requirements of the Contract.

No later than ten calendar days following the issuance of the Notice to Proceed (NTP), Contractor shall furnish up to ten copies of the CQC Plan for review and acceptance by the Engineer. No construction work covered by the CQC Plan will start until the CQC Plan has been accepted by the Engineer. If the CQC Plan is not submitted within ten calendar days after NTP, payment to Contractor may be suspended, at the discretion of the Engineer.

The CQC Plan must assure the maintenance of adequate quality throughout all applicable areas of Contract performance, such as, submittal document review and control, fabrication, inspection, testing, handling, packaging, shipping, storage, and site construction activities. The CQC Plan must provide methods of operation that emphasize the identification, correction, and prevention of deficiencies and discrepancies.

Contractor shall designate a Contractor's QC Manager whose sole responsibility is to ensure compliance with the quality standards of the Contract and who shall be responsible for overall management of the CQC Plan and who shall have the authority to act in all CQC matters for Contractor. Contractor's QC Manager or his designee, as is acceptable to the Engineer, must be present at the work site at all times that any work is in progress.

Before starting work, Contractor shall submit the name, qualifications, and experience of its proposed QC Manager, who, upon acceptance of the Engineer, must have full authority to represent and act for Contractor on all quality-related matters. Contractor's QC Manager must have at least ten years of experience in QC on public works civil construction projects, including, preparation and implementation of CQC Plans and procedures with a minimum of five years' experience in railroad or rail transit construction. Contractor's QC Manager shall have expertise in all areas of the CQC Plan and shall be a registered professional engineer in the State of California, unless otherwise approved by the Engineer. Contractor's QC Manager is to be assisted by other QC staff as warranted by specific construction activities and/or workload.

Contractor shall provide the MST Quality Manager with complete documentation of compliance with the Project approved work plans and construction specifications for all items supplied and constructed under this Contract. Evidence of compliance must consist of certificates of compliance and/or test results from the MST Quality Manager-authorized testing facility for raw products, witnessed test results for manufactured products and systems, and any other information required by the MST Quality Manager.

IV. Content Of The CQC Plan

The CQC Plan shall address all of the applicable FTA 15 elements of Quality Management as determined by the

Engineer. The CQC Plan shall include, as a minimum, the following to cover all construction operations, both on-site and off-site, including work by subcontractors, fabricators, and suppliers:

- The purpose of the CQC Plan as well as Contractor's company policy statement regarding QC.
- Management Responsibility- An organization chart identifying Contractor's QC Manager, showing that this position is outside the construction staff with clear lines of authority for QC reporting directly to Contractor's management.

The CQC Plan shall include a copy of a letter of direction to Contractor's QC Manager, outlining Contractor QC Manager's duties and responsibilities and signed by a responsible officer of Contractor. This letter must include the authority to halt construction, reject materials, and direct removal and replacement of work not in compliance with the Contract. This authority must not be subject to approval of Contractor's PM or Construction Manager.

This section of the CQC Plan should also include the names, qualifications, duties, responsibilities, and authorities of each person assigned a QC function. Adequately experienced QC personnel will be assigned or designated to perform inspections and test the work, as required. Quality Control personnel will be assigned to oversee the work. Contractor's QC Manager and QC personnel must have the authority to direct on-site correction of work not in compliance with the Contract. References hereinafter to Contractor's QC will mean inspection or testing by qualified personnel identified on the approved QC organization chart. Names and resumes of qualifications of all QC personnel assigned to Contractor's QC Manager must be submitted to the Engineer as they are assigned. Contractor shall notify the Engineer, in writing, in the event Contractor desires to change its QC Manager or other key QC personnel identified on the organization chart and shall provide information specified above for the Engineer's approval of Contractor's proposed new QC Manager. No Contractor QC personnel will be removed from the work without prior written notice to the MST Quality Manager.

- Documented Quality Management System - Contractor shall establish and maintain a Contractor's CQC Plan that includes quality objectives and procedures, and ensure it is communicated throughout all levels of the organization throughout the project life cycle. Contractor shall impose upon its suppliers and subcontractors the same QC requirements, including inspection and test procedures, as are imposed upon Contractor by the Project construction specifications and referenced standards, and Contractor shall provide a defined procedure for implementing such requirements. Contractor shall apply appropriate controls, designed to ensure that all materials supplied comply with the requirements of the Project construction specifications.
- Document Control - Procedures for control of project documents shall be established and maintained in

compliance with the most current version of Mid-Coast Corridor Transit Project Document Control Plan. The document control measures should ensure all relevant documents are current and readily available to all users that require them. See also Section J., "Document Control."

- Purchasing - Procurement control procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, offsite fabricators, suppliers, and purchasing agents shall be maintained. Prior to procurement of items and materials, Contractor shall submit a list of suppliers and subcontractors that must include items to be supplied, item numbers if applicable, specifications, inspection and test requirements, performance data, anticipated inspection test dates, and other pertinent information as appropriate. Contractor shall evaluate and select suppliers and subcontractors based on their ability to supply product in accordance with the project specifications. Criteria for selection, evaluation, and re-evaluation shall be established. Records of the results of evaluations and any necessary actions arising from the evaluation shall be maintained.
- Product Identification And Traceability- Procedures shall be established and maintained for identifying and controlling items of production (batch, materials, parts, and components) to prevent the use of incorrect or defective items/materials and to ensure that only correct and acceptable items are used or installed on the project. See also Section G., "Identification and Control of Items and Materials."
- Process Control - Contractor, subcontractor, and suppliers should identify and plan the production and installation processes that directly affect quality and should ensure these processes are performed under controlled conditions. Special processes, the results of which cannot be verified by subsequent inspection and testing of the product, must be continuously monitored.
- Inspection And Testing - Control, verification, and acceptance testing procedures for each specific test to include the test name, specification paragraph requirement test, feature of work to be tested, test frequency, and person responsible for each test. The CQC Plan shall include under this section:
 - A detailed plan identifying QC activities and testing requirements for all definable features of work.
 - Activities that require qualified production, inspection, and test personnel identified.
 - A Three-Phase QC System procedure.

See also Section H., "Inspection and QC Testing."

- Inspection, Measuring, And Test Equipment - Inspection, measuring, and test equipment required to carry out inspection and testing shall be identified, controlled, calibrated, and maintained in order to demonstrate the conformance of work to the project documents, and procedures established in the CQC Plan. A schedule of

testing equipment that requires periodic and regularly scheduled recalibration should be included in Contractor's CQC Plan. The system must include provisions for the unique identification of each piece of measuring and test equipment with a number or designation permanently affixed to the device. Calibration of measuring and test equipment must be performed at intervals specified in calibration procedures by Contractor or an agency/vendor specifically approved and traceable to the National Institute of Standards and Technology (NIST).

- Inspection And Test Status - A procedure shall be provided for identifying the inspection and test status relative to the quality of work during production and installation. The purpose of this is to ensure that only work that has passed the required inspections and tests are accepted. The status of completed, tested, and inspected construction should be kept as an ongoing record in the daily inspection reports. Nonconforming materials or construction should be recorded with location noted on inspection reports or nonconformance reports as applicable.
- Non-Conformance - Procedures shall be established and maintained for the immediate control of nonconforming work, in order to ensure that such work is not inadvertently used or installed. Nonconforming work shall be identified, documented, and evaluated to determine appropriate disposition. Nonconforming conditions shall be documented on nonconformance forms, in reports, letters, memos, corrective action lists, audit findings, etc. It is imperative that all non-conformances be resolved in cooperation with project management and the Quality Manager. See also Section K., "Nonconformance."
- Corrective Action - Corrective action procedures shall be established, documented, and maintained. These include procedures for investigation of the root cause of nonconforming work and the corrective action needed to prevent recurrence, and procedures for analysis to detect and eliminate potential causes of nonconforming work.
- Quality Records - Procedures shall be established and maintained for quality records. These procedures must identify which records should be kept, responsibility for production and collection, and responsibility for indexing, filing, storage, maintenance, and disposition of quality records. Contractor shall maintain current QC records, on forms approved by the Engineer, of all inspections and tests performed. These records must include factual evidence that the required inspections or tests have been performed. Contractor shall include in the CQC Plan an index of the records that will be accumulated and maintained during the progress of the work. See also Section I., "Reports and Forms."
- Quality Audits - Contractor shall perform scheduled internal audits, using non-Project QC personnel, to verify that its QC procedures ensure total compliance with the Project construction specifications and all reference standards. A schedule for the audits must be established as part of the CQC Plan. Records of self- audits

must be maintained as quality records and must be submitted to the MST Quality Manager within seven calendar days of the audit completion. Contractor shall provide access to the audit locations upon prior notice by the MST Quality Manager.

- Training - Contractor shall establish and maintain procedures for identifying the training needs and provide for the training of all personnel performing activities affecting quality. Contractor shall conduct quality training for all subcontractors, maintain quality training certifications from its subcontractors, and ensure all training and qualification records are maintained.

V. Acceptance Of The CQC Plan

Contractor shall submit the CQC Plan to MST for review and acceptance by the Engineer. An accepted CQC Plan is required prior to the start of construction. Acceptance is conditional and will be predicated on satisfactory performance during construction. MST reserves the right to require Contractor to amend the CQC Plan to address deficiencies and may also require removal or additional QC personnel, as necessary, to obtain the quality specified in the CQC plan.

VI. Notification of Changes to the CQC Plan

After acceptance of the CQC Plan, Contractor shall notify MST, in writing, prior to any proposed change. Proposed changes must be documented, tracked and approved by the Engineer.

VII. Identification and Control of Items and Materials

Contractor shall establish a process to trace materials from acceptance through shipping or receiving to installation in the work. Identification and traceability shall be provided through all inspections and tests. Provisions shall be made to maintain stored items consistent with the expected environmental requirements and duration of storage. Defective items must be moved and stored in an area separate from other items or materials to be incorporated into the work. A documented system must be developed and maintained to assure that procured products conform to the requirements of the Contract.

Contractor shall develop and maintain a receiving inspection log, which must contain the following information:

1. Purchase order number
2. Item number
3. Supplier name
4. Lot Number

5. Quantity
6. Item description
7. Reference to applicable Contract requirements, including section or specification numbers
8. Date received
9. Heat number, serial number, or other identification, as applicable
10. Verification of receipt of all required supporting documentation
11. Quality Control acceptance sign-off and date
12. Non-conformance number, if applicable
13. The condition of received materials or items, including photographic documentation

Contractor shall develop and maintain a separate receiving inspection log for MST-furnished materials, which must contain the same information required by this section. Contractor shall develop and maintain a separate defective material disposition log.

All samples of materials, products, or assemblies to be incorporated into the work must be retained for a minimum period of one year after the date of acceptance of the material or longer if reference samples have been taken. Contractor shall provide notice to the Engineer of intent to discard or destroy such samples as may be in the possession of Contractor or its subcontractors.

VIII. Inspection and QC Testing

A. General

Contractor shall perform QC inspection and testing as specified or required by the Standard Specifications and these General Provisions to verify that control measures are adequate to provide a product which conforms to contract requirements. Contractor shall bear all costs for QC inspections and tests as required and in accordance with the Contract. MST will perform Quality Assurance (QA) inspection and testing. QA testing results by MST, or their representative, shall govern and may require retesting for that feature of work at Contractor's expense.

Procedures and instructions, including copies of recognized national standards and written test procedures, as applicable, must be readily available to inspection and test personnel at the time of inspection or test. When methods of inspection and test are changed, revisions must be reflected in approved written procedures prior to implementation of the change on any work. Adherence to methods and processes reflected in approved work procedures and instructions must be complete and continuous.

The Engineer may inspect the materials supplied and installed under this Contract throughout the life of the Project. Contractor shall provide the Engineer with safe access to the work during its construction, and shall be furnished

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with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of the contract documents. Contractor shall provide the Engineer sufficient time to review any material in the field, place of manufacture, or any testing facility. Contractor shall provide the Engineer with at least 15 calendar days' written notice, unless otherwise indicated, of any off-site manufacture, testing, or other pertinent work to allow the Engineer to inspect such work. No materials or items will be installed without documented conformance to the Project construction specifications.

Contractor's plan identifying QC activities and testing requirements for all definable features of work must be in the CQC Plan. A definable feature of work is a task that is separate and distinct from other tasks and has separate control requirements. It could be identified by different trades or disciplines, or it could be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there is frequently more than one definable feature under a particular section. In the absence of inspection or test frequency identified in the contract specifications, Contractor shall propose a frequency for approval by the Engineer as part of the CQC Plan.

Activities that require qualified production, inspection, and test personnel must be identified and the minimum competence level must be established as part of the CQC Plan. Personnel performing special processes (e.g., welding or brazing) or inspection/test tasks must have the experience, training, certification, and, where required, the license commensurate with the scope, complexity, or nature of the activity and must be approved by the Engineer.

Records of personnel qualifications must be maintained by Contractor as Quality Control records.

B. Inspection

A Three-Phase QC System shall be incorporated into the CQC plan to ensure that Contractor constructs the project to the required quality standards by requiring Contractor to plan, schedule, and document the results of the necessary QC activities.

The three phases of inspection are conducted by the CQC Manager and Construction Management Consultant Quality Assurance (CMC QA) Manager for all definable features of work. The three phases include preparatory, Initial, and Follow-up. Procedures shall be established for tracking preparatory, initial, and follow-up control phases and control, verification, and contractor's acceptance tests, including test records documentation.

The preparatory phase shall include a Readiness Review Meeting conducted by the CQC Manager and attended by MST quality staff. MST and the CQC Manager shall agree on the limits of work, hold points, and acceptable level of workmanship required with the superintendent and other contractor and subcontractor personnel as

applicable, and the foreman responsible for the definable feature being inspected. The results of the preparatory phase actions shall be documented by separate minutes prepared by the CQC Manager.

Contractor shall provide the Engineer with not less than 48 hours' written notice of the occurrence of an assigned hold point (with the exception of any hold point that is subject to be inspected by outside agencies). Hold points required by outside agencies require a seven calendar day prior written notification to the Engineer and to the outside agency's representative.

In-process inspection shall be utilized, in addition to receiving inspection, first article inspection, installation inspection, and final inspection, to evaluate project attributes (such as performance, reliability, etc.) and to verify that the project is built in accordance with the project requirements. Contractor-procured material shall be subject to Source Inspection requirements as stated in the Caltrans Construction Manual, Chapter VIII, Section 8-02.

Contractor shall furnish MST a list of Contractor's materials sources and the locations at which they will be available for inspection (use the "Notice of Materials to be Used" Form). The list shall be furnished to MST in sufficient time to permit inspecting and/or testing of materials furnished from the listed sources in advance of their use. Also, copies of documented QC operations, inspections, and tests must be made available to the MST representative at the points of production, manufacture, and/or shipment.

Additionally, Contractor will coordinate and provide code and/or special inspection as defined in the International Building Code (IBC) where required by local jurisdictions. The special inspectors will provide the Engineer with copies of their daily diaries as well as any other required inspection reports.

C. Testing

Testing includes, but is not limited to qualification tests, factory tests, installation verification tests, construction material tests, demonstration tests, and pre-operation tests. Contractor's QC testing shall be performed and documented by qualified persons other than those responsible for accomplishing the work being inspected.

Contractor shall notify the Engineer at least 24 hours in advance of testing. Inspection and test results must be submitted to the Engineer prior to incorporation of the item(s) into the work.

Inspection/test results indicating non-compliance (failure) with specified requirements must be reported to the Engineer immediately upon receipt. Certificates of compliance and submittals must be submitted and reviewed prior to the products' incorporation into the work. Inspection and tests, conducted by persons or agencies other than Contractor, will not in any way relieve Contractor of its responsibility and obligation to meet all Project construction specifications and the referenced standards.

All tests taken, both passing and failing tests, shall be recorded on Contractor's Daily Report. Specification paragraph reference, location where tests were taken, and the sequential control number identifying the test will be given. Items of nonconformance shall be identified and work shall not proceed for that feature of work until corrective action has been approved by MST.

Contractor shall employ the services of an approved independent certified material testing laboratory/laboratories to perform materials testing and control testing of materials incorporated into the work. The independent testing laboratory/laboratories must be accepted by the Engineer. The names of proposed laboratories must be submitted to the Engineer for acceptance within 20 calendar days after NTP.

The testing laboratory must conform to the standards of the nationally recognized association or agency that promulgates the standards referenced in the Project construction specifications for the work performed by said testing laboratory/laboratories. Some of the specific testing laboratory requirements are as follows:

1. Asphalt, concrete, and soil testing must be supervised by a Professional Engineer registered in the State of California and must conform to the requirements of ASTM E-329.
2. Engineering calculations and recommendations must be prepared by or under the direct supervision of a Professional Engineer registered in the State of California.
3. Electrical systems, power, and distribution equipment must be tested by an electrical testing laboratory that meets the standards of OSHA, Title 29, Part 1907, and is a certified member of the National Electrical Testing Association.
4. A registered land surveyor must perform the layout of the work.

Dismissal and replacement of the independent certified material testing laboratory requires written notification to and acceptance of the Engineer. Inspections and tests to verify compliance with the specified requirements must be performed by the QC personnel or their test laboratory using recognized national standards (e.g., ASTM) or, in the absence of such standards, using written test procedures that have been reviewed and approved by the Engineer. The written test procedures must include the following, at a minimum:

1. Prerequisites for the given test
2. Procedures
3. Required tools, equipment, and instrumentation
4. Necessary environmental conditions
5. Acceptance criteria
6. Data to be recorded
7. Test results reporting forms
8. Identification of items tested

When materials or other products, subject to testing, are supplied from more than one source on the same day, the tests and test frequencies indicated in this Section must apply to each source of supply used.

IX. Reports and Forms

Contractor shall maintain current QC records, on forms approved by the Engineer, of all inspections and tests performed. These records must include factual evidence that the required inspections or tests have been performed.

These records must cover both conforming and defective or deficient features and include corrective actions taken, and must include a statement that all supplies and materials incorporated in the work are in full compliance with the terms of the Contract. Legible copies of these records must be kept in the Project field office for review by the Engineer as requested. The records must cover all work placed subsequent to the previously furnished records and must be verified by Contractor's QC Manager. Contractor shall document inspection and tests as specified in the Project construction specifications. These records must be available for review by the Engineer or his authorized representative throughout the life of the Contract.

Specifically, Contractor shall maintain the following records:

A. Weekly Quality Control Summary Reports

Contractor's QC Manager must submit signed biweekly QC summary reports to the Engineer. These reports must address both Project progress and Project QC activity. Attached to these biweekly summary reports will be the inspector's and technician's daily reports and testing data.

B. Section I - Project Progress

This Section I - Project Progress must identify Contractor and subcontractor personnel on-site, equipment on-site, idle equipment and personnel, material deliveries, weather conditions, and work accomplished. When time and material work is performed, the daily inspector's report must include Contractor and subcontractor personnel on-site, equipment on-site, idle equipment and personnel, material deliveries, weather conditions, and work accomplished. These reports must be attached to the time and material sheets.

C. Section II - Project Quality Control Activity

This Section II - Project Quality Control Activity must summarize the day's inspection and testing activity, including

the following:

1. Meetings
2. Preparatory, initial, and follow-up inspections
3. Quality Control problems encountered or resolved
4. Failing test results received or corrected
5. Other significant events impacting Project quality or Contract compliance

Contractor's inspector's daily reports and test reports must be attached to the weekly QC summary report.

Weekly Quality Control summary reports must include the following, or similar, certification:

"On behalf of [CONTRACTOR'S NAME] - I certify that this report and the inspector's daily reports are complete and correct, and that all materials and equipment used and work performed during this reporting period are in compliance with the [PROJECT NAME] Construction Manager/General Contractor Project approved work plans and construction specifications and the Contract, except as noted in the inspector's daily reports."

D. Inspector's Daily Reports

Each of Contractor's inspectors must maintain a daily log of all inspections the inspector performs for both Contractor and subcontractor operations on the appropriate form approved by the Engineer. These inspector's daily reports must provide factual evidence that continuous QC inspections and tests have been performed including, but not limited to, the following:

1. Compliance with approved shop drawings
2. Proper storage of materials and equipment
3. Job safety
4. Computations employed in the work

The inspector's daily reports must identify the following:

1. Inspections and tests conducted
2. Results of inspections and tests
3. Location and nature of defects found
4. Causes for rejection
5. Remedial or corrective actions taken or proposed

Three copies of the weekly QC summary report and the inspector's daily reports must be provided to the Engineer by 4 p.m. on Tuesday for the previous week's work. The original Weekly Summary Report and inspector's daily reports must be placed in the Project QC files for audit and review by MST at any time. At the completion of the Project, these files must be turned over to MST in their entirety.

E. Tests Reports

Each week, a copy of all test results must be sent directly from Contractor's independent testing laboratory to the Engineer.

A copy of any failing report must be sent immediately. All test reports must be reviewed and signed by a Professional Engineer licensed in the State of California.

A copy of all daily field test reports (technicians' hand-written reports) as well as file copies of official laboratory test reports received that day must be attached to the weekly QC summary report.

F. Testing Control Log

Contractor shall maintain a log to record and track each test performed. The log must indicate the date of the test, test designation or type, location, specification test result requirements, initial test results, causes for failing the test, recommended remedial actions, and references to subsequent retests and their results.

G. Outstanding Item List

Contractor shall maintain a continuous log to record and track all inspections and tests which remain open or uncorrected at the close of each workday or shift. The log must number each item in successive, chronological order and must briefly describe the nature and location of the work, the nature of the inspection or test, cause(s) for rejection, corrective action(s) recommended, the identity of the inspector or technician, the date the item was corrected, and the identity of the inspector or technician who verified the corrective action.

H. Sign-Off Sheets

Contractor shall be responsible for establishing a system of sign-off sheets certifying that all work required prior to the construction or start-up of critical work elements has been constructed and installed in accordance with the Project approved work plans and construction specifications.

Critical work elements are defined as the following:

CM/GC General Provisions

1. Work activities concealing any feature of the work from subsequent inspection, for example, concrete placement, spray fireproofing, and installation of suspended ceilings; and
2. Start-up activities potentially damaging to work in place (i.e., energizing transformers and switch-gear, bumping motors, running in pumps, and hydro- testing pipelines).

Sign-off sheets must be initialed by each Contractor's QC inspector responsible for ensuring the quality of the work and signed by Contractor's QC Manager.

Contractor shall provide a copy of the completed sign-off sheet to the Engineer prior to performing each critical work element.

For each monthly progress payment, Contractor shall submit to the Engineer a certification, signed by Contractor's QC Manager, that all work for which payment is sought, including stored materials, has been inspected and tested as specified, and is in compliance with the Contract.

Prior to final acceptance, Contractor shall submit a certification to the Engineer, signed by Contractor's QC Manager, that all work has been inspected and tested and that all work, except as specifically noted, is complete and in compliance with the Project approved work plans and construction specifications. A certification must also be provided from all testing laboratories employed under this Contract confirming that all tests have been completed and that all test reports have been submitted. Tests must include those required by the Contract with all conformed modifications.

X. Document Control

Contractor's document control procedure must establish requirements for the systematic control of records and documents for the construction of the project. Document control measures shall ensure that all relevant documents are current and available to all users who require them. Contractor's document control procedures are required to:

1. Identify and maintain all available information relevant to the construction project;
2. Maintain project documents that have been reviewed by authorized personnel;
3. Incorporate and track changes to all documents in a controlled manner;
4. Establish a method for denoting and eliminating superseded or obsolete documents;
5. Ensure the proper distribution of all documents;
6. Establish a master list enumerating the current revision of each document;
7. Ensure that superseded documents are properly stored for later retrieval;

8. Maintain controlled copies and current revision status in accordance with documented requirements; and
9. Ensure that records are protected from damage, deterioration, or loss.

All records and documents which are quality related must be prepared, identified, and maintained current by Contractor and must be available for review or submitted to the Engineer upon request. Upon final acceptance of the Contract, Contractor shall provide MST with all records relating to QC activities.

XI. Nonconformance

A system must be established to define the methods and responsibilities for the identification, documentation, control, and processing of nonconforming equipment and material. A nonconformance will be considered to exist when either material or equipment exhibits a deficiency in either physical inspection characteristics or documentation. This system must apply to all material and equipment, including the actions associated with installation or construction which for any reason fail to conform to the Project construction specifications or other applicable approved product description. Contractor shall provide the following to prevent use of nonconforming items/materials:

1. Identification of nonconformance
2. Documentation
3. Evaluations/recommendations
4. Separation/removal
5. Immediate notification to the Engineer
6. Cause of nonconformance (Root Cause)
7. Determine extent to which problem affected past performance
8. Proposed corrective action
9. Corrective action actually implemented
10. Follow up to determine effectiveness of corrective action (internal audit)

Contractor shall develop and maintain a nonconformance log to enable tracking of all nonconformances. This log must contain the following information, at a minimum:

1. Sequential, unique number
2. Date issued
3. Originator
4. System affected/drawing number/serial number

5. Description of nonconformance and source (e.g., supplier, subcontractor, or welder)
6. Recommended/final disposition
7. Date closed
8. Contractor's Quality Control Manager's signature
9. Remarks, as applicable
10. The Engineer's signature

Contractor's QC personnel must have the authority to stop that portion of the work that does not comply with the Contract and to require the removal of nonconforming work.

The dispositions of nonconforming items/materials will be approved by the Engineer. Procedures must be established that control the use, including, logging, installation, and removal, of status tags. Authorization for removal must be defined in the CQC Plan. Intentional unauthorized removal of nonconformance status tags must result in immediate dismissal and removal from the job site of all responsible personnel.

Prompt action must be taken to identify the basic cause of nonconformance and the corrective action to prevent recurrence. The results of failure and discrepancy report summaries, supplier evaluations, and any other pertinent applicable data must be used for determining corrective action. Information developed during construction, test(s), and inspection(s) that support the implementation of required improvements and corrections must be used to support the adequacy of corrective action taken

EXHIBIT 2 - CONTRACTOR'S SAFETY & SECURITY PLAN

- I. Contractor's Safety Program
 - A. Contractor's Safety Program shall incorporate Contractor's safety practices and procedures, as well as the requirements described herein including the following:
 - 1. A disciplinary program.
 - 2. A policy that prohibits rough or boisterous play and activity, gambling, the use of alcohol or drugs, and the possession of weapons on the construction site.

- II. First Aid
 - A. Contractor shall provide emergency medical services including American Red Cross certified First Aid Representative(s) on the jobsite and an appropriate area designated for first aid to treat injured employees. First Aid Representatives shall be CPR certified.
 - B. Employees shall receive prompt first aid care when injured.

- III. Emergencies and Emergency Procedures
 - A. Develop Emergency Procedures for any event that may occur for the following categories:
 - 1. Fire
 - 2. Employee injury
 - 3. Property damage and damage to various utilities (such as, electrical, gas, sewage, water, telephone, or public roadway or railways)
 - 4. Earthquake
 - 5. Public demonstrations
 - 6. Bomb threats
 - 7. Hazardous materials encountered
 - 8. Toxic spills
 - 9. Explosions
 - 10. Vehicular accidents

 - B. The Emergency Procedures shall include, but not be limited to, the following:
 - 1. Identification of the person responsible for handling an emergency.

2. Establishment of teams for handling each type of emergency.
 3. Identification of the person responsible for making emergency call (preferably the ranking Supervisor present).
 4. The requirement to conspicuously post a list of emergency phone numbers, along with information to be transmitted.
- C. Update the Emergency Procedures when necessary.
- D. Provide to the Engineer copies of the above Emergency Procedures.
- E. Contact the Engineer immediately in the event a serious accident should occur.
- F. Following an emergency, Contractor shall:
1. Secure the area as expediently as possible; and
 2. Provide only those authorized representatives of MST and specific governmental agencies an account of the nature of the emergency. Questions from media personnel shall be referred to the Engineer.
- G. Whenever Contractor requires emergency services, such as ambulance, Fire Department or Police, Contractor shall use the posted emergency numbers and also contact a MST representative.

IV. Protecting the General Public

- A. Contractor shall take the necessary steps to prevent injury to the general public, MST employees, and MST patrons, or damage to public property. The public shall be considered as any persons not employed by Contractor or its Subcontractors. Contractor shall adhere to the following requirements:
1. Work shall be performed outside of the designated work area only when specifically stated in writing from the Engineer.
 2. Necessary steps shall be taken to protect and maintain work areas that interface with public sidewalks, station entrances (lobbies, corridors and aisles), stairways, escalators, elevators, and station platforms.
 3. All travel ways, access and egress points shall be maintained and kept clear of obstructions at all times.
 4. Warning signs shall be conspicuously positioned and a flag person shall be assigned when Contractor's equipment may be encountered by pedestrians or vehicles.

V. Specific Requirements

- A. Work Areas: Contractor shall provide a safe work area for its employees such that no laborer or mechanic shall be required to work in surroundings that are unsanitary, hazardous, or dangerous in accordance with the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3704 and its implementing regulations, "Safety and Health Regulations for Construction," 29 CFR 1926. When unsafe conditions do exist, immediate abatement is required.
- B. Work Practices: Contractor shall be responsible for assuring that its employees work safely and use the appropriate personal protective equipment.
- C. Weekly "Tool Box" Meetings:
 - 1. Contractor shall conduct weekly "tool box" meetings (15 minutes minimum) for all employees. The purpose of these weekly meetings is to:
 - a. Discuss observed accident trends and causes.
 - b. Plan safety into the work activities.
 - c. Take action to correct workers' safety concerns.
 - d. Review emergency procedures with employees.
 - 2. These meetings shall be documented and such documentation forwarded to the Engineer within one week of the meeting.
- D. Accident and Incident Reports: Provide Engineer with copies of all accident and incident reports within 24 hours of occurrence.
- E. Cal/OSHA Permit and Registration Requirements:

Submit copies of permits from the California Division of Occupational Safety for the following:

 - 1. Erection or demolition of any building, falsework, scaffolding, or structure the equivalent of three stories or higher.
 - 2. Performing any work related to hazardous materials.
- F. Personal Protective Equipment (PPE): Contractor's personnel, without exception, are required to

wear certain PPE. Among these are:

1. Hard hats and orange safety vests - mandatory.
2. Hearing protection - mandatory in all operations creating noise above eighty (80) decibels.
3. Eye protection - mandatory when performing tasks producing flying debris or when handling any chemicals.
4. Safety harness - meeting ANSI A10.14 and shall be worn and used when exposed to any fall of six feet or more in height, where the height cannot be properly guarded with rails or other means.
5. Shoes - made of leather (if tunneling is performed, shoes shall be made of rubber with steel toes).
6. Shirts - only those with sleeves allowed; no tank tops or mesh shirts are allowed.
7. Respiratory protection - when required by law.

VI. Inspections by Outside Agencies

Contractor shall be subject to inspections by outside agencies, including Cal/OSHA. Contractor shall notify the Engineer immediately should citations, warnings or safety violations be issued. Copies of same shall be provided to the Engineer within 48 hours.

VII. Inspections by MST

- A. Contractor shall cooperate with designated MST representatives when conducting site inspections.
- B. MST may periodically make quality assurance audits of Contractor's Safety Program.

VIII. Work Performed Near Existing Operating ROW

For any construction equipment (such as cranes, concrete pump trucks, backhoes, and the like) that could encroach into operating right-of-way, Contractor shall submit, and obtain approval by the Engineer, a plan describing the use of such equipment, and the necessary precautions to be taken to preclude any accidental encroachment of the right-of-way. Contractor shall obtain encroachment and/or right of entry permits for any anticipated encroachment into and operating right-of-way.

IX. Submittals

- A. Within five days of execution of contract:

Submit Contractor's proposed Safety representative's resume identifying his or her work experience and qualifications. The minimum qualifications shall be five years of diversified construction safety experience, and two years' experience related to the Contract's scope of work. Contractor shall have received the Engineer's approval of Contractor's proposed Safety Representative prior to submitting the first monthly progress payment.

B. Within seven days of Notice to Proceed:

Submit two copies of Contractor's Safety Program.